

Awards | Bar Business | CLE | Social Events

THE OKLAHOMA BAR Journal

Volume 88 — No. 24 — 9/9/2017



LOVE YOUR LAW PRACTICE
OKLAHOMA BAR ASSOCIATION
ANNUAL MEETING 2017
November 1-3 | Tulsa

COSPONSORED BY THE FAMILY LAW SECTION



6/0

PRACTICALITIES OF FAMILY LAW ADVOCACY

OCTOBER 6, 9 A.M. - 2:50 P.M.

OKLAHOMA BAR CENTER - "LIVE" WEBCAST AVAILABLE

PROGRAM PLANNER:

Allyson Dow, Fry & Elder

TOPICS INCLUDE:

- Experts in Family Law Cases
- Tips & Tricks on Drafting Decrees
- Admitting Evidence and Trial Organization
- Opening Statements & Effectiveness of Cross Examination

Early registration by Friday, September 29th is \$150. Registration received after Sept. 29th is \$175 and walk-ins are \$200. Registration includes continental breakfast and lunch. To receive a \$10 discount on in-person programs register online at www.okbar.org/members/CLE. Registration for the live webcast is \$200. Members licensed 2 years or less may register for \$75 for the in-person program (late fees apply) and \$100 for the webcast. All programs may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org to register.

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THEME:
OBA ANNUAL MEETING

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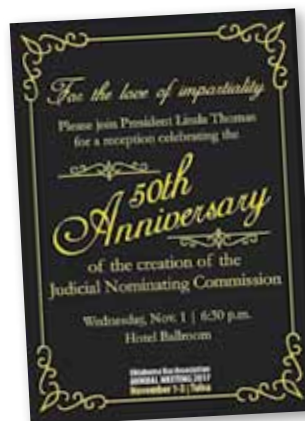
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PRESIDENT'S RECEPTION, JAZZ HALL OF FAME
AND OTHER EVENTS

Annual Meeting Offers Many Benefits for All Lawyers

By Linda S. Thomas

I love being a lawyer – most days. But I must admit there are moments I dream of winning the lottery and sailing off into the sunset without another thought about client files, custody disputes, billable hours or difficult opposing counsel. Surely, I'm not the only lawyer with such daydreams.

As it turns out, I am not the only lawyer who has experienced varying levels of job satisfaction. I recently stumbled upon an article on *The American Lawyer* website discussing job satisfaction among lawyers. As stated by the article's author, Bruce Lithgow, job satisfaction is derived from a variety of factors, including relationships with colleagues, work environment and culture, resources and support, compensation, growth opportunities, firm reputation and the work you do on a daily basis. Significant events in my own personal life, such as the birth of my grandchildren and the death of my father, have also impacted the level of satisfaction with my professional life throughout the years.

As significant as anything else (if not more significant), is the huge impact my involvement in the Oklahoma Bar Association has had on my personal job satisfaction. Through the OBA, I have made wonderful lifelong friends, received continuing legal education and training in a broad range of practice areas and participated in a variety of projects serving the community and my fellow lawyers. I have also been fortunate to be mentored by so many great lawyers throughout Oklahoma, and now have the opportunity to mentor the generation of great lawyers who will carry on the work of the profession and the OBA. One annual event that provides most, if not all, of these benefits is the OBA Annual Meeting.



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

The theme of the 2017 OBA Annual Meeting to be held Nov. 1 - 3 at the Hyatt Regency in downtown Tulsa is

"Love Your Law Practice." Whether you are a new admittee, right in the thick of your career, a self-professed "bar junkie" or enjoying the golden years of retirement, there is something for you.

- Join me at the President's Reception on Wednesday, Nov. 1, to celebrate the 50th anniversary of the Judicial Nominating Commission and honor past and present JNC members.

*I invite you
to come and
celebrate loving
your law practice
with me!*

- Learn how to be a lean, mean effectiveness machine from attorney coach and author Nora Riva Bergman who will share "For the Love of Productivity: 40 Tips in 40 Minutes" at the Annual Luncheon on Thursday. Nora's fun presentation of "been there, done that" tips will make a positive change on how you manage your practice and maybe even your personal life.

- Get inspired by recipients of the 2017 OBA Awards.

- Show your love and appreciation Thursday evening to outgoing OBA section and committee chairs and congratulate OBA members celebrating 70-, 60- and 50-year anniversaries at the Oklahoma Jazz Hall of Fame. Come dressed in 1920s attire – or not; either way it will be a great event in a great venue.

- Get all your 2017 CLE requirements met at one of three CLE tracks being offered.

More details about these exciting and informative events can be found in this issue. I invite you to come and celebrate loving your law practice with me!

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LOVE YOUR LAW PRACTICE OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2017 NOVEMBER 1-3 | TULSA

HIGHLIGHTS

President's Reception

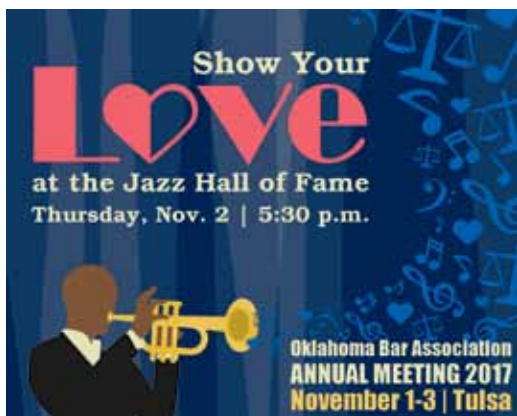
Catch up with friends from across the state and join President Linda Thomas on Wednesday evening to celebrate the 50th anniversary of the Judicial Nominating Commission. JNC members past and present will be honored. Enjoy free drinks and food, including an anniversary cake! The reception is free with Annual Meeting registration and each registrant receives two beverage tickets.

Annual Luncheon

Attorney coach Nora Riva Bergman will share "For the Love of Productivity: 40 Tips in 40 Minutes" in a fast-paced, TEDtalk-style presentation at the Thursday Annual Luncheon. Learn how to manage the challenges of practicing law today – deadlines, staffing issues, marketing, emails, demanding clients. OBA Award recipients will also be honored at this event. Tickets are available with or without meeting registration; sponsored by the OBA Family Law Section.



Attorney Coach Nora Riva Bergman



Show Your Love at the Jazz Hall of Fame

The Thursday evening social will be at the Oklahoma Jazz Hall of Fame, a unique venue only a seven-minute walk or short shuttle trip from the hotel. Join your peers and show some love to lawyers celebrating their 50-, 60- and 70-year membership anniversaries, as well as your outgoing section and committee chairpersons. Attendees are encouraged to embrace the Jazz Age and dress in their best Roaring 20s attire. The reception will start right after meetings end. Sponsored by the OBA sections; admission is free to all.

Delegates Breakfast

Kick off the last day of Annual Meeting and join your county bar delegates for breakfast. This year's Friday morning breakfast will be a ticketed event, free for delegates or only \$30 for nondelegates. Annual Meeting planners are hard at work confirming the nationally recognized speaker, and there will be an announcement soon, so keep an eye out and be sure to get your tickets early!

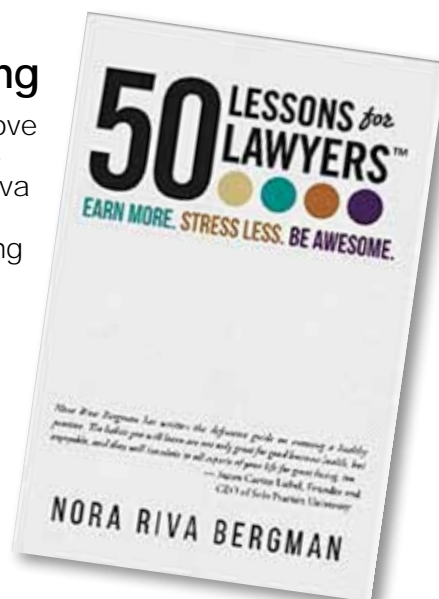


General Assembly and House of Delegates

The most important association business of the year takes place Friday morning – OBA award presentations, updates from judicial and OBA leaders, elections and consideration of resolutions. For resolutions to be published in the Oct. 21 *Oklahoma Bar Journal* and in the official General Assembly and House of Delegates publication, proposed resolutions in bill format must be submitted to Executive Director John Morris Williams by Oct. 2.

Things to Love About This Meeting

This year's Annual Meeting will help you fall in love with your law practice all over again. The conference gift with meeting registration will be Nora Riva Bergman's popular book, *50 Lessons for Lawyers*, with the latest strategies on productivity, marketing and leadership. Parking hassles are being addressed by providing nearby alternate options – a map will be available on the meeting website at www.amokbar.org. A list of restaurants in and around the hotel will also be available online.





LOVE YOUR LAW PRACTICE **OKLAHOMA BAR ASSOCIATION** **ANNUAL MEETING 2017** **NOVEMBER 1-3 | TULSA**

ATTORNEY COACH NORA BERGMAN TO DELIVER KEYNOTE ADDRESS

Attorney Coach Nora Bergman will be this year's keynote speaker at the Annual Meeting Luncheon. Ms. Bergman will pour her best productivity lessons into "40 Tips in 40 Minutes." The tips will focus on maintaining a healthy balance of work life and home life, staying focused and prioritizing. She will also speak at a plenary session featuring tips from her book *50 Lessons for Lawyers: Earn More. Stress Less. Be Awesome.*

Before she was meeting with clients, leading a bar association or coaching attorneys, she was a musician. Her 10-year career as a singer and musician helped her form the discipline and hustle that followed her throughout her law career. She received her undergraduate degree in journalism from the University of South Florida (USF) and her J.D. from the Stetson University College of Law. After law school, Ms. Bergman practiced employment law and mediation. She worked as an adjunct professor at both of her *alma maters*, Stetson University College of Law and USF. She also served as executive director of the St. Petersburg Bar Association.

Her career as a certified practice advisor started in 2006. She has spoken at conferences for the American Bar Association, The Florida Bar and other national and regional bar associations and legal organizations. Our own bar President Linda Thomas heard her speak at the National Conference of Bar Presidents. Ms. Bergman is certified in the Conflict Dynamics Profile and DISC behavioral style assessment. She holds a Lean Six Sigma Sensei certification and teaches the course for solos for Solo Practice University.

With her unique experience and excellent coaching skills, her address is surely not one to miss. The Annual Luncheon starts at noon on Thursday, Nov. 2. The cost to attend the event is \$40 with Annual Meeting registration or \$50 without meeting registration.





By Susan Damron

on the relationship and crossroads between family law and other areas of practice such as mediation and criminal law, as well as examining equity in attorney fee awards.

There is love in the afternoon with a three-hour track, ***What Have They Done to Me Now: Significant Decisions for You and Your Practice***, with panel discussions by distinguished judges and legislators moderated by Karen Grundy of the TU College of Law.

Love your life and let Heather Hubbard help you create your life and law plan with her three-hour afternoon track. She is the founder of *The Language of Joy*. If you want to experience greater success and satisfaction in your professional and personal life, an integrated approach is required. Ms. Hubbard, a former partner and practice group leader at an AmLaw 200 firm, created the Life & Law Plan framework to help attorneys intentionally design a career and life of meaning and purpose. During this interactive workshop, you'll learn the framework of an integrated plan, explore the areas of your career and life that need the most attention, establish priorities and outline your strategy for success. At the end of this session you'll have an integrated plan ready to go for 2018!

What's not to love about a six-hour track brought to you by OBA Management Assistance Program Director Jim Calloway and Advisor Darla Jackson? ***Naked & Afraid in the Digital Age*** will include information on cutting-edge trends important to your practice, how to increase security for better client service and benefits of digital client files. The track will also feature Britt Lorish, a partner with Affinity Consulting Group LLC. She is a frequent speaker and writer for the ABA, ALA, ALI, state bars and other private organizations. She is also a recognized expert in law office finance, billing, trust accounting, speech solutions and paperless office concepts, as well as full-scale technology audits and workflow analysis. Ms. Lorish will teach you everything you need to know about time, billing and accounting software as well as provide the *IRS Audit Survival Manual* for law firms.

There will also be a three-hour morning track with different “come and go” ethics hours. Ethics presenters will include Oklahoma Court of Civil Appeals Judge Jane Wiseman and OBA General Counsel Gina Hendryx. Also, back by popular demand, the American Board of Trial Advocates will present ***Civility Matters***, so that we may “always remember that the practice of law is first and foremost a profession.”

THURSDAY, NOV. 2

For an additional three hours of CLE credit, you will love waking up for Thursday morning's plenary session with our Annual Meeting Luncheon keynote speaker, Nora Riva Bergman. Attorney coach Bergman will kick off the morning with her two-hour presentation, ***Earn More. Stress Less. Be Awesome. 12 Simple Strategies to Help You Fall in Love . . . With Your Law Practice***

based on her book, *50 Lessons for Lawyers*. She will share her strategies for helping lawyers achieve a sound balance in their personal and professional lives. This interactive presentation focuses on strategies from the book that you can put to work in your practice right now.

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

Ms. Damron is OBA educational programs director.

Wed. Nov. 1

Naked & Afraid in the Digital Age: Survival of the Fittest

Come & Go Ethics

Family Law Track

9-9:50
a.m.

From Limited Scope Services to Artificial Intelligence: Cutting Edge Trends Important to the Practice of Law

Jim Calloway, OBA

****Ten Things Every New Lawyer Needs to Know and What Others May Have Forgotten***

Jane Wiseman,
Court of Civil Appeals

TBD

10-10:50
a.m.

Everything You Need to Know About Time, Billing and Accounting Software

Britt Lorish, Affinity Consulting

****The Ten Most Common Bar Complaints: How to Avoid Becoming a Statistic***

Gina Hendryx, OBA
General Counsel

TBD

11-11:50
a.m.

Utilizing Client Portals for Increased Security and Better Client Service

Darla Jackson, OBA

****Civility Matters***

American Board of Trial Advocates
(ABOTA)

TBD

Naked & Afraid in the Digital Age: Survival of the Fittest

What Have They Done to Me Now? Significant Decisions for You and Your Practice

Heather Hubbard Life & Law Plan

2-2:50
p.m.

The IRS Audit Manual for Law Firms – What You Must Know to Survive

Britt Lorish

Significant Legislation:

Moderator: Karen Grundy, TU Law
Panel: TBD

Create Your Life & Law Plan™

Heather Hubbard, J.D.

3-3:50
p.m.

Don't Be Afraid: How You and Your Practice Will Benefit from Digital Client Files

Jim Calloway & Darla Jackson

Significant Case Law:

Panel: TBD

cont'd

4-4:50
p.m.

Like It or Not... Automated Document Assembly is in Your Future

Jim Calloway

Significant U.S. Supreme
Court Cases

cont'd

Thurs. Nov. 2 Resetting Your Law Firm for a Changing Economy & Marketplace

9-10:50
a.m.

Life. Law. Love. Earn More, Stress Less & Be Awesome

Presented by Nora Riva Bergman, J.D.

11-11:50
a.m.

*****Marketing Your Practice in the Digital Age***

Jim Calloway, OBA

* 1 ethics credit hour ** .5 ethics credit hour



LOVE YOUR LAW PRACTICE OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2017 NOVEMBER 1-3 | TULSA

PROGRAM OF EVENTS

All events will be held at the Hyatt Regency Tulsa, 100 E. 2nd St., Tulsa 74103, unless otherwise specified. Submit meeting program information to Laura Stone at lauras@okbar.org.

WEDNESDAY, NOV. 1

- Meeting registration opens at 11 a.m.
- OBA CLE:
 - Naked & Afraid in the Digital Age: Survival of the Fittest • Come and Go Ethics • Family Law • What Have They Done to Me Now? Significant Decisions for You and Your Practice • Life and Law Plan
- OCU School of Law Alumni Reception and Luncheon
- OU College of Law Alumni Reception and Luncheon
- TU College of Law Alumni Reception and Luncheon
- Committee and Section Meetings
- President's Reception
- Past Presidents Dinner



THURSDAY, NOV. 2



- OBA CLE: Plenary Session
 - Life. Law. Love. Earn More, Stress Less & Be Awesome *with keynote speaker Nora Riva Bergman* • Marketing Your Practice in the Digital Age
- Committee and Section Meetings
- Annual Meeting Luncheon featuring Nora Riva Bergman
- OBA Sections "Show Your Love at the Jazz Hall of Fame" event

FRIDAY, NOV. 3

- Delegates Breakfast
- General Assembly
- House of Delegates





LOVE YOUR LAW PRACTICE
OKLAHOMA BAR ASSOCIATION
ANNUAL MEETING 2017
NOVEMBER 1-3 | TULSA

RESOLUTION NO. ONE: LAWS GOVERNING TRUSTS

BE IT ENACTED BY THE PEOPLE OF THE STATE
OF OKLAHOMA:

Section 175.58. GOVERNING LAW.

A. The law of the jurisdiction designated in the trust terms; or

RESOLUTION NO. TWO: TRUST DECANTING

BE IT ENACTED BY THE PEOPLE OF THE STATE
OF OKLAHOMA:

Section 175.700. SHORT TITLE.

Section 175.701 DEFINITIONS.

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A. "Authorized trustee" means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries or a special needs fiduciary under Section 175.704 of this title.

B. "Charity" means a charitable entity or a charitable trust, as those terms are defined by Section 301.3 of this title or Sections 552.2(2) or 856 of Title 18 of the Oklahoma Statutes.

C. "Current beneficiary," with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.

D. "First trust" means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Sections 175.702 or 175.703 of this title.

E. "Full discretion" means a power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion.

F. "Limited discretion" means:

1. a power to distribute principal according to mandatory distribution provisions under which the trustee has no discretion; or
2. a power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the health, education, support or maintenance of the beneficiary.

G. "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

1. The trust terminated on that date; or
2. The interests of all current beneficiaries ended on that date without causing the trust to terminate.

H. "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Sections 175.702 or 175.703 of this title, is not currently required to be distributed.

I. "Second trust" means any irrevocable trust to which principal is distributed under Sections 175.702 or 175.703 of this title.

J. "Successor beneficiary" means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.702 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.702 DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH FULL DISCRETION.

A. An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one more than one, or all of the current beneficiaries of the first trust and for the benefit of one, more than one, or all of the successor or presumptive remainder beneficiaries of the first trust.

B. The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

C. If the authorized trustee grants a power of appointment to a beneficiary under Subsection B, the class of permissible appointees in whose favor the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

D. If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one

or more persons who become members of that class after the distribution to the second trust.

E. The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.703 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.703 DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH LIMITED DISCRETION.

A. An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

B. The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and presumptive remainder beneficiaries of the second trust must be the same as the successor and presumptive remainder beneficiaries of the first trust.

C. The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

D. If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become members of that class after the distribution to the second trust.

E. If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

F. The authorized trustee shall exercise a power of distribution under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as

Section 175.704 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.704 TRUST FOR BENEFICIARY WITH DISABILITY.

A. In this Section:

1. "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incompetent.

2. "Governmental benefits" means financial aid or services from a state, federal, or other public agency.

3. "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

a. A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

b. If no trustee or fiduciary has discretion under paragraph (A)(3)(a) of this Section, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

c. If no trustee or fiduciary has discretion under paragraphs (A)(3)(a) and (A)(3)(b) of this Section, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

4. "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

B. A special-needs fiduciary may exercise the decanting power under Section 175.702 of this title over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

1. A second trust is a special-needs trust that benefits the beneficiary with a disability; and

2. The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

C. In an exercise of the decanting power under this section, the following rules apply:

1. Notwithstanding Section 175.702 of this title, the interest in the second trust of a beneficiary with a disability may:
 - a. Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C., Section 1396p(d)(4)(C), as amended; or
 - b. Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C., Section 1396p(d)(4)(A), as amended.
2. Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must comply with Sections 175.702 or 175.703 of this title with respect to the interest(s) of each other current beneficiary, presumptive remainder beneficiary, or successor beneficiary.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.705 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.705 NOTICE REQUIRED.

A. An authorized trustee may exercise a power of distribution under Sections 175.702 175.703 of this title without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power.

B. For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.

C. Except as provided by paragraph (E)(5) of this Section, in addition to the notice required under paragraph (A) of this Section, the authorized trustee shall give written

notice of the trustee's decision to the attorney general if:

1. A charity is entitled to notice;
2. A charity entitled to notice is no longer in existence;
3. The trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
4. The trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

D. If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor. For purposes of paragraph (E)(3) of this Section, a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under this paragraph D waives the requirement that notice be given under this Section.

E. The authorized trustee is not required to provide notice:

1. To a beneficiary who is known to the trustee and cannot be located by the trustee after reasonable diligence;
2. To a beneficiary who is not known to the trustee;
3. To a beneficiary who waives the requirement of the notice under this section;
4. To a beneficiary who is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them; or
5. To the attorney general under paragraph (C) of this Section if the attorney general waives that requirement in writing.

F. The notice required under paragraph (A) of this Section must:

1. Include a statement that:

- a. The authorized trustee intends to exercise the power of distribution;
- b. The beneficiary has the right to object to the exercise of the power; and
- c. The beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this Act;

2. Describe the manner in which the trustee intends to exercise the power;

3. Specify the date the trustee proposes to distribute the first trust to the second trust;

4. Include the name and mailing address of the trustee;

5. Include copies of the agreements of the first trust and the proposed second trust;

6. Be given not later than the 90th day before the proposed date of distribution to the second trust; and

7. Be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.706 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.706 WRITTEN INSTRUMENT REQUIRED.

A distribution under Sections 175.702 or 175.703 of this title must be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first trust and the second trust.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.707 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.707 REFERENCE TO TRUST TERMS.

A reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust's principal was distributed under this Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.708 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.708 SETTLOR OF SECOND TRUST.

A. Except as provided by paragraph (B) of this Section, the settlor of a first trust is considered to be the settlor of a second trust established under this Act.

B. If a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust under this Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.709 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.709 COURT-ORDERED DISTRIBUTION.

A. An authorized trustee may petition a court to order a distribution under this Act.

B. If the authorized trustee receives a written objection to a distribution under this Act from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 175.705 of this title, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this Act.

C. If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 175.705 of this title was received by the attorney general, the trustee may not make a distribution under Sections 175.702 or 175.703 of this title without petitioning a court to approve or modify the exercise of the trustee's power to make a distribution under this Act.

D. In a judicial proceeding under this Section, the authorized trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable

the trustee to better carry out the purposes of the trust.

E. The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.

F. This section does not limit a beneficiary's right to bring an action against a trustee for a breach of trust.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.710 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.710 DIVIDED DISCRETION.

If an authorized trustee has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee having full discretion may exercise the power to distribute the trust's principal under Section 175.702 of this title.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.711 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.711 LATER DISCOVERED ASSETS.

To the extent the authorized trustee does not provide otherwise:

A. The distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal to the second trust; and

B. The distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.712 of Title 60, unless there is cre-

ated a duplication in numbering, reads as follows:

Section 175.712 OTHER AUTHORITY TO DISTRIBUTE IN FURTHER TRUST NOT LIMITED.

This Act may not be construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.713 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.713 NEED FOR DISTRIBUTION NOT REQUIRED.

An authorized trustee may exercise the power to distribute principal to a second trust under Sections 175.702 or 175.703 of this title regardless of whether there is a current need to distribute principal under the terms of the first trust.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.714 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.714 DUTIES NOT CREATED.

A. This Act does not create or imply a duty for an authorized trustee to exercise a power to distribute principal, and impropriety may not be inferred as a result of the trustee not exercising a power conferred by Sections 175.702 or 175.703 of this title.

B. An authorized trustee does not have a duty to inform beneficiaries about the availability of the authority provided by this Act or a duty to review the trust to determine whether any action should be taken under this Act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.715 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.715 CERTAIN DISTRIBUTIONS PROHIBITED.

A. Except as provided by paragraph (B) of this Section, an authorized trustee may not exercise a power to distribute principal of a

trust otherwise provided by Sections 175.702 or 175.703 of this title if the distribution is expressly prohibited by the terms of the governing instrument of the trust.

B. A general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust under Sections 175.702 or 175.703 of this title.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.716 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.716 EXCEPTIONS TO POWER OF DISTRIBUTION.

An authorized trustee may not exercise a power to distribute principal of a trust under Sections 175.702 or 175.703 of this title to:

A. Reduce, limit, or modify a beneficiary's current, vested right to:

1. Receive a mandatory distribution of income or principal;
2. Receive a mandatory annuity or unitrust interest;
3. Withdraw a percentage of the value of the trust; or
4. Withdraw a specified dollar amount from the trust;

B. Materially limit a trustee's fiduciary duty:

1. Under the terms of the trust; or
2. In a manner that would be prohibited by the Oklahoma Trust Act, Section 175.1 et seq. of this title, the Oklahoma Prudent Investor Act, Section 175.60 et seq. of this title, the Oklahoma Principal and Income Act, Section 175.101 et seq. of this title, or the Oklahoma Charitable Fiduciary Act, Section 301.1 et seq. of this title; or

C. Decrease or indemnify against a trustee's liability or exonerate a trustee from liability; or

D. Add a provision exonerating a trustee for failure to exercise reasonable care, diligence, and prudence; or

E. Eliminate a provision granting another person the right to remove or replace the

authorized trustee exercising the distribution power under Sections 175.702 or 175.703 of this title; or

F. Reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.717 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.717 TAX-RELATED LIMITATIONS.

A. The authorized trustee may not distribute the principal of a trust under Sections 175.702 or 175.703 of this title in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. The annual exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended;
2. A marital deduction under Section 2056(a) or 2523(a) of the Internal Revenue Code of 1986, as amended;
3. The charitable deduction under Sections 170(a), 642(c), 2055(a), or 2522(a) of the Internal Revenue Code of 1986, as amended;
4. Direct skip treatment under Section 2642(c) of the Internal Revenue Code of 1986, as amended; or
5. Any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986, as amended.

B. Notwithstanding paragraph (A) of this Section, an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under the Internal Revenue Code, 26 U.S.C., Sections 671 through 679, as amended.

C. If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Sections 175.702 or 175.703 of this title to a second trust that is not a permitted shareholder under the Inter-

nal Revenue Code, 26 U.S.C., Section 1361(c) (2), as amended.

D. If an interest in property that is subject to the minimum distribution rules of the Internal Revenue Code, 26 U.S.C., Section 401(a)(9), as amended, is held in trust, an authorized trustee may not distribute the trust's interest in the property to a second trust under Sections 175.702 or 175.703 of this title if the distribution would shorten the minimum distribution period applicable to the property.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.718 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.718 COMPENSATION OF TRUSTEE.

A. Except as provided by paragraph (B) of this Section and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Sections 175.702 or 175.703 of this title solely to change trust provisions regarding the determination of the compensation of any trustee.

B. An authorized trustee, in connection with the exercise of a power under Sections 175.702 or 175.703 of this title for another valid and reasonable purpose, may bring the trustee's compensation into conformance with reasonable limits authorized by state law.

C. The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in the same manner as the compensation would have been determined in the first trust.

D. An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Sections 175.702 or 175.703 of this title.

SECTION 20. EFFECTIVE DATE. This act shall become effective November 1, 2018.

RESOLUTION NO. THREE: NON-JUDICIAL TRANSFER OF TRUST

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the

Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation creating a new section of law to be codified in the Oklahoma Statutes as Sections 175.801 through 175.803 of Title 60, unless there is created a duplication in numbering, which relates to administration of trusts and transfer of trust assets to different place of administration. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Estate Planning, Probate and Trust Section.)*)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.801 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.801. SHORT TITLE.

This act shall be known and may be cited as the "Oklahoma Non-Judicial Transfer of Trust Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.802 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.802. PRINCIPAL PLACE OF ADMINISTRATION AND NON-JUDICIAL TRANSFER OF TRUST.

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

1. A corporate or trust company trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
2. All or part of the administration occurs in the designated jurisdiction; for example, physically maintaining trust records in the designated jurisdiction and preparing or arranging for the preparation of, on an exclusive basis or a nonexclusive basis, an income tax return that must be filed by the trust occurs wholly or partly in the designated jurisdiction.

B. A trustee or trust protector of a trust that is not subject to the jurisdiction of an Oklahoma court may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States if expressly authorized by the trust terms without beneficiary or court approval, or if not expressly authorized by the trust terms, then as provided in this Section.

C. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee or trust protector may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States as provided in this Section.

D. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred;
2. The address and telephone number at the new location at which the trustee can be contacted;
3. An explanation of the reasons for the proposed transfer;
4. The date on which the proposed transfer is anticipated to occur; and
5. The date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

E. The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

F. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to a court order.

G. For purposes of this Section, the term "qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

1. Is a distributee or permissible distributee of trust income or principal;
2. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (a) terminated on that date without causing the trust to terminate; or
3. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.803 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 175.803. METHODS AND WAIVER OF NOTICE.

A. Notice to a person under this Act or the sending of a document to a person under this Act must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

B. Notice otherwise required under this Act or a document otherwise required to be sent under this Act need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

C. Notice under this Act or the sending of a document under this Act may be waived by the person to be notified or sent the document.

D. Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

SECTION 4. EFFECTIVE DATE. This act shall become effective November 1, 2018.

RESOLUTION NO. FOUR: CHANGES IN MEMBER CLASSIFICATIONS

Whereas the Strategic Planning Committee of the Oklahoma Bar Association (OBA) is charged with studying and making recommendations regarding the long term financial stability of the OBA;

Whereas the demographics of the OBA have undergone significant changes regarding the age of the members of the Association and the number of members who are reaching age seventy (70) each year and electing Senior Member classification;

Whereas members who reach age seventy (70) and elect Senior Member classification pay no dues;

Whereas the financial projections of the OBA show that over the next ten (10) years the result of a large number of members actively practicing law and not paying any dues will cause a significant drop in revenue to the OBA while expenses to the OBA in support of those members will increase;

Whereas the discontinuation of the Senior Member Classification for members who reach age seventy (70) and allowing non-practicing members to elect Retired Status, and pay no dues, is equitable and necessary to aid in preserving the financial stability of the OBA;

Resolved, by the House of Delegates of the Oklahoma Bar Association to adopt as part of its Legislative Program to recommend to the Supreme Court amendments to Article II, Section 2 of the Rules Creating and Controlling the Oklahoma Bar Association, as published in *The Oklahoma Bar Journal* and posted to the website www.okbar.org, relating to change in the amount of dues to be paid by active members of the Oklahoma Bar Association. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the OBA Strategic Planning Committee.*)

(a) Active Members. Active ~~members~~ Members shall be all members not enrolled as ~~senior members~~ Senior Members, Retired, or ~~associated members~~ Associate Members.

(b) ~~SENIOR MEMBERS~~ Senior Member. An ~~active member~~ Active Member in good standing who ~~is~~ was seventy (70) years of age as of the first day of January of the ~~then current year~~ 2018, ~~may become a senior member and previously became a Senior Member~~ by filing with the Executive Director his or her statement, setting forth the month, day and year of his birth and requesting ~~senior membership~~ Senior Member classification. Thereafter, he or she shall be entitled to all the privileges and advantages of an Active Member ~~active membership~~ in the

Association without payment of further dues, with the exception that he or she shall not receive the Bar Journal free of charge. If a ~~senior member~~ Senior Member desires to receive the Bar Journal, ~~the senior~~ he or she shall pay for an annual subscription, the cost of which shall be based upon production and mailing costs. No additional members shall be added to this classification after January 1, 2018. After January 1, 2018, all members who are seventy (70) years of age or older, who are actively engaged in the practice of law, and who are not Senior Members, Associate Members or Retired Members shall pay dues in the amount specified for those in practice for more than three (3) years.

(c) Associate Member. A member in good standing who files, or on whose behalf there is filed, with the Executive Director, a statement that, by reason of illness, infirmity, or other disability, he or she is unable to engage in the practice of law shall become an ~~associate member~~ Associate Member of the Association for the duration of such illness, infirmity or other disability ~~and until he is restored to his the former classification~~. An ~~associate member~~ Associate Member shall not engage in the practice of law or be required to pay dues during such period. He or she may, on annual request, receive the Bar Journal during his or her disability. The member, on causing an appropriate showing thereof to be made to the Executive Director, shall be reclassified to be an Active Member ~~the membership held prior to such illness, infirmity or other disability~~ and shall be required to pay the dues applicable thereto beginning January 2nd next following such reclassification and to pay the cost of the Bar Journal during such disability if he or she has elected to receive it.

(d) Retired Member. An Active Member in good standing who reaches age seventy (70) on, or after January 2nd, 2018 and is no longer engaged in the practice of law may notify the Executive Director, in writing, that he or she wishes to be designated as a "Retired Member." Such request shall include a statement that the member is not engaged in the practice of law in any jurisdiction. Members who request Retired Member classification shall be relieved from paying dues and may purchase the Bar Journal and other member benefits that might be made available at a price equal to the cost to the Oklahoma Bar

Association in providing the member benefit. An Active Member requesting Retired Member classification must have reached age seventy (70) prior to January 2nd of the year he or she is requesting to be reclassified to Retired Status and relieved from paying dues. Those members who were previously classified as Senior Members prior to the adoption of this subsection may change their classification to Retired Member if a request in writing is submitted to the Executive Director with a request for the reclassification and a statement that the requesting member is no longer engaged in the practice of law.

~~(d)~~ (e) Reclassification to Active Membership – Showing Competence. Whenever a member seeks restoration to ~~active membership~~ Active Member classification after the lapse of two (2) years or less, he or she may be reinstated as provided in Rule 11.8 of the Rules Governing Disciplinary Proceedings. After the lapse of more ~~that~~ than two (2) years, an ~~associated member~~ Associate Member may be restored to ~~active membership~~ Active Member classification upon compliance with Rule 11.1 through Rule 11.7 of the Rules Governing Disciplinary Proceedings.

~~(e)~~ (f) Voting Members Defined. Active and ~~senior members~~ Senior Members shall constitute the voting members of the Association. Associate and Retired Members shall not be Voting Members.

RESOLUTION DEADLINE

Notice: Proposed resolutions are one of many bar business items discussed during the OBA Annual Meeting. Pursuant to OBA Bylaws, proposed resolutions must meet publication guidelines before Annual Meeting. For any resolution to receive a potential recommendation from the Board of Governors, the proposal must have been received by Sept. 5. A proposal relating to the Legislative Program must be sent in bill format to Executive Director John Morris Williams by **Monday, Oct. 2**, for publication in the *Oklahoma Bar Journal* Oct. 21 issue. In order for a resolution to be published in the official General Assembly and House of Delegates publication, it must be received by **Oct. 2**.



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OKLAHOMA BAR ASSOCIATION

ANNUAL MEETING 2017

NOVEMBER 1-3 | TULSA

HOUSE OF DELEGATES

Dear county bar presidents:

Thank you to the county bar presidents of:

Beaver, Blaine, Bryan, Canadian, Carter, Choctaw, Cimarron, **Cleveland, Custer, Dewey, Ellis, Grant, Greer, Hughes, Jackson, Kingfisher, Kiowa, Latimer, LeFlore, Lincoln, McClain, Oklahoma, **Payne, Seminole, Tulsa, Wagoner, Washita and Woodward counties for submitting your delegate and alternate selections for the upcoming OBA Annual Meeting.

(**Reported, awaiting election)

Listed below are the counties that have not sent their delegate and alternate selections to the offices of the Oklahoma Bar Association as of Aug. 30, 2017.

Adair	Haskell	Osage
Alfalfa	Jefferson	Ottawa
Atoka	Johnston	Pawnee
Beckham	Kay	Pittsburg
Caddo	Logan	Pontotoc
Cherokee	Love	Pottawatomie
Coal	Major	Pushmataha
Comanche	Marshall	Roger Mills
Cotton	Mayes	Rogers
Craig	McCurtain	Sequoyah
Creek	McIntosh	Stephens
Delaware	Murray	Texas
Garfield	Muskogee	Tillman
Garvin	Noble	Washington
Grady	Nowata	Woods
Harmon	Okfuskee	
Harper	Okmulgee	

Please help us by sending the names of your delegates and alternates now. In order to have your delegates/alternates certified, mail delegate certifications to OBA Executive Director John Morris Williams, P. O. Box 53036, Oklahoma City, OK 73152-3036, or fax to 405-416-7001.

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

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

Show Your **Love**

at the Jazz Hall of Fame
Thursday, Nov. 2 | 5:30 p.m.



**Sponsored by the
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**Open to all - no meeting
registration required!**

**Oklahoma Bar Association
ANNUAL MEETING 2017
November 1-3 | Tulsa**

2018 OBA BOARD OF GOVERNORS VACANCIES

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

OFFICERS

President-Elect

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

Vice President

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

BOARD OF GOVERNORS

Supreme Court Judicial District One

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

Supreme Court Judicial District Six

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

Supreme Court Judicial District Seven

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

Member At Large

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

Summary of Nominations Rules

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

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

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

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

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

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

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

NOTICE

The nominating petition deadline was 5 p.m., Sept. 1. This issue went to press before the deadline, and the list of nominees may not be complete.

See www.amokbar.org for updates.

OBA NOMINATING PETITIONS

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

OFFICERS

PRESIDENT-ELECT

CHARLES W. CHESNUT, MIAMI

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

Linda S. Thomas, Kimberly Hays, Jennifer Castillo, Cathy Christensen, Gary C. Clark, M. Joe Crosthwait Jr., Melissa DeLacerda, Renée DeMoss, John Gaberino, William R. Grimm, Garvin A. Isaacs, Charles D. "Buddy" Neal Jr., David K. Petty, David A. Poarch, Deborah Reheard, James T. Stuart, Richard Stevens, Peggy Stockwell, James Hicks, John Weedn, James R. Gotwals, Roy D. Tucker, Lane R. Neal, Mart Tisdal, Luke Adams, Michael C. Mayhall, Mike Mordy, Glenn A. Devoll, Steven L. Barghols, Jimmy Goodman, Dietmar Caudle, Susan Shields, Phillip J. Tucker, Joseph M. Vorndran, Louis J. Price, Dennis J. Watson, Becky Baird, N. Georgeann Roye, LeAnne Burnett, James K. Larimore, Michael D. Clover, Barry G. Reynolds, J. Schaad Titus, Tom Hillis, Kelley G. Loud, Gerald C. Dennis, Mark W. Curnutte, Donna L. Smith, O. Christopher Myers II and Mack K. Martin.

A total of 162 signatures appear on the petitions.

A Nominating Resolution has been received from the following county: Ottawa County

VICE PRESIDENT

RICHARD STEVENS, NORMAN

A total of 76 signatures appear on the petitions.

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

BOARD OF GOVERNORS

SUPREME COURT JUDICIAL DISTRICT No. 1

BRIAN T. HERMANSON, NEWKIRK

A total of 39 signatures appear on the petitions.

SUPREME COURT JUDICIAL DISTRICT No. 6

D. KENYON WILLIAMS JR., TULSA

A total of 26 signatures appear on the petitions.

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

SUPREME COURT JUDICIAL DISTRICT No. 7

MATTHEW C. BEESE, MUSKOGEE

A total of 30 signatures appear on the petitions.

MEMBER AT LARGE

BRIAN K. MORTON, OKLAHOMA CITY

A total of 59 signatures appear on the petitions.



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Ward & Associates, P.C.,
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- Understanding the Unique Needs of the Spanish-Speaking Community
- The Ethical Dangers of Having Family Members as Interpreters
- Hiring Interpreters and Translators
- Practice-Specific Spanish Legal Terms

\$200 for early-bird registrations with payment received by September 22nd. Registrations received after September 22nd are \$225 and walk-ins are \$250. Registration includes continental breakfast and lunch. To receive a \$10 discount for the in-person program, register online at www.okbar.org/members/CLE. Registration for the live webcast is \$225. Members licensed 2 years or less may register for \$75 for the in-person program and \$100 for the webcast. All programs may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org to register. No other discounts apply.

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- OBA hospitality refreshments all day and continental breakfasts on Wednesday and Thursday
- 20% discount on registrants' Annual Luncheon tickets

HOW TO REGISTER



Online

Register online at
www.amokbar.org



Mail

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



Phone/Email

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



Fax

405-416-7092

DETAILS

Location

Most activities will take place at the Hyatt Regency Tulsa, 100 E 2nd St., Tulsa, 74103, unless otherwise specified.

Materials

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

Hotel

Fees do not include hotel accommodations. For reservations at the Hyatt Regency Tulsa, call 888-591-1234 and reference the Oklahoma Bar Association 2017 Convention, or **go to www.amokbar.org/registration**. A discount rate of \$115 per night is available on reservations made on or before Oct. 10.

Cancellation

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

Special Needs

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

Name _____

Email _____

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

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Nonattorney Guest _____

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

Check all that apply: ☐ Judiciary ☐ Delegate ☐ Alternate

	Early Rate	Standard Rate	New Member✓ Early Rate	New Member✓ Standard Rate
Meeting Registration	\$75	\$100	\$0	\$25

Circle your choice

✓ *New members sworn in this year*

SUBTOTAL \$ _____

CLE

Annual Meeting registration not required. **Early rate valid on or before Oct. 10.** Circle your choice

	Early Rate	Standard Rate	New Member✓ Early Rate	New Member✓ Standard Rate
Wednesday*	\$150	\$175	\$50	\$75
Thursday Plenary**	\$50	\$75	\$25	\$50

✓ *New members sworn in this year* * includes 6 hours of CLE, including up to 3 ethics ** includes 3 hours of CLE, including .5 ethics

SUBTOTAL \$ _____

LUNCHEONS AND EVENTS

Annual Meeting registration not required

Law School Luncheon	<input type="checkbox"/> OCU <input type="checkbox"/> OU <input type="checkbox"/> TU	_____ # of tickets at \$40	\$ _____
Annual Luncheon with meeting registration		_____ # of tickets at \$40	\$ _____
Annual Luncheon without meeting registration		_____ # of tickets at \$50	\$ _____
Delegate Breakfast for nondelegates and alternates		_____ # of tickets at \$30	\$ _____
Delegate Breakfast for delegates (no charge)	<input type="checkbox"/> (check if attending as a delegate)		

SUBTOTAL \$ _____

PAYMENT

☐ Check enclosed: Payable to Oklahoma Bar Association

TOTAL COST \$ _____

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

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

Schedule

- 8:30am** **Registration and Continental Breakfast**
- 9:00** **The Starting Line**
Jim Calloway, Director, OBA Management Assistance Program
- 9:30** **It's All About the Clients: From Client Communication to Client Development and Marketing**
Jim Calloway
- 11:00** **Break**
- 11:10** **How to Manage-Everything!**
Jim Calloway
- 12:00pm** **Lunch provided by Oklahoma Attorneys Mutual Insurance Company**
- 12:30** **Malpractice Insurance and Other Risk Management Issues**
Phil Frain, President, Oklahoma Attorneys Mutual Insurance Company
- 1:00** **Professional in the Practice of Law**
Judge David Lewis, Presiding Judge, Oklahoma Court of Criminal Appeals
- 1:30** **Break**
- 1:40** **Trust Accounting and Legal Ethics**
Gina Hendryx, OBA General Counsel – Tulsa
Loraine Farabow, OBA First Assistant General Counsel – OKC
- 2:40** **Break**
- 2:50** **Equipping the Law Office**
Darla Jackson, Practice Management Advisor,
OBA Management Assistance Program
- 3:30** **Your Money: Accounting and Tax for Law Firms**
James Porter, CPA
- 4:30** **Adjourn**

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

By Spencer C. Pittman and Mbilike M. Mwafurirwa

*Today we're looking at science fiction becoming tomorrow's reality –
the self-driving car.*

Gov. Jerry Brown¹

Pretend for a moment you are a trolley driver. You round a bend and see five men repairing the track you are driving on. Your only option to avoid the men is to apply the trolley's brakes, but you quickly discover the brakes do not work. You suddenly see a break in the track to the right. You have the option to turn the trolley right and avoid the five men ahead of you. Luck, however, is not on your side. Another workman is working on that side of the track as well. Due to steep sides, none of the workmen can get off the track in time to avoid your trolley. You quickly glance to your left hoping for some reprieve. Instantly, you see a worn path that leads to a dead end and a sizable barrier, and most certainly, to your end.

Your options so far are threefold: 1) continue on your charted path and kill the five workmen, 2) turn the trolley right and kill the single workman and finally 3) turn the trolley to the left side leading to your own demise. Therein lies the conundrum: Are you under a moral duty to turn the trolley?² If so, which way? What about liability? Who should be responsible? This article discusses and analyzes the trolley problem's application to autonomous vehicles and also attempts to answer the vexing liability questions – who should be liable and on what terms?

For well over half a century, the trolley problem (in various forms) has been a ripe subject for philosophical debate. Recent advances in

technology, however, make this a question for our time. Uber, for example, has already started testing self-driving cars in Pittsburgh.³ Industry experts predict that as many as 10 million self-driving vehicles are expected to be on American roads by 2020.⁴ Assuming for all intents and purposes that an autonomous vehicle is 100 percent self-driven with no user-operation or control, experts have recognized the potential application of the “trolley problem” in the inherent functionality of self-driving cars, especially if the car is placed in a situation where it must make a judgment call – to risk taking your life or someone else's.⁵ Again, who should be liable and on what terms?

AUTONOMOUS VEHICLES AND THE LAW: INEVITABLE UNCOUPLING

We are living in the age of artificial intelligence (AI). AI is the sum of efforts “to build intelligent entities.”⁶ Intelligent entities are made by “creating machines with one or more of the following abilities: the ability to use language; to form concepts; to solve problems now solvable only by humans; to improve themselves.”⁷ These are machines that operate independently of humans. For so long, the motorcar and its driver have been indispensable partners. This bond, however, is undergoing a conscious uncoupling. The automobile industry is preparing to roll out self-driving vehicles.⁸

A number of states have enacted legislation to regulate self-driving cars. Nevada took the lead in 2011, enacting Assembly Bill 511 (2011). Nevada defines an “autonomous vehicle” as “a motor vehicle that uses artificial intelligence, sensors and global positioning system coordinates to drive itself *without the active intervention of a human operator*.”⁹ However, vehicles “with a safety system or driver assistance system, including . . . a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warnings” systems are not considered self-driving cars.¹⁰ For liability purposes, the car driver is still considered the operator of the vehicle so long as he “causes the autonomous vehicle to engage, regardless of whether the person is physically present in the vehicle while it is engaged.”¹¹ Other states are also quickly enacting similar autonomous vehicle laws in anticipation of self-driving cars.¹² Oklahoma, however, does not have legislative schemes in place for autonomous cars.¹³ Short of comprehensive legislative intervention, the common law will have to fill the void and deal with autonomous vehicles.¹⁴

THE FORESEEABLE CONUNDRUM INHERENT IN SELF-DRIVING CARS

Recall our hypothetical: the self-driving car is involved in an accident. A number of vexing issues inevitably arise, 1) who should the car injure? You (the passenger) or them (innocent

victims)?; and, 2) who should be liable and on what terms? We delve into these issues.

You or Them?

What should the autonomous vehicle be programmed to do? Who should be responsible for the programming? Should the driver of the autonomous vehicle have a part in the decision? Although the common law does not specifically answer these questions, it has over the years laid down some bright lines. Sir William Blackstone, for example, quipped that when a person is faced with a choice of saving himself at the expense of another innocent person, that person “ought rather . . . die himself than escape by the murder of an innocent.”¹⁵ Other scholars, on the other hand, have suggested that flipping a coin would provide a better and more fair answer.¹⁶ In fact, the coin flip (*i.e.*, leaving the fatal choice to chance alone) has been suggested as a logical extension and expression of natural law since the ultimate choice forces “God to ‘show his hand’” and forces “Him to reveal His intentions for the future.”¹⁷ In Oklahoma, the common law presently appears to favor that the choice should fall on self.¹⁸ Interestingly, in accord with the law’s position, experience has also shown that a good number of people, given a choice, would favor self-sacrifice.¹⁹ To expect the self-driving vehicle to make the election itself would

provoke more questions than answers, such as what objective criteria would the machine use to make the election when preferring one life over another? Maybe Isaac Asimov, the renowned robotics writer, had the solution all along. In his famous book, *I, Robot*, Mr. Asimov coined the “Three Laws of Robotics” to govern robots. According to those rules:

- 1) A robot may not injure a human being or, through inaction, allow a human being to come to harm.
- 2) A robot must obey the orders given it by human beings except where such orders would conflict with the First Law.
- 3) A robot must protect its own existence as long as such protection does not conflict with the First or Second Law.²⁰

“What should the autonomous vehicle be programmed to do? Who should be responsible for the programming?”

If followed, these rules foreclose any possibility of the self-driving vehicle electing to take human life, unless specifically programmed to do so.²¹

Who Should Be Responsible?

With no continued user-control in the operation of the vehicle, which then takes the life of another, who should the law hold responsible for the car's choices? Three possibilities emerge: 1) the owner of the vehicle, 2) someone on the manufacturing end, or 3) the autonomous vehicle itself. In regard to owner liability, if the owner of the vehicle plays a role in initiating the operation of the vehicle (either by pressing a button, voice activation or paying for the use of the car in order to initiate it), then he should have responsibility for the consequences. The second possibility is that the owner of the vehicle, as a mere passenger in a self-operated vehicle, should have no liability. After all, he or she did not decide the fate of any person, let alone operate a vehicle to carry out that fate. On the other hand, liability on the manufacturing end of the spectrum supposes that the automated vehicle will have a certain "code" or algorithm to instruct the autonomous vehicle which decision to make.²² Thus, the coder will be empowered to choose whose life should be taken – yours or theirs. Should the coder write the algorithm to minimize the loss of human life? Should the coder risk the lives of the elderly over the infantile? And if the coder does make the choice, should liability attach? We explore these themes.

Owner Liability. Oklahoma law provides that when civil tort liability is in question, it can be premised on either a fault-based or no-fault liability model.²³ On a fault based liability model, we can rule out intentional act liability because due to the very fact that the vehicle is self-operated, it is difficult to envision that the nonparticipant owner deliberately chose to run over a specific person, let alone that he had substantial certain knowledge that he would kill someone by just being a passenger in his car.²⁴

A negligence theory, however, might provide a sounder basis for liability. The default common law liability-limitation rule is *sic utere tuo ut alienum non laedas* (the rightful and lawful use and enjoyment of one's own property cannot be a legal wrong to another absent malice or negligence).²⁵ The strength of that proposition is underscored in situations where the owner of the autonomous vehicle is a mere

passenger who does nothing to initiate or continue the operation of the vehicle. The analysis is, however, somewhat different if you assume two facts at this juncture: 1) that the autonomous vehicle is programmed to save a life (yours) but to take that of another and 2) the owner of the vehicle played some role in initiating the operation of the vehicle (either by pressing a button, voice activation or paying for the use of the car in order to initiate it). Under these circumstances, the owner cannot so easily disclaim liability. In negligence claims, the "existence of a duty of care is the threshold question."²⁶ Oklahoma law imposes an affirmative duty on every person not to engage in any conduct that might injure another person or the property of another.²⁷ Specifically in relation to vehicles, "drivers have a duty to operate their vehicle with due care."²⁸ In fact, the law generally imposes a duty "where the person's own affirmative act created an unreasonably high risk that harm would occur to the injured party."²⁹ Armed with the knowledge that the self-automated car is deliberately predisposed to killing third parties in the event of an accident, the person placing that risk on others should have a duty to prevent that outcome. A failure to do so should be sufficient to make out a *prima facie* case for negligence.

Manufacturer Liability. The base assumption in this context is that the car's manufacturer (or the programmer, either as an employee or an independent contractor for the manufacturer) has programmed the vehicle to deliberately injure third parties (as opposed to its operator) in the event of an accident. Against that background, Oklahoma law generally imposes a duty "where the person's own affirmative act created an unreasonably high risk that harm would occur to the injured party."³⁰ Under these circumstances, the manufacturer would have a duty, as a matter of law, to prevent that outcome.³¹ The safest option for the manufacturer would be to program the vehicle to injure its user.³²

Strict liability offers an additional basis for manufacturer liability. "[T]hough strict liability does eliminate negligence as a basis for recovery, it does not dispense with the requirement of proximate cause."³³ The *prima facie* case elements for strict liability in Oklahoma are threefold: "(1) a defect existed in the product at the time it left the manufacturer, retailer, or supplier's control; (2) the defect made the product unreasonably dangerous; and (3) the defect in

the product was the cause of the injury.”³⁴ Oklahoma’s strict liability “doctrine also applies to bystanders.”³⁵ A strict liability lawsuit has to be grounded on a claim that 1) the product had a manufacturing defect when it left the manufacturer, retailer or supplier; 2) the entire line of the product is defective (design defect); or 3) there was a warning defect.³⁶ Regardless of the claim pursued, a plaintiff still must show, as a threshold matter, that the product was both defective and unreasonably dangerous.³⁷ The requirement that a product has a defective condition and that it be unreasonably dangerous are “essentially synonymous.”³⁸ As such, a product can be defective because it is unreasonably dangerous.³⁹ Oklahoma applies the consumer expectation test from the Restatement of Torts to determine if a product is unreasonably dangerous.⁴⁰ That test holds that a product is unreasonably dangerous if it is “dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.”⁴¹ As applied to self-driving cars, there is a reasonable basis to find such vehicles to be unreasonably dangerous. Ordinary consumers will probably not know off-hand that self-driving cars in the streets are irreversibly disposed to killing them (as opposed to leaving it to chance) in the event of an accident. That would serve as an ideal predicate for a failure-to-warn manufacturer’s liability claim. After all, Oklahoma law imposes liability on manufacturers when they fail to provide adequate notice for the risks posed by their products.⁴² In addition, based on the preceding analysis, we have no doubt that a product liability claim based on either a manufacturing or product design defect would remain open to a plaintiff.⁴³

Suing the Self-Driving Car. The more advanced self-driving cars become – exercising uninhibited free judgment – the more compelling the argument for holding the car responsible becomes. In *Sierra Club v. Morton*,⁴⁴ Justice Douglas considered a novel question: Should inanimate objects (like trees) have standing?⁴⁵ Justice Douglas decided that they should; his premise was straightforward:

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole – a creature of ecclesiastical law – is an acceptable adversary,

and large fortunes ride on its cases. The ordinary corporation is a “person” for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.⁴⁶

In *Morton*, Justice Douglas decided that legal personality should be extended to trees because he saw no notable difference between them and other inanimate objects like corporations and ships – that all have litigation rights and burdens.⁴⁷

Self-driving cars, like other inanimate objects, can also be sued directly. The common law’s approach to ships provides the closest analogy. The common law has long personified ships.⁴⁸ Besides *in rem* actions, the common law “permits a salvage action to be brought in the name of the rescuing vessel.”⁴⁹ In addition, in collision litigation, ships can sue and be sued directly.⁵⁰ Likewise, the common law should afford self-driving cars legal personality like it does to other notable inanimate objects, like ships and corporations, so they can be sued directly.⁵¹ Indeed, other jurisdictions, like the European Union, are already adjusting their laws to give self-driving cars legal personality, so they can sue and be sued.⁵²

Once it is accepted that the self-driving car has advanced consciousness and that it can make an independent judgment (choosing between multiple risks), there is room to accept that it can also make socially undesirable choices – *i.e.*, make wrong choices or mistakes.⁵³ This is important because in Oklahoma, at a bare minimum, “[e]very mistake involves an element of *negligence, carelessness or fault*.”⁵⁴ That wrong choice could serve as the basis for liability, especially if it resulted in harm or injury to someone or his property interests.⁵⁵

But who would represent the vehicle’s interest in litigation? Like the inanimate objects (corporations and trees) contemplated by Justice Douglas, in the event of a lawsuit against the car, “the voice of the existing beneficiaries of these . . . [inanimate] wonders should be heard.”⁵⁶ This class of persons could include the owner or licensed user of the vehicle, and even an attorney provided by the self-driving car’s insurers.⁵⁷

CONCLUSION

The ethical dilemma of the trolley problem will soon become a reality on many of America’s roadways – one that will challenge settled

ethical expectations and civil liability rules. Before the advent of mass scale operation of autonomous vehicles (likely just before 2020), a comprehensive regulatory scheme should be implemented. Otherwise, litigants will be forced to rely upon judge-made law and its incremental case-by-case development until this conundrum is addressed. From a survey of various other states' laws, if a comprehensive regulatory framework is to be implemented, at a bare minimum, it should ensure that, 1) the autonomous cars, like all other vehicles, obey all existing traffic laws; 2) any owner or operator of such a vehicle (that is placed on a public road) should be required to comply with the compulsory liability insurance laws; 3) to the extent that the vehicle can switch from operating 100 percent autonomously to having some user input, the human operator should be required to have a valid driver's license (with an appropriate endorsement attained after showing competence in the operation of autonomous vehicles); and 4) in the event of a detected error with the autonomous vehicle's operating system, the car should be required to stop at the nearest safest point and cease operation, only resuming if a licensed (nonimpaired) human operator is willing to assume manual control of the vehicle.

1. "Driverless Car Bill is Signed in California at Google Headquarters," *BBC News*, Sept. 26, 2012, www.bbc.com/news/technology-19726951 (last accessed July 5, 2017).
2. Phillipa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," 5 *Oxford Rev.* 5 (1967); Judith Jarvis Thompson, "The Trolley Problem," 94:6 *Yale L.J.* 1395 (May 1985).
3. *The New York Times* (Sept. 10, 2016), "No Driver? Bring It On. How Pittsburgh Became Uber's Testing Ground," www.nytimes.com/2016/09/11/technology/no-driver-bring-it-on-how-pittsburgh-became-ubers-testing-ground.html?_r=0 (last accessed Jan. 8, 2017).
4. John Greenough, "10 Million Self-driving Cars Will Be on the Road by 2020," *Business Insider*, June 15, 2016, www.businessinsider.com/report-10-million-self-driving-cars-will-be-on-the-road-by-2020-2015-5-6 (last accessed July 5, 2017).
5. John Markoff, "Should Your Driverless Car Hit a Pedestrian to Save Your Life?," *The N.Y. Times*, June 23, 2016, www.nytimes.com/2016/06/24/technology/should- (last accessed July 5, 2017). (your-driverless-car-hit-a-pedestrian-to-save-your-life.html).
6. See generally, Stuart Russell and Peter Norvig, *Artificial Intelligence: A Modern Approach* 1, 3 (3rd ed. 2009).
7. James Somers, "The Man Who Would Teach Machines To Think," *The Atlantic*, November 2013, www.theatlantic.com/magazine/archive/2013/11/the-man-who-would-teach-machines-to-think/309529/ (last accessed Jan. 23, 2017).
8. *Supra*, note 3.
9. A.B. 511 (2011), at (8)(3)(b) (emphasis added); see also, e.g., Nev. Rev. Stat. §§482A *et seq.*; Fla. Stat. §§316.85, 319.145; Cal. Veh. Code §§38750(b); Ut. Stat. §§41-26-101, *et seq.*; Tn. Stat. §§55-8-202; D.C. Code §§50-2351, *et seq.*
10. Reg. Dep't of Motor Veh., LCB File No. R084-11, §1 (eff. March 1, 2012).
11. *Id.* at §3.
12. Automated Driving: Legislative and Regulatory Action, available at cyberlaw.stanford.edu/wiki/index.php/Automated_Driving:_Legislative_and_Regulatory_Action (last accessed Jan. 8, 2017).
13. H.R. 3007, 53rd Leg., 2d Sess., (2012).
14. See, e.g., Okla. Stat. tit. 12 §2 ("The common law, as modified by constitutional and statutory law, judicial decisions and the condition

and wants of the people, shall remain in force in aid of statutes of Oklahoma").

15. Blackstone et al., 2 Commentaries on the Laws of England: In Four Books; with an Analysis of the Work, at *30 (1832); see also *R v. Dudley & Stevens*, (1884) 14 Q.B.D. 273 (noting that when a person is faced with a choice of saving himself at the expense of another innocent person, that person should sacrifice himself). That rule drifted across the pond to the United States and was the basis for the conviction of a cannibalistic stranded stranger who ate another person to survive. See *United States v. Holmes*, 26 F.Cas. 360 (E.D. Pa. 1842).
16. Thompson, *supra* note 2, at 1359 n. 2.
17. Cătălin Avramescu, *An Intellectual History of Cannibalism* 32 (2003); for an in-depth analysis on the potential rationales and arguments for any of the potential choices, see Thompson, *supra* note 2.
18. In fact, Oklahoma has generally adopted Sir. William Blackstone's approach that requires that a person should not take the life of an innocent person to preserve himself. See *Tully v. State*, 1986 OK CR 185, ¶13, 730 P.2d 1206, 1210 (quoting Blackstone).
19. See, e.g., Jean-François Bonnefon, Azim Shariff, and Iyad Rahwan, "The Social Dilemma of Autonomous Vehicles," 352 *Science* 1573 (June 24, 2016), available at www.popularmechanics.com/cars/a21492/the-self-driving-dilemma/ (noting that in a recent survey, 76 percent of respondents thought it would be more moral to have an autonomous vehicle sacrifice the passenger than kill ten pedestrians).
20. Isaac Asimov, *I, Robot* 27 (2008 ed.).
21. See generally *id.*
22. Cory Doctorow, "The Problem With Self-driving Cars: Who Controls the Code?," *The Guardian*, Dec. 23, 2015, www.theguardian.com/technology/2015/dec/23/the-problem-with-self-driving-cars-who-controls-the-code. (last accessed Jan. 8, 2017), superseded by statute on other grounds.
23. "[A]ctionable tortious conduct [falls] into (1) negligence, and (2) willful acts that result in intended or unintended harm." *Parrett v. Unico Serv. Co.*, 2005 OK 54, ¶12, 127 P.3d 572, 575.
24. An act is intentional when, 1) it is the actor's desire to bring about that result, or 2) he must have acted with the knowledge that such an outcome was substantially certain to occur. *Id.* ¶14, 127 P.3d at 576.
25. "G.A.I., *Sic Utere Tuo Ut Alienum Non Laedas*," 5:8 Mic. L.R. 673 (1907); *Franklin Drilling Co. v. Jackson*, 1950 OK 107, ¶2, 217 P.2d 816, 823 (Halley, J., concurring in part and dissenting in part).
26. *Lowery v. Echostar Sat. Corp.*, 2007 OK 38, ¶12, 160 P.3d 959, 964 (citations omitted).
27. Okla. Stat. tit. 76 §1 ("Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights").
28. *Fargo v. Hays-Kuehn*, 2015 OK 56, ¶13, 352 P.3d 1223, 1227 (internal citations omitted).
29. *J.S. v. Harris*, 2009 OK CIV APP 92, ¶16, 227 P.3d 1089, 1094.
30. *Id.*; see also *Schenfeld v. Norton Co.*, 391 F.2d 420, 422 (10th Cir. 1968) ("It is no longer doubted that the supplier of a chattel negligently made is liable for foreseeable harm to anyone injured, regardless of privity").
31. See also Dylan LeValley, "Autonomous Vehicle Liability – Application of Common-Carrier Liability," 36 *Seattle U. L. REV.* 5, 6 (2013) (manufacturers of autonomous cars, similar to common carriers, should be saddled with liability for the "slightest negligence").
32. The programmer could also create a clear warning message to the vehicle-user before the vehicle starts informing the user that that in case of an accident, the vehicle would opt to injure the user to save innocent third-parties. That way, assumption of risk would be at issue.
33. *Minor v. Zidell Trust*, 1980 OK 144, ¶14, 618 P.2d 392, 396.
34. *Black v. M&W Gear Co.*, 269 F.3d 1220, 1231 (10th Cir. 2001) (citations omitted); see also *Kirkland v. Gen. Motors Corp.*, 1974 OK 52, ¶12, 521 P.2d 1353, 1363.
35. *Moss v. Polyco, Inc.*, 1974 OK 53, ¶12, 522 P.2d 622, 626.
36. *Mayberry v. Akron Rubber Mach. Co.*, 483 F.Supp. 407, 412 (N.D. Okla. 1979).
37. See *Kirkland*, 521 P.2d at 1363; see also *Black*, 269 F.3d at 1233.
38. *Black*, 269 F.3d at 1233 (quoting *Spencer v. Nelson Sales Co.*, 620 P.2d 477, 481-482 (Okla. Ct. App. 1980)).
39. *Id.*
40. Restatement (Second) of Torts §402A, cmt. g; *Clark v. Mazda Motor Corp.*, 2003 OK 19, ¶5 n. 4, 68 P.3d 207, 209 n. 4. (citations omitted).
41. *Kirkland*, 1974 OK 52, ¶26, 521 P.2d at 1362-1363. (citations omitted).
42. *McKee v. Moore*, 1982 OK 71, ¶4, 648 P.2d 21 (Okla. 1982) (citing *Tayar v. Roux Laboratories, Inc.*, 460 F.2d 494, 495 (10th Cir. 1972)).
43. See Restatement (Second) of Torts §402A cmt. h (The defective condition may arise not only from harmful ingredients, not characteristic of the product itself either as to presence or quantity, but also from foreign objects contained in the product, from decay or deterioration

before sale, or from the way in which the product is prepared or packed.).

44. *Sierra Club v. Morton*, 405 U.S. 727, 742-743 (1972) (Douglas, J., dissenting).

45. *Id.*

46. *Id.*

47. *Id.*

48. Maritime law encompasses a well-established body of common law. *United States v. Reliable Transfer Co.*, 421 U.S. 397, 409 (1975) (“the Judiciary has traditionally taken the lead in formulating flexible and fair remedies in the law maritime, and ‘Congress had largely left to this Court the responsibility for fashioning the controlling rules of admiralty law’”).

49. Federal Judicial Center, *Admiralty and Maritime Law* 31 (2d ed. 2013) (an “*in rem* [action] [is] directly against the property – typically a vessel.... In such cases, the vessel – not the vessel’s owner – is the defendant. Under the fiction of ‘personification,’ the vessel is deemed to have a legal personality and, as such, is subject to suit directly whereby it can be held liable for the torts it has committed and for the contracts it has breached.”), available at [www.fjc.gov/public/pdf.nsf/lookup/admiralty2d.pdf/\\$file/admiralty2d.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/admiralty2d.pdf/$file/admiralty2d.pdf) (last accessed Jan. 22, 2017); *Morton*, 405 U.S. at 743 n. 2 (Douglas, J., dissenting) (citing *The Camanche*, 8 Wall. 448, 75 U.S. 476 (1869)).

50. *Morton*, 405 U.S. at 743 n. 2 (Douglas, J., dissenting) (citing *The Gylfe v. The Trujillo*, 209 F.2d 386 (2d Cir. 1954)). Indeed, as soon as ship touches the water, “she acquires a personality of its own.” *Id.* (quoting *Tucker v. Alexandroff*, 183 U.S. 424, 438 (1902)).

51. *Cf. Morton*, 405 U.S. at 742-743 (noting the freestanding legal personality accorded ships and other inanimate objects).

52. See European Parliament Committee on Legal Affairs Draft Report With Recommendations to the Commission on Civil Law Rules on Robotics, at ¶31(f) (2015/2103(INL)) (May 31, 2016), (sophisticated autonomous robots . . . [should have] the status of electronic persons with specific rights and obligations, including that of making good any damage they may cause . . .) available at www.europarl.europa.eu/sides/getDoc.do?pubRef=/ /EP / /NONSGML%2BCOMPARL%2BPE-582.443%2B01%2BDOC%2BPDF%2BV0 / /EN (last accessed Jan. 22, 2017).

53. See, e.g., “Watson Wasn’t Perfect: IBM Explains *Jeopardy!* Errors,” *AOL Finance* (Feb. 17, 2011) (noting that the supercomputer made miscalculations and errors resulting in imperfect results), webcache.googleusercontent.com/search?q=cache:4rTaqvHWD44J:www.aol.com/article/2011/02/17/the-watson-supercomputer-isnt-always-perfect-you-say-tomato/19848213 / +&cd=4&hl=en&ct=clnk&gl=us&client=safari (Jan. 22, 2017).

54. *Pan v. Bane*, 2006 OK 57, ¶24, 141 P.3d 555, 563 (emphasis added).

55. *Brewer v. Murray*, 2012 OK CIV APP 109, ¶¶9-11, 292 P.3d 41, 46-47 (Accorded precedential value by the Supreme Court).

56. *Morton*, 405 U.S. at 749 (Douglas, J., dissenting).

57. Just like ships, an owner of a self-driving car could consider procuring a general liability insurance for his property with an *in rem* endorsement that would provide the necessary funds to pay damages if the vessel was sued directly. *Cf. John W. Fisk Co., In rem coverage* (“coverage endorsement extending coverage for suits filed against the value of a thing (Vessel) seeking for the recovery of damages”), jwfisk.com/definitions/#In-Rem (last accessed Jan. 22, 2017).

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The Right to Trial and Summary Judgment in Probate Proceedings

By James C. Milton & Courtney L. Kelley

In the October 2013 issue of this journal, James C. Milton and Travis G. Cushman wrote that, “without much fanfare,” in *Shamblin v. Beasley*,¹ the Oklahoma Supreme Court “identified a state constitutional right to trial in equitable actions.”² This was an important pronouncement for attorneys handling matters in probate and other equitable proceedings.

The *Shamblin* court’s decision was important for many reasons. Mr. Shamblin had purchased Mr. and Mrs. Beasley’s homestead at a tax sale. Mr. Shamblin then sued the Beasleys and their mortgage lender to quiet title and to eject the Beasleys from their home. Mr. and Mrs. Beasley and their lender sued to cancel the tax deed on the basis that the county had given insufficient notice of the tax sale. District Judge Sam Fullerton gave summary judgment to Mr. Beasley. On *certiorari*, the Oklahoma Supreme Court held that notice upon Mr. and Mrs. Beasley was proper, but that the lender had raised sufficient fact issues to force a trial on sufficiency of notice of the tax sale.

SHAMBLIN AS PART OF OKLAHOMA’S SUMMARY-JUDGMENT JURISPRUDENCE

In addition to its treatment of the due process requirements for notices of tax sales, the decision in *Shamblin* represented part of a trilogy of decisions outlining the differences existing at that time between Oklahoma law and federal law regarding summary-judgment standards.³ For the first time with a clear majority of the court, Justice Opala again pronounced his standard for summary adjudication: “Summary process – a special procedural track to be conducted with the aid of acceptable probative substitutes – is a search for undisputed mate-

rial facts that would support but a single inference which favors the movant. It is a method for identifying and isolating non-triable fact issues, *not a device for defeating the opponent’s right to trial*. Only that evidentiary material which entirely eliminates from testing by trial some or all material fact issues will provide legitimate support for nisi prius use of summary relief in whole or in part.”⁴ This standard has been subject to erosion, in the form of the enactment of Section 2056 of the Oklahoma Pleading Code as well as recent decisions that appear to adopt the federal summary-judgment standard. However, it has yet to be expressly overruled.⁵

By coincidence, *Shamblin* also provided the Oklahoma Supreme Court’s first express acknowledgment of the right to trial in equitable – nonjury – proceedings. This acknowledgment is apparent in several ways. First, Justice Opala changed his phraseology, in his description of the summary-adjudication standard, from “right to trial by jury” to “right to trial.”⁶ The *Shamblin* court also provided express acknowledgment that “[s]ummary process applies in a like manner to issues that are tendered in legal as well as in equitable claims (or counterclaims).”⁷ Even though its treatment of the issue was both brief and without fanfare,

the *Shamblin* court's identification of the right to trial in equitable proceedings cannot be overstated.

LIMITATIONS ON THE RIGHT TO JURY TRIAL

Oklahoma provides a constitutional right to trial by jury.⁸ This right serves as one of the cornerstones of Oklahoma's court system. In dissenting decisions predating *Shamblin*, and in two majority opinions following *Shamblin*, the right to trial by jury provided the apparent foundation of Justice Opala's standard for summary adjudication.⁹ The right to a trial by jury impacts all aspects of the court system, from dispositive motions to the enforceability of arbitration provisions and the cost and time involved in resolving disputes. Some litigants take comfort in knowing they can explain their dispute to a jury of their peers. Other litigants experience fear and discomfort from the cost and uncertainty associated with jury trials.

Not all litigants enjoy the right to a trial by jury. Oklahoma courts have long held that there exists no right to a jury trial in equitable proceedings.¹⁰ The trial court may, in its discretion, submit an equitable issue to a jury for an advisory determination, but only the trial court itself holds the authority to decide the equitable issues.¹¹ Likewise, under federal law, "[i]t is well established that no jury trial is required where an action is *in equity* or where, as here, the action is brought pursuant to statute, where no analogous common law right or remedy previously existed."¹² This standard is based on the text of the Seventh Amendment to the U.S. Constitution, which provides that, "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."¹³

OPEN ACCESS TO COURTS AND THE RIGHT TO TRIAL

With *Shamblin*, the Oklahoma Supreme Court has acknowledged that, even when the litigant does not have the right to force a trial before a jury of his or her peers, the litigant retains a

right to have his or her day in court – an evidentiary hearing or some other form of trial. Under federal law, the right of access to courts derives from the Fifth Amendment to the U.S. Constitution.¹⁴ Due process requires notice and an opportunity to be heard,¹⁵ but "due process requirements are highly flexible, with the nature of the proceeding determining whether a full trial-type hearing or something less is necessary."¹⁶ "The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure."¹⁷ Rather, "[t]he type of hearing required must be appropriate to the nature of the case."¹⁸

Oklahoma's right to trial might derive from any or all of several provisions of the state constitution. Oklahoma's Constitution contains a state constitutional right to due process of law.¹⁹ Oklahoma's Bill of Rights also grants a right to "open access to courts."²⁰ Because Justice Opala's decisions tie the rights together through alternating phrases,²¹ one might even argue that the right to trial derives implicitly from the constitutional provision granting the right to jury trial.²² In addition to these provisions of the state's Bill of Rights, the state constitution provides that "[t]he District Court shall have unlimited original jurisdiction of all justiciable matters ..."²³

If the federal Due Process Clause provides support for the federal right of access to courts,²⁴ then Oklahoma's specific "open access"²⁵ provision adds extra strength to any such right that might be derived from Oklahoma's own Due Process Clause.²⁶ Indeed, Oklahoma's case law on open access shows that the right receives frequent attention and great protection from the Oklahoma Supreme Court.²⁷ In *Zeier v. Zimmer, Inc.*, the Oklahoma Supreme Court held that "[a]ccess to courts must be available to all through simple and direct means and the right must be administered in favor of justice rather than being bound by technicalities. Claimants may not have the fundamental right of court access withheld for nonpayment of some liability or conditioned on coercive collection devices."²⁸ The *Zeier* court struck a new statutory provision imposing the requirement of an expert's affidavit of merit as a condition of filing a

“Oklahoma’s right to trial might derive from any or all of several provisions of the state constitution.”

medical malpractice claim, because it “create[d] an unconstitutional monetary barrier to the access to courts ...”²⁹

While the litigant enjoys the right to trial and the other due-process accouterments that accompany trial, the civil litigant cannot force a confrontation *at trial* with an adverse witness. “Denial of the right of cross-examination may constitute a denial of due process,”³⁰ but this right is distinct from the right to confront the witness at trial³¹ – a right that is exclusive to criminal proceedings.³² In *Smith v. Smith*, a California defendant received notice of reciprocal enforcement in California of an award issued through child-support proceedings initiated in Connecticut. In California, the defendant received a right to show cause why the Connecticut award should not be enforced. He invoked that right and received a trial, attempting to prove the Connecticut award was obtained by fraud. On appeal, the defendant complained that the California court received testimony in the form of Connecticut proceedings in which the Connecticut judge examined the plaintiff without the defendant present. The defendant claimed that this procedure violated his right to cross examine the plaintiff at trial. The California Court of Appeals held that the defendant did not hold a right to confront his opponent at trial, but that he did enjoy the right to *cross examine* opposing witnesses. The defendant’s right of cross examination could have been exercised through deposition, after he received notice of the California proceedings.

THE RIGHT TO TRIAL IN THE CONTEXT OF PROBATE PROCEEDINGS

Oklahoma probate and equitable proceedings present a range of types of “cases” for purposes of analyzing the right to trial. These various types of cases stem from the fact that “[a] probate proceeding is not a suit or action of a civil nature which is cognizable as a case at law or in equity. Probate is a special statutory proceeding, controlled by the probate code, *which moves along a procedural track vastly different from that followed by a regular civil action.*”³³

The two most important trials in probate procedure, of course, are will contests³⁴ and personal representatives’ accountings.³⁵ The Oklahoma Probate Code also contemplates trials or evidentiary hearings regarding concealment or embezzlement of estate assets³⁶ and other issues.³⁷ For example, in 2006, the Oklahoma Court of Civil Appeals affirmed the outcome of a trial address-

ing whether a claimant, born two months after her parents’ divorce, was an heir-at-law of her father’s and paternal grandparents’ estates.³⁸ The trial also addressed whether the claimant or another heir would be appointed as personal representative.³⁹ Indeed, trials are not uncommon on the issue of selection of personal representative for an estate.⁴⁰ Similar issues abound in guardianship and trust proceedings.

At first glance, the due-process standards for probate proceedings appear to be set at a lower level than, say, proceedings for money damages based on contract or tort. While probate citations⁴¹ must be served in the same manner as civil process,⁴² other notices in probate proceedings are held to a lower statutory standard.⁴³ With limited exceptions, the Oklahoma Probate Code is not made expressly subject to the Oklahoma Pleading Code or other Oklahoma procedural rules.⁴⁴ Oklahoma’s pretrial conference procedures appear implicitly to allow for nonjury proceedings to be exempted from the requirement of a pretrial order.⁴⁵

It also might be said that probate law is more stringent when it comes to giving notice and holding hearings. “Due notice and hearing” are prerequisites for a valid and binding probate decree distributing property to the estate’s heirs, devisees or legatees.⁴⁶ The probate court holds a duty to hold the required hearing and determine “who are the beneficiaries, the part to which each is entitled, and the nature and extent of their interest in the estate; and in so doing it has jurisdiction to construe and interpret the will under which the property is distributed.”⁴⁷

With the right to trial and related due-process rights firmly entrenched in Oklahoma law governing probate and other equitable proceedings, it is worth examining the scope of this right. It is evident that a person claiming an interest in a trust, guardianship estate or probate estate is entitled to notice and an opportunity to be heard. One would expect the right to cross examine witnesses will cross over into the probate arena.⁴⁸ In probate proceedings, the parties hold a right to receive findings of fact and conclusions of law in support of any entry of judgment following trial.⁴⁹

SUMMARY JUDGMENT IN PROBATE PROCEEDINGS

One might also ask whether the right to trial in probate and related proceedings would eliminate the availability of summary judgment altogether – if it is available at all. Rule 13

of the Rules for District Courts might be viewed as inapplicable to probate proceedings.⁵⁰ Likewise, Section 2056 of the Oklahoma Pleading Code would appear to be similarly limited in its scope of application.⁵¹ However, Oklahoma courts have held that summary judgment procedures may apply even in proceedings not expressly subject to summary judgment rules.⁵²

Despite a brief hiccup in the form of a 2006 decision from the Court of Civil Appeals,⁵³ courts have consistently allowed summary-judgment procedures within Oklahoma probate proceedings. In 1976, the Oklahoma Supreme Court affirmed a trial court decision granting a “motion for declaratory judgment” on whether a testator’s daughter would be treated as a pretermitted heir.⁵⁴ Carolyn Gay Ghan requested “declaratory judgment” determining her to be a pretermitted heir under her father’s will. There was no dispute that she was not named in her father’s will. Both the trial court and the Supreme Court determined that extrinsic evidence could not be offered to show that the omission was intentional. The court determined the trial court appropriately applied summary-judgment standards, finding that “since there is only a question of law to be determined, a summary judgment by the Trial Court was proper.”⁵⁵ Ms. Ghan was granted pretermitted heir status as a result of the summary judgment entered by the trial court and affirmed by the Supreme Court.

In 1999, the Oklahoma Court of Civil Appeals affirmed a summary judgment against Holly White, who claimed to be an out-of-wedlock granddaughter of the decedent.⁵⁶ Ms. White’s alleged father had died years earlier. Fearing a claim of inheritance from Ms. White, the decedent, Gertrude Jo Geller, added to her will a “forced heirship and will contest” clause, providing: “I hereby direct that should there be anyone not herein specifically or indirectly mentioned or provided for who would inherit a portion of my estate had I not executed this Will, such person or persons shall receive One Dollar (\$1.00) as his, her or their sole and entire inheritance from me.” The trial court never reached the forced heirship clause, finding instead that Ms. White could not establish the requirements of the Oklahoma statute dealing with children born out of wedlock.⁵⁷ On this basis, the court affirmed summary judgment against Ms. White on her counterclaim for determination of heirship.

In 2002, the Oklahoma Court of Appeals overturned a summary judgment against James E. Richardson, who sought an omitted child’s share from the estate of his father.⁵⁸ The executor moved for summary judgment on the basis that the father intentionally omitted his son in an amendment to a pour-over trust executed after the father’s will. The trial court found no issue of material fact and found for the executor. On appeal, the *Richardson* court approved, at least implicitly, of the use of summary procedure in a probate proceeding.⁵⁹

Based on the decisions in *Glomset*, *Geller* and *Richardson*, it appeared Oklahoma appellate courts were in agreement regarding the applicability of summary judgment in a probate proceeding. But in early 2006, the Oklahoma Court of Civil Appeals issued an opinion directly at odds with these earlier cases.⁶⁰ This jurisprudential “hiccup” would be short lived. In April 2006, just two months after rehearing was denied in *Davis*, the Oklahoma Supreme Court in *Jernigan v. Jernigan* affirmed summary judgment on a replevin claim that had been brought within a probate proceeding.⁶¹

Since *Jernigan*, the courts have consistently allowed summary-judgment procedures within Oklahoma probate proceedings.⁶² In February of this year, the Oklahoma Court of Civil Appeals affirmed the denial of summary judgment filed by Beverly Eagleton, who claimed entitlement to a forced share of certain property (farm) from her deceased husband’s estate and a surviving spouse allowance.⁶³ Mr. Eagleton died in 2014. In February 2015, Mrs. Eagleton, who was still living at the farm, filed suit seeking to have a 2012 deed transferring the farm to Mr. Eagleton’s daughter declared void; seeking a forced probate distribution of the Farm as estate property; seeking a surviving spouse allowance payment from the estate assets; and seeking to establish a homestead right of residence at the farm. Ms. Eagleton moved for summary judgement on these issues. The trial court denied the motion. On appeal, the Oklahoma Court of Appeals applied the summary judgment standard of review in affirming the denial of summary judgment on some issues.⁶⁴

In Oklahoma, as demonstrated by *Shamblin*, statutory and decisional law does impose limits upon those instances where litigants may obtain judgment relying solely on affidavits, based upon state rights to trial or access to courts. These limitations have gradually erod-

ed, based in part on changes at the Oklahoma Supreme Court and the enactment of Section 2056 of the Oklahoma Pleading Code.

IMPACT OF THE RIGHT TO TRIAL ON MEDIATION AND ARBITRATION

Emerging trends in estate planning appear to favor the use of mediation or arbitration provisions in wills and trust instruments to resolve challenges and other disputes arising in connection with succession or the fiduciary relationships arising from these instruments. The right to trial in probate and trust disputes could stand in the way of some of these alternative-dispute-resolution mechanisms.

Outside the trust and probate arena, the Oklahoma Supreme Court rejected an open-courts challenge against arbitration provisions.⁶⁵ “In this case the Legislature has said you may agree to arbitrate your dispute, and once you have done so, the courthouse door stands open to you if you have been the victim of fraud, bias, excess of power, or unfair procedure. Those things are now the ‘wrong’ for which you have a judicial remedy.”⁶⁶

In the probate and trust arena, the Oklahoma Court of Civil Appeals reached a different conclusion. In *Clark v. Clark*,⁶⁷ the trustee entered into a custodial agreement with Merrill Lynch containing an arbitration provision. When the trust’s beneficiary sued both the trustee and Merrill Lynch for breach of fiduciary duty, Merrill Lynch moved to compel arbitration. The trial court confirmed an arbitration award in favor of Merrill Lynch and its employees. The Court of Civil Appeals reversed, holding that the beneficiary could not be bound by the arbitration agreement because he was not a party to it. “It further cannot be said that Plaintiff waived his constitutional right to access to the courts because he did not voluntarily or intentionally relinquish said right.”⁶⁸ Thus, while courts in other jurisdictions allow mandatory arbitration in probate and trust disputes,⁶⁹ Oklahoma’s right to trial would prevent such a result absent agreement by all parties to the dispute.⁷⁰

OTHER SIMILAR EQUITABLE PROCEEDINGS

As discussed above, *Shamblin* provided the Oklahoma Supreme Court’s first express acknowledgment of the right to trial in equitable – nonjury – proceedings. The *Shamblin* court also provided express acknowledgment

that summary process applies to issues tendered in legal as well as equitable claims.⁷¹ Summary process has been used in trust proceedings⁷² and actions involving child support⁷³ and replevin.⁷⁴ However, it remains unclear whether summary process applies to *all* proceedings of equitable cognizance. For instance, the authors are not aware of any summary judgment cases in proceedings governed by the Oklahoma Guardianship and Conservatorship Act.⁷⁵ The right to trial clearly applies in guardianship proceedings,⁷⁶ but the infrequency or absence of summary judgment in such proceedings may be tied to the heightened due-process rights associated with guardianship and conservatorship.

The Oklahoma Supreme Court’s decision in *Jernigan* may be a good example of summary proceedings in both probate and nonprobate equitable proceedings. There, the court affirmed summary judgment on a replevin claim that had been brought within a probate proceeding.⁷⁷ Rose Marie Jernigan died testate in 1996, leaving three sons and one daughter. Mrs. Jernigan’s estate consisted only of personalty, including jewelry. Rather than bring a probate, the heirs agreed to distribute the jewelry among themselves. Eight years later, Mrs. Jernigan’s son initiated a proceeding to probate Mrs. Jernigan’s estate. Shortly before the probate was filed, Jana Jernigan, wife of James Jernigan (wife or donee), had commenced divorce proceedings against James Jernigan (husband or donor), one of Mrs. Jernigan’s sons. In the divorce case, the wife claimed as her separate property jewelry she had received as a gift from her husband during the marriage. Some of that jewelry had belonged to Mrs. Jernigan. The personal representative brought in probate a replevin action against the divorcing wife for the return of the jewelry. The district court granted summary judgment to the wife. On appeal, the Oklahoma Supreme Court approved of the use of summary procedure in the probate and replevin proceeding and applied the summary judgment standard of review in its analysis.⁷⁸

CONCLUSION

Litigants who rely on the right to trial by jury in resisting summary judgment might find comfort in *Shamblin* and its invocation of the right to trial in equitable proceedings as imposing the same or similar limitations on summary process. The right to trial is an important part of the “procedural track” that makes probate

and other equitable proceedings so unique. Litigants seeking to challenge the admission of a testamentary instrument or a fiduciary's accounting can demand the trial court to grant them a trial on their issues. At the same time, though, trial courts reviewing summary-judgment motions in such proceedings can take comfort that the summary procedure applies in probate and equitable proceedings with much the same standards as civil proceedings.

1. 1998 OK 88, 867 P.2d 1200.
2. James C. Milton & Travis G. Cushman, "What Happens Now? Weighing Section 2056, the Federal Anderson Trilogy Standard and the State Constitutional Right to Trial," 84 *Okla. Bar J.* 2105, 2107 (2013).
3. Milton & Cushman, *supra* at 2107.
4. *Shamblin*, 1998 OK 88, ¶9, 867 P.2d at 1207 (emphasis added; footnote omitted).
5. *Shamblin* was followed on this issue as recently as 2016, when the Oklahoma Court of Civil Appeals quoted paragraph 9, including the language acknowledging the right to trial, and reversed summary judgment on the issue of damages in a case brought under the Telephone Communication Protection Act, 47 U.S.C. 227 *et seq.*, as amended by the Junk Fax Protection Act. *Ketch, Inc. v. Royal Windows, Inc.*, 2016 OK CIV APP 77, ¶26, 385 P.3d 994, 1000.
6. *Compare Polymer Fabricating, Inc. v. Employers Workers' Compensation Ass'n*, 1998 OK 113, ¶7, 980 P.2d 109, 112, and *Akin v. Missouri Pacific Railroad Co.*, 1998 OK 102, ¶7, 977, P.2d 1040, 1043 (both using the phrase, "right to trial by jury"), with *Shamblin*, 1998 OK 88, 867 P.2d at 1208 (substituting the phrase, "right to trial").
7. *Shamblin*, 1998 OK 88, ¶9, 867 P.2d at 1208.
8. Okla. Const. Art. 2, §19. Article 2, Section 19 provides that, with certain exceptions as to amount in controversy, "[t]he right of trial by jury shall be and remain inviolate ..." *Id.*
9. *Williams v. Tulsa Motels*, 1998 OK 42, ¶19, 958 P.2d 1282, 1289-90 (Opala, J., dissenting); *Weldon v. Dunn*, 1998 OK 80, ¶15, 962 P.2d 1273, 1280-81 (Opala, J., dissenting); *Polymer Fabricating, Inc. v. Employers Workers' Compensation Ass'n*, 1998 OK 113, ¶7, 980 P.2d 109, 112; *Akin v. Missouri Pacific Railroad Co.*, 1998 OK 102, ¶7, 977, P.2d 1040, 1043.
10. *Waggoner v. Johnston*, 1965 OK 192, 408 P.2d 761, 766 (interpleader); *In re Bank of Earlsboro*, 1964 OK 97, 391 P.2d 887, 888 ("It is well established by the opinions of this court that in an equitable action, trial by jury is not a matter of right.") (bank receivership); *Dowdy v. Clausewitz*, 1961 OK 90, 361 P.2d 288, 290 (partnership accounting); *Steinway v. Griffith Consol. Theatres*, 1954 OK 156, 273 P.2d 872, 877 ("[I]t is an established rule in this jurisdiction that [i]n an equity cause a party is not entitled, as a matter of right, to a trial by jury" (internal quotations omitted)) (stockholder derivative suit); *Hall v. Williams*, 1951 OK 91, 229 P.2d 584, 585 (will contest); *Russell v. Freeman*, 1949 OK 256, 214 P.2d 443, 444 (holding no right to jury trial in action to enforce judgment where title issues predominated). Existence of the right to jury trial depends, though, on the character and nature of the action. For example, a jury is available in suits on rejected creditor claims. *Chanel v. Mackey*, 1959 OK 198, 345 P.2d 870, 871. Likewise, in a suit by an executor to recover property embezzled from the decedent's estate prior to the executor's appointment, the defendant holds the right to demand a jury. Okla. Stat. tit. 58, §294. *See also id.* §709 ("All issues of fact joined in a probate proceeding must be tried by the court ...").
11. *Teachers' Conservative Inv. Ass'n v. England*, 1926 OK 27, 243 P. 137, 138. *See also* Okla. Stat. tit. 12, §557 (containing mandatory language providing for trial of "all other" issues to the court, but allowing reference to a jury).
12. *Hodgson v. Stewart In-Fra-Red Commissary, Inc.*, 370 F. Supp. 503, 504-05 (E.D. Pa. 1973) (emphasis added) (holding that defendants were not entitled to a jury trial in an enforcement action brought under the federal Fair Labor Standards Act).
13. U.S. Const. 7th Am. (emphasis added).
14. *Gillespie v. Civiletti*, 629 F.2d 637, 641 n.2 (9th Cir. 1980) (holding that the Fifth Amendment right to access to courts can serve as a basis for a *Bivens*-type private cause of action).
15. "[Due process] requirements are satisfied if [the party] has reasonable notice and reasonable opportunity to be heard and to present his claim or defense; due regard being had to the nature of the proceeding and the character of the rights which may be affected by it." *Dohany v. Rogers*, 281 U.S. 362, 369 (1930).

16. *Coral Gables Convalescent Home, Inc. v. Richardson*, 340 F. Supp. 646, 650 (S.D. Fla. 1972). In its decision, the *Coral Gables* court required findings and conclusions – a requirement that appears in some instances in the Oklahoma Probate Code.
17. *Dohany*, 281 U.S. at 369. *See also Smith v. Smith*, 270 P.2d 613, 622-23 (Cal. App. 1954) (addressing whether a litigant can prevent the offer of testimony taken in courts of another sovereign).
18. *Coral Gables*, 340 F. Supp. at 650 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). *See also Dohany*, 281 U.S. at 369 (noting importance of "the character of the rights which may be affected"). The *Dohany* court rejected a due process challenge against a Michigan procedure for condemnation proceedings in which the landowner was not afforded 1) a right to trial by jury, 2) a right to recover attorney fees, or 3) a right to appeal by right as opposed to appeal by *certiorari*.
19. "No person shall be deprived of life, liberty, or property, without due process of law." Okla. Const. Art. 2, §7.
20. "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice." Okla. Const. Art. 2, §6.
21. *See supra* note 6.
22. "The right of trial by jury shall be and remain inviolate ..." Okla. Const. Art. 2, §19.
23. Okla. Const. Art. 7, §7.
24. *Gillespie*, 629 F.2d at 641 n.2.
25. Okla. Const. Art. 2, §6.
26. Okla. Const. Art. 2, §7.
27. The Oklahoma Supreme Court has addressed the "open access" provision on multiple occasions in the last two decades. *Lee v. Bueno*, 2016 OK 97, ¶30, 381 P.3d 736, 747; *Zeier v. Zimmer, Inc.*, 2006 OK 98, ¶26, 152 P.3d 861, 873; *C&L Enters., Inc. v. Citizen Band Potawatomi Tribe*, 2002 OK 99, ¶¶10-12, 72 P.3d 1, 4; *Rollings v. Thermodyne Indus., Inc.*, 1996 OK 6, ¶34, 910 P.2d 1030, 1036.
28. *Zeier*, 2006 OK 98, ¶26, 152 P.3d at 873.
29. *Id.* In 2016, the court declined to strike as unconstitutional Okla. Stat. tit. 12, §3009.1, which limits the admissibility of costs of medical treatment in personal injury actions. *Lee v. Bueno*, 2016 OK 97, ¶30, 381 P.3d at 747.
30. *Smith v. Smith*, 270 P.2d 613, 622 (Cal. App. 1954).
31. "A defendant in a civil action or special proceeding is not guaranteed a right of confrontation at the trial of the action or proceeding." *Smith v. Smith*, 270 P.2d at 622.
32. U.S. Const. 6th Am.
33. *In re Estate of Davis*, 2006 OK CIV APP 31, ¶27, 132 P.3d 609 (emphasis added). *See also Jernigan v. Jernigan*, 2006 OK 22, ¶17, 138 P.3d 539; *Wilson v. Kane*, 1993 OK 65, ¶6, 852 P.2d 717, 721 (same). The difference in procedure between civil actions and probate proceedings can be seen in the inapplicability of Okla. Stat. tit. 12, §994(A) to probate proceedings. *See Williams v. Mulvihill*, 1993 OK 5, n.27, 846 P.2d 1097, 1104 n.27 (holding that Section 994(A)'s predecessor, Okla. Stat. tit. 12, §1006, is inapplicable to determining appealability of probate decrees).
- The *Davis* court rejected the availability of summary judgment in probate proceedings. This rejection was criticized by the Oklahoma Court of Civil Appeals in *In re Estate of McGahey*, 2015 OK CIV APP 21, 359 P.3d 1157. As shown in this article, the *Davis* court's rejection of summary judgment in probate proceedings is incorrect.
34. Okla. Stat. tit. 58, §41.
35. *See, e.g., id.* §545 (providing for examination of personal representative regarding accounting exhibits presented to court); *id.* §555 (providing for proceedings on contested accounting).
36. *Id.* §294.
37. *Id.* §27.
38. *In re Estate of Watson*, 2006 OK CIV APP 55, ¶1, 135 P.3d 853, 854.
39. *Id.*
40. *See, e.g., Wyche v. Wyche*, 1961 OK 211, 365 P.2d 993, 995. In *Wyche*, the Oklahoma Supreme Court described an all-too-common trial-court battle over whether to appoint the decedent's widow or his son's nominee as personal representative of an estate involving business interests and an antenuptial agreement.
41. Citations may not be required by statute on all contested matters, but citations represent the default method of notice when personal service is required. Okla. Stat. tit. 58, §706 ("When a personal notice is required, and no mode of giving it is prescribed in this chapter, it must be given by citation"). In various specific statutes, the Oklahoma Probate Code requires that citations must be issued to personal representatives, heirs, devisees and legatees upon any *post-admission* will contest, *id.* §62; to personal representatives on a claim of insufficient bond; *id.* §§180, 184; upon a petition for revocation of let-

ters of administration, *id.* §§135-137; upon claims of embezzlement from probate estates, *id.* §293; upon a complaint that distribution should be effected, *id.* §625. Notably, the provisions for a will contest taking place *before admission* of the will do not expressly require issuance and service of a citation. *Id.* §41.

42. *Id.* §705.

43. *See id.* §§25, 34. These lower notice requirements would apply to preadmission will contests. *See id.* §41. When in doubt, though, use a process server.

44. Execution of judgments, though, may occur in the same manner as civil actions. *Id.* §§597, 709. At least in will contests, depositions may occur in the same manner as in civil proceedings. *Id.* §43. Hearings on sale of lands owned by “full-blood Indians” may be heard in the same manner as civil actions. *Id.* §903. Mortgages may be foreclosed in the manner provided in civil procedure statutes. *Id.* §333. The provisions of the Probate Code, which are themselves ancient, also incorporate ancient Oklahoma standards for demurrer. *Id.* §41. (Demurrer is long since repealed).

45. “The judge is not required to hold pretrial conference in cases where jury has been waived but he may do so.” Okla. Dist. Ct. R. 5(A).

46. *Oberlander v. Eddington*, 1964 OK 98, 391 P.2d 889, 893. *See also Gassin v. McJunkin*, 1935 OK 629, 48 P.2d 320, 325 (“A decree of distribution entered without notice thereof is void”).

47. *Id.* (internal quotations omitted). *See also Street v. Saddler*, 1937 OK 597, 73 P.2d 415, 417 (“Whereas, in the case at bar it appears that the purported decree of heirship was made on an ex parte hearing and without proper or legal notice. It also appears that the land distributed did not belong to the Saddler estate, and consequently the county court had no jurisdiction over it”).

48. *See Smith v. Smith*, 270 P.2d 613, 622 (Cal. App. 1954).

49. Okla. Stat. tit. 58, §709 (“After the hearing, the court shall give in writing the findings of fact and conclusions of law, and judgments thereon, as well as for costs, may be entered and enforced by execution or otherwise, by the court, as in civil actions”).

50. *See In re Estate of McGahey*, 2015 OK CIV APP 21, ¶10, 359 P.3d 1157 (discussing and rejecting the view that summary judgment is inapplicable to probate proceedings).

51. “The Oklahoma Pleading Code governs the procedure in the district courts of Oklahoma in all suits of a civil nature whether cognizable as cases at law or in equity except where a statute specifies a different procedure.” Okla. Stat. tit. 12, §2001. In 2006, the Oklahoma Supreme Court noted a “procedural demarcation line” between probate proceedings and “regular” actions upon claims, which are governed by the Pleading Code. *Jernigan v. Jernigan*, 2006 OK 22, ¶17, 138 P.3d 539. It is worth noting that Section 2001 defines the Pleading Code as encompassing Sections 2001 through 2027 of Title 12. Section 2056 was a later addition. Statutory editors treat it as part of the Pleading Code. It is the only section of the Pleading Code falling outside the defined scope set forth in Section 2001.

52. *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, ¶18, 987 P.2d 1185. In *Patel*, the court addressed whether summary judgment is available in postjudgment vacation proceedings. “[T]here is no legal impediment to the use – in a §1031 postjudgment vacation proceeding – of acceptable evidentiary substitutes to eliminate from adversary contest any individually and clearly defined fact issue that is claimed as undisputed and shown to be supported solely by inferences consistent with the movant’s position in the case.” *Id.*

53. *In re Estate of Davis*, 2006 OK CIV APP 31, ¶27, 132 P.3d 609. The *Davis* court keyed its decision upon limitations upon probate court jurisdiction, relying on *Wilson v. Kane*, 1993 OK 65, ¶6, 852 P.2d 717, 721. *Id.* These limitations were rolled back when the legislature broadened the jurisdiction of courts sitting in probate in 1997 and 2001. Laws 1997, HB 1969, c. 224, §2 (eff. Nov. 1, 1997); Laws 2001, HB 1752, c. 58, §1 (eff. Nov. 1, 2001).

54. *In re Estate of Glomset*, 1976 OK 30, ¶6, 547 P.2d 951, 953.

55. *Id.*

56. *In re Estate of Geller*, 1999 OK CIV APP 45, ¶14, 980 P.2d 665.

57. *Id.*, 1999 OK CIV APP 45, ¶14, 980 P.2d 665. The statute is found at Okla. Stat. tit. 84, §215.

58. *In re Estate of Richardson*, 2002 OK CIV APP 69, 50 P.3d 584.

59. *Id.*, 2002 OK CIV APP 69, ¶2, 50 P.3d 584. During the pendency of the appeal, the Oklahoma Supreme Court ordered that briefs be submitted despite the summary nature because the appeal was from an interlocutory order in a probate proceeding which is appealable by right. *Id.*, ¶1 n. 1. The *Richardson* court nevertheless approved of the summary procedure in the probate proceeding and applied the summary judgment standard of review in its analysis. *Id.*, ¶2.

60. [See *supra*] note 53.

61. 2006 OK 22, ¶¶17, 25, 32, 138 P.3d 539.

62. *See, e.g., In re Estate of McGahey*, 2015 OK CIV APP 21, ¶10, 359 P.3d 1157 (discussing and rejecting the view that summary judgment is

inapplicable to probate proceedings); *In re Estate of Eagleton*, 2017 OK CIV APP 2, ¶4, ___ P.3d ___, (mandate issued) (affirming the trial court’s denial of summary judgment in probate proceeding after applying the summary judgment standard of review in its analysis).

63. *Id.*, 2017 OK CIV APP 2, ¶1, ___ P.3d at ___.

64. *Id.*, 2017 OK CIV APP 2, ¶¶5, 22, ___ P.3d at ___.

65. *Rollings v. Thermodyne Indus., Inc.*, 1996 OK 6, ¶34, 910 P.2d 1030, 1036. In 2002, the Oklahoma Supreme Court rejected a due process and open-courts challenge against an arbitration award entered by default against a tribal nation. *C&L Enters., Inc. v. Citizen Band Potawatomi Tribe*, 2002 OK 99, ¶¶10-12, 72 P.3d 1, 4.

66. *Rollings*, 1996 OK 6, ¶34, 910 P.2d at 1036.

67. 2002 OK CIV APP 96, 57 P.3d 95.

68. *Id.*, 2002 OK CIV APP 96, ¶12, 57 P.3d at 99.

69. *Rachal v. Reitz*, 403 S.W.3d 840 (Tex. 2013). *See also Syncora Guarantee v. HSBC Mexico*, 861 F. Supp. 2d 252, 260 (S.D.N.Y. 2012). The result is made available by statute in some states. *See* Ariz. Rev. Stat. Ann. §14-10205; Fla. Stat. Ann. §731.401 (2010). *See generally* American College of Trust & Estate Counsel, *Arbitration Task Force Report* (Sept. 18, 2006) (examining the issues and proposing model acts and sample arbitration-related clauses).

70. For similar results in other states, *see Schoneberger v. Oelze*, 96 P.3d 1078, 1082 (Ariz. 2004); *McArthur v. McArthur*, 224 Cal. App. 4th 651 (Cal. Ct. App. 2014); *In re Mary Calomiris*, 894 A.2d 408 (D.C. 2006); *Schmitz v. Merrill Lynch*, 939 N.E.2d 40, 45 (Ill. App. Ct. 2010). The result in *Schoneberger* was legislatively overruled by Ariz. Rev. Stat. Ann. §14-10205. The authors thank Philip N. Jones of Duffy Kekel, LLP, in Portland, Oregon, for gathering the citations to these and related authorities. *See also* Mary F. Radford, “Predispute Arbitration Agreements Between Trustees and Financial Services Institutions: Are Beneficiaries Bound?,” 40 ACTEC L.J. 273 (2014).

71. *Shamblin*, 1998 OK 88, ¶9, 867 P.2d at 1208.

72. Okla. Stat. tit. 60 §175.23(D) (providing that Oklahoma Trust Act shall be governed by rules of civil procedure). *See also In re Dooley Trust*, 2016 OK 110, 383 P.3d 773 (affirming the trial court’s grant of summary judgment to trustee in trust action).

73. *See, e.g., Cope v. Cope*, 2009 OK CIV APP 32, ¶¶1, 7, 231 P.3d 737 (reversing the trial court’s grant of summary judgment in child support proceeding after applying the summary judgment standard of review in its analysis). Child support proceedings are of equitable cognizance. *Thornton v. Thornton*, 2011 OK 6, ¶5, 247 P.3d 1180, 1182 (internal citations omitted).

74. *Jernigan v. Jernigan*, 2006 OK 22, 138 P.3d 539.

75. Okla. Stat. tit. 30, §1-101, *et seq.*

76. *See, e.g.,* Okla. Stat. tit. 30, §3-116 (providing for proceedings to determine restoration of capacity).

77. *Jernigan*, 2006 OK 22, ¶¶3, 14, 32, 138 P.3d 539.

78. *Id.*, 2006 OK 22, ¶¶13, 14, 17, 25, 32, 138 P.3d 539.

ABOUT THE AUTHORS



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Saving Oklahoma Seniors

By Eric Olsen

Recently I spoke with Penny, age 65, who shared her story. “My only income now is \$962 in Social Security. My father, who was always there for me, passed away. Two months later, my 30-year-long companion who had cancer died. Collectors were calling me when I was with him in the intensive care unit. My world had fallen all apart. I had a school loan for my daughter, and I owed the IRS. Then there were the other creditors I owed. I never dreamed in a million years I would be in this position. When the creditors called, they threatened and I thought I had to pay. There went my food money. I was scared and I didn’t know what to do.”

The Kaiser Family Foundation recently reported that 38 percent of Oklahoma seniors – people over age 65, approximately 220,000 persons – have incomes within 200 percent of the poverty line.¹ Even more concerning, more than one in 10 Oklahoma seniors, seniors like Penny, have incomes under the poverty line, based on supplemental poverty measures.²

Several studies show that debt owed by seniors has risen dramatically in the last 15 years. The federal Consumer Financial Protection Bureau recently released a report declaring abusive debt collection as the top complaint for older Americans.³

Most legal help today is oriented toward seniors with money. Low-income seniors with little or no money to pay for advice or help often have difficulty finding answers to their financial questions. After nearly 40 years of practice, I have learned that attorneys want to help this segment of the population, which can be among the most helpless in our society. It is not uncommon for attorneys in different areas of practice to be contacted by a senior searching for answers – answers and assistance, as I will explain, that are often very easy to pro-

vide. If turned away, these seniors may never be able to find the help they need. Attorneys in private practice willing to answer questions for a few minutes on the phone can be a blessing to low-income elderly.

PROTECTION FROM COLLECTORS

I am the executive director of HELPS (Help Eliminate Legal Problems for Seniors and Disabled), a nationwide 501(c)(3) nonprofit law firm that protects seniors from unwanted collector contact and educates seniors about maintaining their financial independence. I have learned that the vast majority of seniors do not understand one very important fact: Social Security, pensions, retirement, VA benefits and disability income are all protected from collection under federal law. They cannot be garnished or seized. However, if seniors don’t pay their old debt, collectors can make their lives miserable, and most seniors don’t realize they also have the right to be protected from unwanted collector contact.

One way attorneys can help is to tell seniors about the federal Fair Debt Collection Practices Act (FDCPA).⁴ This act provides that when a

debtor sends a cease and desist letter in writing, a collector must stop all communication by mail or phone. The law can be explained and a template provided to a senior. These templates are found on the internet, or at our website www.helpsishere.org.

It is our experience that when a cease and desist letter is sent, it is normally the end of the matter. However, even when this law is explained and a template provided, seniors may be unable to prepare or send the letter. Legal matters are confusing and intimidating to many seniors, and they have a very difficult time dealing with collectors on their own. Because of this, there is another way attorneys can help further. FDCPA also provides that if a person is represented by an attorney, a collector may no longer communicate with that person, only with the attorney. HELPS represents low-income seniors and disabled persons nationwide in order to receive collector communication on an ongoing basis. We never turn any senior away who needs our help, but we are not large enough to assist every senior. We encourage all attorneys to provide seniors who are in need with a cease and desist letter. Perhaps, like HELPS, the attorney can send the letter for the senior, or even offer to represent the senior simply to receive these communications from collectors on an ongoing basis. This is a simple service that will bring peace back to their lives.

BANK ACCOUNT PROTECTION

There is other helpful information for attorneys to know when counseling low-income seniors. Seniors often worry about the money in their bank account, so they can be informed that federal banking regulations automatically protect all monies in an account into which Social Security is deposited, equal to twice the amount of monthly Social Security, no matter the source of the money in that account at the time of a garnishment. Any garnishment must be disregarded. If the account has excess money that is garnished, a claim of exemption can be filed to have that money returned.

The internet is full of debt settlement companies that advertise helping people to either settle or pay old debt. I have yet to talk with a

senior enrolled with a debt settlement company who was ever told, "By the way, you don't need to pay us anything because all your income is protected by law." I often talk with seniors with minimal income who go into utter poverty to make a payment to one of these companies for old debt they cannot afford and do not need to pay.

TAXES AND OTHER DEBT

Some seniors are garnished 15 percent of their Social Security for past due IRS taxes. Low-income seniors almost always qualify for tax-exempt status. Attorneys in private practice can advise seniors with this problem to contact the IRS. Also, Social Security and retirement income are protected from garnishment for past-due state income taxes. Additionally,

some seniors are being garnished 15 percent of their Social Security for old student loans, but low-income seniors usually qualify for \$0 per-month payments under the income contingent repayment plan and private student loans cannot garnish Social Security or other retirement income. HELPS will email any attorney instruction sheets on obtaining IRS "currently not collectible" status and income contingent repayment procedures.⁵

Attorneys can also provide other common-sense advice. Seniors sometimes spend protected retirement on old debt, leaving them without income cushion.

Many do not know they can stop payments for purchases they simply cannot afford. For example, seniors can be advised about the option of stopping a mortgage payment they cannot afford, selling the home or living in the home while it is going through foreclosure. Many seniors don't know about the availability of Section 8 subsidized housing or, if there is enough equity in the home, that a reverse mortgage can pay off an existing mortgage, allowing the senior to stay in a home they otherwise could no longer afford.

Some seniors are worried about difficulty renting in the future because of poor credit. Landlords typically do not know that a senior's Social Security and retirement income are safe and protected. An attorney can write a simple informational letter addressed to "prospective

**“...federal
banking regulations
automatically
protect all monies
in an account into
which Social
Security is
deposited...”**

landlord” that explains how the law protects the senior’s Social Security and retirement income, so the income will therefore be available to pay rent and provide for their needs, no matter what their credit looks like. HELPS provides these letters for any senior and we have found this often solves concerns for most landlords who are worried about a senior’s poor credit.

TOGETHER WE CAN HELP

Certainly seniors want to pay their debt, but some simply are not able. There is a reason laws protect seniors’ income, we want seniors to be able to provide for their needs. According to the United Health Foundation, almost one out of every six Oklahoma seniors over 60 faced the threat of hunger in 2016.⁶ Oklahoma attorneys can help seniors understand their rights, especially that their income is protected. If attorneys are unable to help, HELPS is always available to seniors and disabled persons to provide the assistance mentioned above. Together, with the help of Oklahoma

attorneys, fewer seniors will face hunger and more will have peace return to their lives.

1. Kaiser Family Foundation analysis of 2012, 2013 and 2014 *Current Population Survey: Annual Social and Economic Supplement*.
2. Kaiser Family Foundation estimates based on the Census Bureau’s *March 2016 Current Population Survey Annual Social and Economic Supplements*.
3. Consumer Financial Protection Bureau, Office for Older Americans, *2014 Snapshot of Older Complaints Submitted by Older Consumers*.
4. Fair Debt Collection Practices Act (FDCPA), U.S.C. §1692 *et seq.*
5. www.helpsishere.org/resource.
6. National Foundation to End Senior Hunger, *The State of Senior Hunger in America, 2016 Report*.

ABOUT THE AUTHOR



Eric W. Olsen graduated from the University of Oregon School of Law in 1978 and was the founder of the consumer bankruptcy firm OlsenDaines. Mr. Olsen is executive director of HELPS, a nonprofit law firm he founded following the 2008 recession. HELPS assists low-income seniors and disabled persons by protecting them from collector harassment and teaching them how to maintain their financial independence.

In Memory of Robert Barr Smith



Robert Barr Smith taught at the OU College of Law and was a decorated soldier who retired as a colonel in the United States Army after serving his country as a JAG officer and military judge, prosecutor and defense counsel.

At the OU College of Law, Professor Smith taught many lawyers the fundamentals of trial practice, writing and advocacy. He was an excellent professor and creative teacher. He authored more than 26 books and over 100 magazine articles. His funeral was Sept. 1 in Springfield, Missouri.

A memorial service for Professor Smith will be held Sept. 15 at 3 p.m. at All Souls Episcopal Church in Oklahoma City.

Let us all join together to celebrate the life of Robert Barr Smith, great role model, teacher and leader.

If you would like to read his full obituary, go to greenlawnfuneralhome.com.

Oklahoma Attorneys Selected for Leadership Academy

The Oklahoma Bar Association announces the 23 participants of its sixth annual OBA Leadership Academy class selected from applications throughout the state.



"I'm so excited for members of the sixth OBA Leadership Academy," said OBA President Linda Thomas of Bartlesville. "They will learn professional skills that will enhance the way they incorporate service and leadership into their practice. The Leadership Academy is a great opportunity for them to grow professional relationships and refine essential communication skills. I look forward to working with each of them."

The OBA Leadership Academy will offer four sessions set to begin in September 2017. The academy will conclude in April 2018.

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Originating from the OBA's Leadership Conference in 2007, the academy is aimed at developing the future leaders of the OBA by giving Oklahoma attorneys training in the core principles of effective leadership and how to com-

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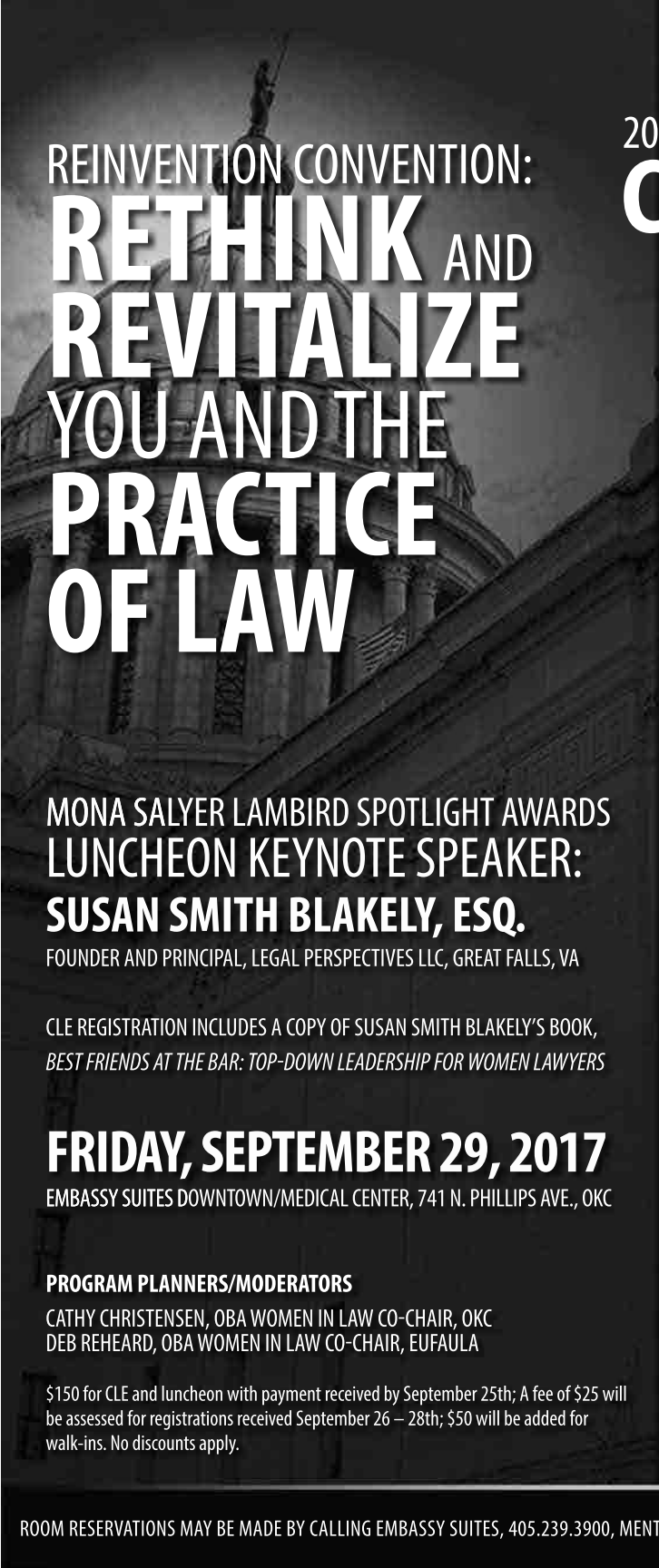
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\$150 for CLE and luncheon with payment received by September 25th; A fee of \$25 will be assessed for registrations received September 26 – 28th; \$50 will be added for walk-ins. No discounts apply.



2017 WOMEN IN LAW **CONFERENCE**

- 9:00 WELCOME**
OBA PRESIDENT, LINDA THOMAS, BARTLESVILLE
- 9:10 STRONGER TOGETHER: INVOKING THE POWER OF THE INTERNET TO COMMUNICATE**
SUSAN CARNS CURTISS, THE "MOTHER" OF GIRL ATTORNEY, OKC
- 10:00 BREAK**
- 10:10 ALTERNATIVES TO 9 TO 5: RETHINK YOUR PRACTICE TO MAKE TECHNOLOGY WORK FOR YOU**
KELLY HUNT, BROKEN ARROW
- 11:00 THE STUMPS ON TRUMP: RETHINKING IMMIGRATION AND ITS EFFECT ON YOUR PRACTICE**
MATTHEW STUMP, OKLAHOMA CITY
KELLI STUMP, OKLAHOMA CITY
- 12:00 21ST ANNUAL MONA SALYER LAMBIRD AWARDS LUNCHEON**
KEYNOTE: SUSAN SMITH BLAKELY, ESQ.,
FOUNDER AND PRINCIPAL, LEGAL PERSPECTIVES
LLC, GREAT FALLS, VA
TOP-DOWN LEADERSHIP
- 1:30 PERCEPTIONS IN THE PROFESSION: KNOW YOUR AUDIENCE AND COMMUNICATE EFFECTIVELY FOR YOUR CLIENT**
MODERATOR: MELANIE CHRISTIANS, OKC
- SUSAN SMITH BLAKELY, ESQ., GREAT FALLS, VA
- THE HONORABLE NOMA GURICH,
OKLAHOMA SUPREME COURT
- MACK MARTIN, OKC
- LARRY OTTAWAY, OKC
- LINDA SCOGGINS, OKC
- 2:20 BREAK**
- 2:30 ETHICS AWARENESS: THE KEY TO AN ETHICAL WORKPLACE**
ANDREW L. URICH, J.D., OSU, STILLWATER
- 3:20 ADJOURN: RECEPTION IMMEDIATELY FOLLOWING**

ROOM RESERVATIONS MAY BE MADE BY CALLING EMBASSY SUITES, 405.239.3900, MENTION YOU ARE ATTENDING THE OBA WOMEN IN LAW CONFERENCE.

Mona Salyer Lambird Spotlight Award Winners Announced

Since 1996 the Spotlight Awards have been given annually to five women who have distinguished themselves in the legal profession and who have lighted the way for other women. The award was later renamed to honor 1996 OBA President Mona Salyer Lambird, who died in 1999, the first woman to serve as OBA president and was one of the award's first recipients.

This year marks the 21st anniversary of the Spotlight Awards, sponsored by the OBA Women in Law Committee. The 2017 recipients are:

Mary Quinn Cooper

Mary Quinn Cooper is a shareholder with McAfee & Taft in Tulsa. She serves as national trial counsel for major corporations and defends product liability claims and class actions across the country. For the last 25 years she has represented Ford Motor Co. and General Motors nationally. She currently serves as co-leader of the firm's Litigation Group. She is an appointed member of the OBA's Professional Responsibility Tribunal. She previously served as a member of the admissions and grievances committee of the U.S. District Court for the Northern District of Oklahoma from 1994 – 1998 and as the chair from 1998 – 2015. She was inducted into the TU College of Law Hall of Fame in 2014 and inducted into the Bishop Kelley High School Hall of Fame in 2013.

She is a volunteer for the Juvenile Diabetes Research Foundation, trustee on the Saint Francis of Assisi Tuition Assistance Trust and board chair of the St. Philip Neri Catholic Newman Center at TU.



Mary Quinn Cooper

She also serves on the Tulsa Literary Coalition Board of Directors and TU College of Law Dean's Advisory Board. She obtained her law degree from the TU College of Law.

Theresa G. Dreiling

Theresa G. Dreiling is a special district judge in Tulsa County, beginning her service in January 2007. Since August 2012, she has presided over a family court docket. She has also presided over various other dockets, including guardianships, small civil cases and civil mental health. Prior to being appointed a special district judge, she served as a law clerk at the Oklahoma Court of Civil Appeals, working for Judges Jane Wiseman (a past Mona Salyer Lambird Spotlight Award recipient), Joe Taylor, Daniel Boudreau and William Means. She also has several years of private practice experience.

She is a 1987 graduate of the TU College of Law and a 1984 graduate of Washburn University of Topeka. In 2015, she received the Neil E. Bogan Award for Professionalism from the Tulsa County Bar Association and was selected as Judge of the Year by the OBA



Theresa G. Dreiling

Family Law Section. She is on the boards of the Tulsa Artists Coalition and the Oklahoma Heart Gallery. She is married to Bruce Neimi and has two daughters.

Kathy R. Neal

Kathy R. Neal is an attorney with McAfee & Taft in Tulsa. Her practice focuses on the representation of employers with respect to all aspects of their relationships with employees. She has broad experience in both state and federal courts, before administrative and regulatory agencies, and in arbitration and mediation. She has particularly unique experience counseling employers that are federal contractors on equal employment opportunity compliance-related matters. She currently serves as an adjunct settlement judge for the U.S. District Court for the Northern District of Oklahoma and previously served as an administrative law judge for the Oklahoma Department of Labor.

She obtained her law degree from the TU College of Law and earned her undergraduate degree with honors from OU. She was inducted into the TU College of Law Hall of Fame in 2015 and honored with the law school's

W. Thomas Coffman Award for Community Service the same year. The Tulsa County Bar Association bestowed its Neil E. Bogan Award for Professionalism on her in 2013. She is a recipient of the TU College of Law Women's Law Caucus' Fern Holland Award for her work with Springboard – Educating the Future, a nonprofit organization



Kathy R. Neal

responsible for building 200 schools for young girls in rural Egypt. She served on the organization's Board of Directors from 2005 – 2015. She is a former board member for The Tristesse Healing Hearts Grief Center and Family & Children's Services.

Beverly Ann Palmer

Beverly Ann Palmer is a 1992 graduate of the OCU School of Law, *summa cum laude*. She has been an assistant district attorney in Oklahoma County for 23 years, serving as first chair in numerous criminal, civil and juvenile cases. She has been a part-time municipal court judge in Warr Acres for the past nine years.

She has provided many years of leadership in female lawyer groups, including Iota Tau Tau and the monthly networking luncheons started by the late Judge Arthur Lory Rakestraw. She is a member of the OBA Criminal Law Section, Government Lawyers Section and General Counsels' Forum. She is starting her 20th year of membership in the Ruth Bader Ginsburg American Inn of Court, where she is a master of the bench. She is passionate about mentoring younger

attorneys to help them develop their skills.

In addition to her service to the legal profession, she has also given back to the community by organizing nonpartisan "Meet the Candidate" events, serving as team captain in the "Light the Night Walk" for leukemia and lymphoma research, chairing the White Fields'



Beverly Ann Palmer

Christmas Project for the Ruth Bader Ginsburg Inn of Court, and volunteering at the Oklahoma City Memorial Marathon, OKC Arts Festival and Feed the World through St. Luke's United Methodist Church.

Shannon L. Prescott

Shannon L. Prescott serves primarily as a family law practitioner in Okmulgee County. She received a B.S. in criminal justice from Northeastern State University and a J.D. from the TU College of Law. A citizen of the Muscogee (Creek) Nation, her native culture has influenced her legal career greatly. She previously served as a tribal prosecutor for the Muscogee (Creek) Nation and is currently a partner in the firm of McKenna & Prescott in Okmulgee. In her nearly 18 years of practice, she has focused on representing other tribal citizens in tribal courts as well as state courts. Her current practice areas encompass all family law issues, including divorce, paternity, juvenile deprived/delinquent, guardianship, adoption and GAL appointments. She currently serves as a contractor for Okmulgee County and Creek County representing parents and children in

juvenile deprived matters. She works primarily in cases involving Indian Child Welfare Act matters. She is currently serving the Delaware Nation as the district judge in Anadarko.

She also provides domestic violence training and courtroom security training as a contract instructor with the Federal Law



Shannon L. Prescott

Enforcement Training Center, Department of Homeland Security and the National Sheriff's Association. Her training focuses on the successful prosecution of domestic violence offenders and consults with courts to assist in assessing courtroom security and developing safety plans. She also provides ICWA training to the Department of Human Services, tribal agencies and CASA. She serves as an editor on the *Oklahoma Bar Journal* Board of Editors. Most importantly, she is married to Tim, a law enforcement officer, and is mother to two beautiful girls, Perri and Lillian.

Award Presentation

Women in Law Conference luncheon
Friday, Sept. 29 – noon
Embassy Suites Downtown/
Medical Center
741 North Phillips Avenue • Oklahoma City

Conference

Rethink and Revitalize
You and the Practice of Law

6 total credit hours
including 1 hour ethics

\$150 for CLE and luncheon

\$40 for luncheon only
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tinyurl.com/womeninlaw2017

Even If We Don't Want To

By John Morris Williams

I do not consider myself old. However, I remember a time when I thought someone my age was “old.” Between that time and today, I still remember a lot of other things. The problem with a lot of things I remember is that they do not have much applicability in today’s world. As with many things in bygone days, people sometimes revise their memory to make the past a bit better than perhaps it was.

Romancing the past in an era of unsurpassed change sometimes makes change a bit harder to embrace. The fact is that big changes have come to the practice of law and are going to continue. Even if you don’t want them to.

Last month the Oklahoma Supreme Court approved a change to the district court rules further solidifying limited scope practice. Twenty years ago, this was something being discussed, and many smart people were certain it was coming. Even if we didn’t want it to.

Lawyer advertising and the law being treated as a commodity were distant and strange things in my youth. These things have become much embedded in our culture. Even if I didn’t want it to. If you do not have a webpage, client portals and have not started moving toward a paperless office, you are going to have to move that direction soon. Even if you don’t want to.

Lawyer rating systems and distant legal providers have permeated the market place. The quality of both are something I question. Third-party referral entities and online legal providers are much in the mix these days. Oklahoma lawyers have to gear their practices to respond to these marked forces and competitors. Even if we don’t want to.

At the OBA, we are fortunate to have leadership and staff who are responsive and tolerant of

“**Lawyers are not alone in facing challenges where technology and public expectations are eroding some time-honored traditions and methodologies.**”

the expanding challenges we face. Professionally we are in the midst of big demographic changes in the aging of the profession and changes in how legal services are provided. We acknowledge that the first wave of Baby Boomers is over age 70, and we live in an online world. Even if we don’t want to.

OBA leadership and staff have been engaged in a series of meetings looking at the business side of maintaining our bar association during this time of great change. We understand that we

have to do some things differently. This requires us to look at membership categories, member services, methods to ensure competency of a large group of aging practitioners and long-term financial planning. Even if we don’t want to.

As a profession, we are in the midst of a major sea change where clients are talked about in terms of “consumers of legal services,” and lawyers and others are looked at as “legal service providers.” This is the reality of where we are in the world. Lawyers are not alone in facing challenges where technology and public expectations are eroding some time-honored traditions and methodologies. Things have shifted and so must we. Even if we don’t want to.

For some time, I have written and spoken on the aging of our association and changes in the practice of law. Those things have come to pass, and the world is not going to accommodate our request for a continuance. What this really means is that we have to rethink and retool a bunch of things connected with running a law practice and a bar association. Now. Even if we don’t want to.



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

Great Solutions and Happy Clients

By Jim Calloway

What does a law firm produce? “Legal services” is a completely accurate, fact-based answer. It also doesn’t communicate very much information. In fact, it is somewhat like asking a meteorologist why it is so hot today and getting back the answer “because the temperature is high.” Well, yes, but...

So, should law firms produce? Let me suggest that a law firm today should be in the business of producing great solutions and happy clients.

Most new clients don’t really want legal services. They need legal services. What they want is often a resolution of a problem. Sometimes they want to avoid a problem in the future. Sometimes they want advice and paperwork relating to something they are planning. However, the majority of legal work is the result of someone having a problem and hiring a lawyer to find, create or negotiate a solution to that problem.

Clients may sometimes be frustrated by the time and money involved in seeking, identifying and implementing the solution, but some clients don’t wish to understand the steps and strategies along that path, except to the extent that they cost the client money.

In fact, a significant difference between lawyers in larger firms representing corporate clients and those lawyers in

solo and small firm practice primarily representing individuals is that the corporate client has in-house counsel who speaks the language of lawyers and approaches legal issues from that perspective. Individual clients almost always show up at the law firm with a problem that needs to be solved and have difficulty seeing the problem from any perspective other than their own.

The more you appreciate that the client wants a solution to their problem rather than legal services, the better you can design your legal services delivery processes to incorporate communication with clients focusing on how you are reaching their solution and the better you can design your marketing efforts to attract new clients.

For example, when you win that important contested argument at the motion docket, a text message or a phone call from the courthouse to the assistant general counsel is likely important. This can be brief because the assistant general counsel understands the situation, but even though you may have worked personally with an individual client preparing for the motion hearing and believe the client understands the issue well, the individual client still needs a reminder of the impact of this ruling as a critical part of the solution to their overall prob-

lem. (e.g., “Now the plaintiff can no longer...”)

Which brings us to my view of the second “thing” a law firm should produce – happy clients.

Producing happy former clients is better for you personally. The practice of law is increasingly competitive. Your number one goal for business development should be producing happy and satisfied clients who will sing the praises of your law firm, come back to you when future services (aka solutions) are needed and refer other potential clients to your firm.

This is also positive for your clients. A well-informed client will have less stress, leading to more positive interactions with the law firm. A confident client will more easily accept your advice and also be more likely to ask for clarification when needed. A satisfied client will promptly pay invoices and is obviously not going to file a grievance against you.

Lawyers spend a lot of time communicating. We are somewhat unique in that our clients understand our value based largely on our communications and interactions with them. Certainly they pay attention to results, but a good result cannot overcome weeks of sporadically returning phone calls or ignoring client emails as far as the client’s impression of you as a lawyer.

Clients often cannot accurately judge the quality of your legal work, so they judge your effectiveness based on your communications with them, returning calls and meeting deadlines.

THE CLIENT EXPERIENCE

The forward-thinking law firm should focus on improving the client experience. Sure, it's the digital age, but you are missing an excellent opportunity if the new client who has engaged the firm does not leave with some brochures and handouts to read. Most clients will only glance at a traditional law firm brochure with honors, awards, photos of lawyers and biographical information. Instead, give them reading material about their specific matter. Often, this will reinforce information that was provided to them orally in the consultation. This is a good thing. Repetition helps us remember and people learn differently. Some will not read your handouts. Some will read them many times and retain more than they did from the consultation, particularly if it was their first time in a lawyer's office.

Staff should be reminded frequently that clients are the ones who provide the funds to pay their salary. Every visitor to the law office should receive a warm greeting. Many law firms now offer clients a choice of a beverage. Counsel your staff that we sometimes deal with people at one of the lowest or most anxious moments in their lives. You should regularly discuss what to do if a lawyer is late to an appointment or a client appears particularly angry or upset. (Sadly, today that discussion must also cover their personal safety and security.)

A law firm should have forms and templates for letters or emails that can be used for client communication as a matter proceeds, with the attorney time involved in developing the template, but not in executing the communication.

ESTABLISHING COMMUNICATION CHANNELS

Once there was a day when communication channels were office consultations, telephone calls and the U.S. mail. Today there are numerous digital methods of communication. Your client may have first learned about your law firm via the law firm's Facebook

“...they judge your effectiveness based on your communications with them...”

page, that doesn't mean that you view Facebook instant messages as a secure and appropriate method of communication. If you do not discuss this, the client will not know this. You cannot be effective if you have to check the digital equivalent of seven or eight “inboxes” every day for client communications. Discuss this with your client.

However, be flexible. Text messages are a very popular form of communication but there are drawbacks. To name one, without advance preparation it is sometimes time-consuming to get text messages saved in the digital client

file where records of all significant client communications should be retained. On the other hand, I have seen situations supporting the conclusion that one might have an ethical obligation to use text messages to communicate with a particular client. If the client doesn't have a computer or internet access and has an unstable living situation where someone might either open or discard their mail, text messages may be the best option.

Email is not secure. We are all using it, but it is not secure. If you are emailing with a client make certain that the client has given informed consent to use email and understands there may be some communications that should not be emailed.

We still believe most law firms will use client portals for document sharing and secure messaging. Many practice management tools now include a client portal.¹ This is a best practice today.

RETURNING PHONE CALLS AND SETTING EXPECTATIONS

It is almost a cliché to repeat that failure to return phone calls is the number one complaint of unhappy law firm clients. Today, as noted above, there are many other communication channels.

Clients sometimes have to return missed calls and voice-mails themselves, but their experience with returning calls in a social setting may give them unrealistic expectations about how quickly phone calls can and should be returned. A lawyer should have a discussion with every new client about communication channels and about how challenging it can be for lawyers to

return their phone calls on occasion. They may have no idea that lawyers are required to turn off their mobile phones in courtrooms, for example. Let them know that this may be a challenge for you, but also let them know about your office policy for returning phone calls. Some lawyers will be ambitious and set returning the call on the same day as a goal. A more realistic goal may be within 48 hours for non-emergency calls. Setting appropriate expectations will go a long way toward resolving client frustration when you are unavailable.

You and your client will have a better relationship if you spend some time going through some hypotheticals. For example, if they just want to schedule an appointment or confirm the court date they may have forgotten, they should know that staff can do that if the lawyer is unavailable. They need to understand it is important to leave messages that let you know why they are calling. Talk about emergency situations. I often told my family law clients that the courthouses were closed on the weekends and some types of emergency calls might be better directed to law enforcement.

Your staff also needs to be informed that, if something unexpected happens, they can return phone calls on your behalf to see what assistance they can provide.

THE COMMUNICATION PROCESS

The basics of the communication process is the sender

has an idea, encodes that idea into a message, the message travels over a channel and then the receiver decodes and interprets the message.

There are many barriers to communication. With our mobile devices, we live in distracting times. It is certainly appropriate to ask your client to mute their mobile phone and not use it during the consultation with you, but then you also have to live with that rule.

You want to avoid interruptions when meeting with a client, particularly with an initial interview with a new client, but that's really true for any office consultation with a client. If you know you will need to be briefly interrupted to sign a pleading or check, tell the client when the consultation starts that you're going to have to take a brief break for a minor emergency. That will make the interruption more acceptable.

You should examine your physical setup to minimize distractions. You may not notice familiar background noises that will distract a client.

Receiver stress is another one of those barriers and many people hire a lawyer to deal with a stressful situation. Maintain eye contact. Pay attention when a client seems distracted or not to be paying attention. You can often reengage them by asking a simple question, perhaps even one unrelated to the matter at hand. We have heard a lot of discussion about doctor's "bedside manner." You want

to make certain that your clients perceive you as the empathetic, caring and competent professional that you are.

BE CONVENIENT

Some potential clients cannot easily take time off work during business hours or lose pay when they do. Even a small business owner might appreciate not leaving his or her business during prime business hours. In this more competitive environment, some consumer-oriented firms may offer regular evening hours of operation.

"Open Thursday evenings" could be both a marketing strategy and a client service strategy. It would likely not be too hard to implement, as law firm staff might easily trade working a Thursday evening for taking Friday afternoon off or not being charged leave for a personal appointment.

Producing great solutions for clients and happy, satisfied clients is a formula for success for every law firm, no matter what the size, and for every lawyer. This also results in happier lawyers.

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

1. Jim Calloway, "Email Attachments vs. Client Portals," 87 *Oklahoma Bar Journal* 1707 (2016), www.okbar.org/members/MAP/MAPArticles/HotPracticeTips/EmailAttachments.aspx

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Recently Adopted Changes to the ORPC

By Gina Hendryx

Lawyers have an obligation to provide competent and diligent representation to their clients. This means the lawyer must apply the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”¹ Furthermore, “a lawyer shall act with reasonable diligence and promptness in representing a client.”²

Lawyers have historically learned that when faced with a novel area of law or a representation involving unfamiliar legal issues, we can satisfy the competency requirement through necessary study or by associating with competent counsel. To diligently represent a client, the lawyer should fulfill obligations to a client within a reasonable time and not neglect the matter or the client. A lawyer’s failure to meet deadlines is a classic example of a violation of Rule 1.3.

“Competent” representation has long been associated with familiarity of substantive law and procedural rules. With the legal field implementing more technology resources and outsourcing more projects, the “competent” lawyer’s responsibilities will expand beyond principles of law and rules of the court. The Oklahoma

Supreme Court has adopted several amendments to the Oklahoma Rules of Professional Conduct that reflect the wide range of technologies used or likely to be used in the near future by lawyers.

ORPC 1.0 TERMINOLOGY

The amendments begin with Rule 1.0, Terminology. Section (n) defines the word “writing” as it is used in the rules. Writ-



ing had been defined to include e-mail. It was determined that the definition of “writing” should be updated in light of changes in technology. The ABA commission charged with studying these rules determined that the prior definition was not sufficiently expansive given the wide range of methods that lawyers use when memorializing an agreement. Therefore, “e-mail” was replaced with the words “electronic communications” to be included in the definition of a “writing.”

(n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, type-writing, printing, photo stating, photography, audio or video recording and electronic communications [emphasis added]. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

ORPC 1.1 COMPETENCE

Lawyers are charged with the responsibility to keep abreast of changes in the law and its practice. The ORPC now include staying current on the “benefits and risk associated with relevant technology.” The Oklahoma Supreme Court has adopted this language to Comment [6] of Rule 1.1, ORPC. To maintain competence in the practice, lawyers are encouraged to engage in continued study and education. Maintaining competence may very well require knowledge of e-discovery, online filing, electronic document retention policies, etc. If you intend to practice in areas where there are potential technology issues, you must understand same.

Failure to do so may be a violation of your duty to competently represent your client.

Comment

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

ORPC 1.4 COMMUNICATION

Communicating with your clients has drastically changed since the days of rotary dial telephones and carbon paper copied letters. Rule 1.4, ORPC states that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

Comment [4] to this rule states that “[c]lient telephone calls should be promptly returned or acknowledged.” The Oklahoma Supreme Court replaced that admonition with the following language, “A lawyer should promptly respond to or acknowledge client communications.” The new language more accurately describes a lawyer’s obligations in light of the increasing number of ways in which clients use technology to communicate with lawyers.

Comment

[4] A lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information,

however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer’s staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

ORPC 1.6 CONFIDENTIALITY OF INFORMATION

Rule 1.6, ORPC has been modified to clearly notify a lawyer that he/she has an ethical duty to take reasonable steps to protect a client’s confidential information from inadvertent or unauthorized disclosures as well as from unauthorized access.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

These duties with regard to this change are explained in comments 16 and 17:

Comments

[16] Paragraph (c) requires a lawyer to act reasonably to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer

has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client’s information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer’s duties when sharing information with nonlawyers outside the lawyer’s own firm, see Rule 5.3, Comments [3] -[4].

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security

measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

ORPC 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

Technology has increased the risk that confidential information may be inadvertently disclosed. Rule 4.4 (b), ORPC provides that should a lawyer receive documents that they know or reasonably should know were sent inadvertently, they must notify the sender. It has been determined that the word "documents" was insufficient to cover the various kinds of information that may be inadvertently divulged. Confidential information is stored in emails, on flash drives and embedded in electronic documents. The amendment to Rule 4.4 (b) makes it clear that the rule extends to all documents or electronically stored information.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

Comments

[2] Paragraph (b) recognizes that lawyers sometimes receive a documents or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been wrongfully inappropriately obtained by the sending per-

son. For purposes of this Rule, "document or electronically stored information" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is e-mail or other electronic modes of transmission subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Competent and diligent representation include knowledge of technology and the impact same has on the practice of law as well as the legal needs of the client. Technology is changing the way many practice law and the practitioner must stay ahead of the benefits of burdens of those changes.

Ms. Hendryx is OBA general counsel. Contact Ms. Hendryx at ginah@okbar.org or 405-416-7007.

1. Oklahoma Rule of Professional Conduct (ORPC) 5 O.S. 2011, Ch. 1, 1.1.

2. Oklahoma Rule of Professional Conduct (ORPC) 5 O.S. 2011, Ch. 1, 1.3.

Meeting Summary

The Oklahoma Bar Association Board of Governors met on Friday, July 21 via teleconference.

REPORT OF THE PRESIDENT

President Thomas reported she worked on recommendations for appointments to the Professional Responsibility Tribunal and to the National Conference on Uniform State Laws, worked with the OBA and Washington County Bar Association to complete plans for the August Board of Governors social event and meeting in Bartlesville, sent invitations to Attorney General Mike Hunter and OBA Legislative Liaison Clay Taylor to attend the August board meeting social event, traveled to Cuba as part of the OBA-sponsored People to People Educational Tour of Cuba and initiated the annual executive director evaluation procedure pursuant to OBA policy.

REPORT OF THE VICE PRESIDENT

Vice President Castillo reported she attended the OBA Law Day Committee meeting via BlueJeans, Solo & Small Firm Conference and the OBF Board of Trustees July meeting. She also sent emails to various law firms regarding submission of applications for the OBA Leadership Academy and sent emails and had telephone conversations with various attorneys regarding submission of nominations for 2017 OBA awards.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hays reported she attended the OBA Family Law Section monthly business meeting, Annual Meeting planning meeting and Trial Advocacy Institute instructor meetings. She also attended the Tulsa County Bar Association Family Law Section meeting, OBA Strategic Planning OBJ Subcommittee meeting via BlueJeans and Solo & Small Firm Conference. She coordinated Women in Law Committee Mona Salyer Lambird award nominations, coordinated strategic planning subcommittees and their topics, emailed attorneys encouraging them to submit OBA Leadership Academy applications and also researched issues for 2017 and 2018 planning.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he went on the CLE cruise to Cuba, attended the Solo & Small Firm Conference, OBA Strategic Planning OBJ Subcommittee meeting and several meetings related to the cruise and operation issues.

REPORT OF THE PAST PRESIDENT

Past President Isaacs reported he delivered juror appreciation materials to the Kiowa County courthouse and spoke at the Appellate Practice Section seminar.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Oklahoma County Bar Association meeting and Solo & Small Firm Conference. **Governor Fields** reported he attended the Solo & Small Firm Conference. **Governor Gotwals** reported he attended two Tulsa County Law Library trustee meetings, Tulsa County Bar Association Litigation Section meeting, TCBA Family Law Section meeting, Tulsa Central High School Foundation Board of Directors meeting, OU Law alumni reception, Standards for Defense of Capital Punishment Cases Task Force meeting and OBA Professionalism Committee meeting. **Governor Hennigh** reported he attended the Solo & Small Firm Conference. **Governor Hicks** reported he attended the Solo & Small Firm Conference, swearing-in ceremony for Oklahoma County Judge Richard Ogden, Clients' Security Fund meeting and Access to Justice Committee meeting. **Governor Hutter** reported she attended the Solo & Small Firm Conference, Cleveland County Bar Association regular meeting and executive meeting in addition to the OBA Diversity Committee meeting. **Governor Kee** reported he attended the Solo & Small Firm Conference and Oklahoma Criminal Defense Lawyers Association midyear CLE seminar in Midwest City. **Governor Oliver** reported he attended the president's cruise to Cuba and Solo & Small Firm Conference. He spoke to

various local attorneys to encourage them to apply for the Leadership Academy. **Governor Porter** reported she attended the Solo & Small Firm Conference and General Practice/Solo and Small Firm Section annual meeting. **Governor Tucker** reported he attended the Solo & Small Firm Conference and the Law Day Committee meeting. **Governor Weedn** reported he attended the Solo & Small Firm Conference and as an OBA Audit Committee member, spoke with the accounting firm handling the OBA annual audit. **Governor Will** reported he attended the Solo & Small Firm Conference and YLD June monthly and midyear meeting held in conjunction with the conference. He also sent letters to YLD members who have attended the OBA Leadership Academy inviting them to run for a YLD Board of Directors seat.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Neal reported he chaired the YLD Midyear Meeting held in conjunction with the Solo & Small Firm Conference.

PROPOSED GENERAL PRACTICE/SOLO AND SMALL FIRM SECTION BYLAWS AMENDMENTS

Section Chair Ashley Forrester reported the section would like to change the term of office for its section officers to the calendar year. Proposed amendments to the section's bylaws reflecting that change were submitted for review. The board voted to approve the amendments.

BOARD LIAISON REPORTS

Governor Tucker reported the Law Day Committee will soon be deciding on a contest theme based on the ABA theme on the topic of separation of powers/checks and balances. He said a

new video production vendor, Windswept Productions, has been selected to produce parts of the *Ask A Lawyer* TV show. They were the lowest bidder. Governor Will reported the Law-Related Education Committee met for a work day to assist the Law Day Committee with lesson plans and educational information for the contest. As Strategic Planning Committee Chair, President-Elect Hays reported the OBJ Subcommittee is recommending ceasing the print publication of court issues and enhancing theme issues. Governor Hicks reported the Clients' Security Fund meeting was well attended and continues to review claims. Governor Gotsdiner reported the Professionalism Committee is working on planning its December symposium. He also reported the Standards for Defense of Capital Punishment Cases Task Force approved its mission and continues its work with the goal of submitting recommendations by September.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Commission did not meet in July, and therefore there is no report this month.

PROPOSED POLICY FOR MAINTAINING AND DISTRIBUTING MEMBERSHIP INFORMATION

Executive Director Williams reviewed a proposed policy containing more details than the current OBA policy on the commercial use of member records. Discussion followed. It was noted member email addresses are not shared with anyone. The board approved the policy.

LICENSED LEGAL INTERN COMMITTEE ANNUAL REPORT AND PROPOSED AMENDMENTS TO LEGAL INTERN RULES

As Legal Intern Committee liaison, Past President Isaacs briefly reviewed the content of the committee's annual report to be submitted to the Supreme Court and the committee's proposed amendments to Legal Intern Rules 2.1, 5.1 and 7.6. The board approved the annual report and the proposed amendments, which will be published for member comment before sending the amendments to the Supreme Court for its consideration.

PRT APPOINTMENT

The board approved President Thomas' recommendation to appoint Jody R. Nathan, Tulsa, to the Professional Responsibility Tribunal to complete the unexpired term of Charles Laster, who resigned. The term will expire June 30, 2020.

JOINT RESOLUTION OF THE ABA COMMISSION ON VETERANS LEGAL SERVICES AND THE STANDING COMMITTEE ON LEGAL SERVICES FOR MILITARY PERSONNEL

President Thomas said she and Executive Director Williams have received a copy of a resolution regarding discharge status petitions and processes from Tulsa lawyer Dwight Smith, who co-chairs the ABA Commission on Veterans Legal Services. The resolution will be discussed at the upcoming ABA House of Delegates, and Mr. Smith is asking for the support of his home state. The board voted to support the resolution.

NOMINATIONS TO THE NATIONAL CONFERENCE OF COMMISSIONERS FOR UNIFORM STATE LAWS

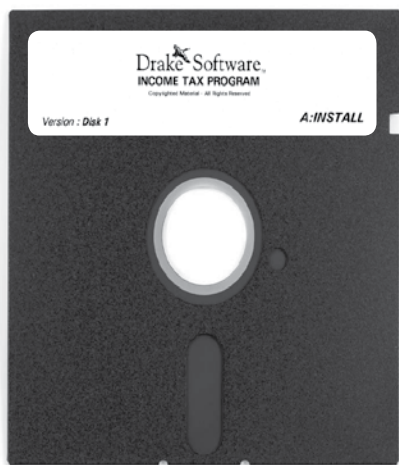
President Thomas said she has recommended Brian A. Crain, Tulsa; Cheryl Hunter, Oklahoma City; and Eric Eisenstat, Oklahoma City, to Gov. Fallin to appoint one to the

National Conference of Commissioners for Uniform State Laws to complete the unexpired term of Patrick Wyrick. The term will expire June 1, 2018.

NEXT MEETING

The Board of Governors met Aug. 25 at Woolaroc in Bartles-

ville. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Sept. 15, at the Oklahoma Bar Center in Oklahoma City.



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Scholarship Recipient Highlights

OBF FELLOWS SCHOLARSHIP



Colton Loy Richardson

Hometown: Tulsa

Law School: TU College of Law

Graduation Date: Fall 2018

Field of Law: Litigation, Criminal and Civil Law

Undergrad: University of Oklahoma

Undergrad Major: Entrepreneurship and Venture Management

Undergrad Minor: Psychology and Pre-Law

Undergrad Graduation Date: Spring 2016

What are your short-term and long-term goals?

Professionally, an obvious short-term goal would be to graduate in fall 2018 and pass the bar. After that, I have not decided what a next step would be, although I am considering working for the Public Defender's Office or the District Attorney's Office.

What made you decide to attend law school?

My father and grandfather are both lawyers. I have always enjoyed their stories, their leadership and their influence on many others. Even though it may have been difficult to point me in a different direction, they counseled and encouraged me to explore options and do what I enjoy or am good at.

Are there any laws or social rules that completely baffle you?

I believe families are the foundation of a healthy society and nation. Because of that, some divorce law baffles me. No-fault divorce causes all kinds of problems for children, that comes out even more throughout the children's lives.

What historical figure inspires you and why?

Solomon, king of Israel, is a historical figure that inspires me. Even after seeing and having everything under the sun, Solomon believes that it is all meaningless like chasing after the wind. I believe we can learn from him. We can never have enough, and this takes self-control and discipline to understand and restrain ourselves. What truly matters is influencing other people and leading them toward life.

What is the most important thing you have learned in law school or undergrad?

The most important thing I have learned was working as an extern after my first year of law school with a federal judge. In this position, I drafted orders for the clerks' and judge's review. Sometimes, we as humans try to make things sound sophisticated because, well, we are lawyers. However, I have learned that the best writing is simple and concise. Just using common sense and being clear often works the best, especially in arguments, because if someone does not even understand the words you're using, then it is impossible for you to influence.

OBF W.B. CLARK MEMORIAL SCHOLARSHIP



Brian Michael Taylor

Hometown: Ponca City
Law School: OCU School of Law
Graduation Date: Spring 2018
Field of Law: Oil and Gas Law
Undergrad: University of Oklahoma
Undergrad Major: Political Science
Undergrad Minor: History
Undergrad Graduation Date: Spring 2015

What are your short-term and long-term goals?

My short-term goal is to finish my education at the OCU School of Law and to secure full-time employment post graduation. My long-term goal is to use the connections that I've made in undergrad and law school to create my own business in the oil and gas industry.

What made you decide to attend law school?

I've always been fascinated with how laws and social norms shape our society's behavior and perception of certain topics. Additionally, I concluded that it would be complementary with my political science degree in hopes of a future in the legislature at the state level.

Are there any laws or social rules that completely baffle you?

While in school, I learned that Native American tribes cannot enforce criminal law on nonnative individuals for crimes that occurred on tribal land. As a result, there are no justification or remedial measures for the victims of these crimes to rectify the transgressions.

What historical figure inspires you and why?

Edgar Allen Poe. He was the person who helped me identify my passion for writing poetry. His imagery and style captivated me and inspired me to embrace my artistic abilities (which I had previously ignored in favor of athletics).

What is the most important thing you have learned in law school or undergrad?

The most important thing I've learned from law school and undergrad was to be willing to embrace discomfort. I am typically a quiet, reserved individual. However, I've learned that by going out of my way to actively acknowledge people and attempt to learn more about them creates several opportunities that I likely wouldn't have been able to experience. My junior year of undergrad, by fostering a relationship with a faculty member, I was able to work on a project in Washington, D.C. with the Department of Education. I had never been to the East Coast before that trip. While in D.C., I had the honor of escorting Arne Duncan, former secretary of education, to a speaking engagement.

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Network and Learn at This Year's Annual Meeting

By Lane Neal

In early August, I attended the ABA Annual Meeting in New York City along with three other members of the YLD Executive Committee. For young lawyers, most of the ABA Annual Meeting is spent in the ABA YLD Assembly. The ABA YLD Assembly consists of delegates from all 50 states and some U.S. territories. It serves as the policy-making body for the ABA YLD. Resolutions and proposals concerning a variety of law-related topics are presented, debated and voted on by the ABA YLD Assembly. Issues addressed included disclosure of compensation structures within law firms, improvements to the processes by which U.S. military records are corrected, providing counsel to indigents in removal proceedings and a number of other topics impacting the practice and rule of law in the U.S.

Attending the ABA YLD Assembly provided a unique perspective into the operations of the ABA and its diverse constituency (in terms of both geography and practice area). The ABA Annual Meeting also



YLD Chair Lane Neal, Immediate Past Chair Bryon Will, Treasurer Brandi Nowakowski and Chair-Elect Nathan Richter attend the ABA YLD Annual Meeting in New York City.

provides for a number of opportunities to network with young lawyers from other states.

As OBA YLD chair, I also served as one of Oklahoma's delegates to the ABA House of Delegates. The House of Delegates is similar to the YLD Assembly, but on a much larger scale. It is the policy-making body for the ABA. The House of Delegates took up a number of interesting issues, some of which included very spirited debate.

It is time to start thinking about the upcoming OBA Annual Meeting. This year the OBA Annual Meeting will be held in downtown Tulsa Wednesday, Nov. 1, through

Friday, Nov. 3. The OBA Annual Meeting has a number of opportunities for young lawyers to learn and network with lawyers from across the state. There will be CLE, section meetings, law school alumni luncheons, the YLD monthly meeting and multiple opportunities to socialize and network with other lawyers.

If you have not attended an Annual Meeting, this should be the year to attend. The planning committee has been hard at work to make this year's Annual Meeting unique and memorable. It is a great opportunity to expand your network of friends, learn the latest trends and issues in the law and simply have a good time. I hope to see you all there.

ABOUT THE AUTHOR



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

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

By Bryon J. Will

The YLD is beginning to look forward to 2018, and a part of that is planning for the leadership of the YLD. As a YLD member (practicing 10 years or less), you are eligible to vote in this election. It is an important role as a YLD member to participate in the election, and I ask that you take some time in this consideration. Offices up for election are as follows:

- All Executive Offices
- District 2: One seat; Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, McCurtain, McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah counties
- District 3: One seat; Oklahoma County
- District 4: One seat; Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Harper, Kingfisher, Major, Roger Mills, Texas, Washita, Woods and Woodward counties
- District 6: One seat; Tulsa County
- District 8: One seat; Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties
- At-Large: Two seats; all counties
- At-Large Rural: One seat; all counties except Oklahoma and Tulsa counties

Below is a list of candidates running for each of the offices along with their narratives. Those offices that are contested will be set for voting and bal-

lots will be sent by email. Those offices that are not contested will be deemed elected by acclamation.

On Oct. 2 you will receive an email that contains a link to the ballot. The email used will be the one the OBA has on file for you. If you do not receive the email please notify me so we can get you a ballot. *Ballots must be cast no later than 5 p.m. Wednesday, Oct 25.*

Results of the election will be announced at the YLD November meeting to be held in conjunction with the OBA Annual Meeting in Tulsa on Thursday, Nov. 2, at 4:30 p.m.

2018 Leadership



2018 Chair
Nathan D. Richter

Nathan D. Richter was born in Oklahoma City. He is a graduate of Mustang High School (1996), OU (B.S. 2000) and the OCU School of Law (2007). Before beginning his legal career, he served in the Oklahoma Army National Guard for 10 years. He was deployed in support of Operation Enduring Freedom to Afghanistan in 2003 where he received the Joint

Forces Commendation Medal and numerous other awards.

Mr. Richter is a trial lawyer currently working for the Denton Law Firm located in Mustang. He has an active trial practice in the areas of personal injury, product liability, trucking and auto collisions, criminal defense and domestic relations. He is very active in the profession as a former president of the Canadian County Bar Association (2012), a volunteer with Trinity Legal Clinic providing pro bono legal services to Oklahoma's indigent population, a volunteer with the Oklahoma Bar Association's Lawyers for Heroes Program, a member of the Robert J. Turner American Inn of Court and the current treasurer for the Oklahoma Bar Association's Young Lawyers Division. He is also very active in his community. He serves as a board member for Youth & Family Services Inc. in Canadian County and is a member of Life Church, Mustang.

In his spare time, he enjoys golfing, cycling and spending time with his family. He is married to Kristin Richter, and they have two children: Harrison (7) and Kailyn (6).

Immediate Past Chair
Lane Neal

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



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

Mr. Neal represented District 3 on the OBA Young Lawyers Division (YLD) Board of Directors from 2010 to 2015. In 2015, he was elected to serve as OBA YLD treasurer. In 2016, he served as chairperson-elect and is currently serving as chairperson.

He received his undergraduate from OU in 2004 and his J.D. from the OU College of Law in 2008. While in law school, Mr. Neal was active in OU's advocacy competition teams. He also served as a note editor for the *American Indian Law Review*. His note regarding regulation of environmental standards by Oklahoma tribes was selected for publication in 2007.

Mr. Neal is a member of Crown Heights United Methodist Church where he serves as a trustee. He also serves as a board member for United Way of Central Oklahoma and Arts Council of Oklahoma City. He is currently participating in the Honorary Commander Program through Tinker Air Force Base.

Mr. Neal's wife, Laura Sams Neal, is also an attorney. She

practices criminal law and personal injury law in Oklahoma City. The Neals have one son, William, who recently turned 1.



Chair-Elect **Brandi N. Nowakowski**

Brandi N. Nowakowski is a senior associate with the law firm of Stuart & Clover in Shawnee. She focuses her practice on probate, adult guardianship, estate planning and real property matters. She, her husband, Chris, and their two sons, Ethan and Zachary, reside in Shawnee.

Ms. Nowakowski received her B.B.A. in management from OU, where she graduated *magna cum laude* in May 2006. She received her J.D. from the OU College of Law in May 2010 and was admitted to the practice of law before all Oklahoma state courts in September 2010. She was later admitted to practice before the United States District Court in the Western District of Oklahoma. She additionally serves on the Supreme Court of the Absentee Shawnee Tribe.

Ms. Nowakowski has actively served on the Young Lawyers Division Board of Directors since January 2012, having served as the District 8 director, secretary and current treasurer. In addition, she has served as YLD Community Service Com-

mittee chairperson since 2013. She enjoys working with the many attorneys who make our bar association great!

She has also previously served on the OBA Law Day Committee and has been selected to serve on the Credentials Committee for the OBA Annual House of Delegates Meeting each year since 2012. Additionally, she served on the Clients' Security Fund Task Force and the OBA Budget Committee. She is honored by the opportunity to continue serving the young lawyers of Oklahoma and the entire bar through the YLD Board of Directors as the 2018 chair-elect.

CONTESTED ELECTIONS

The following persons have been nominated and are running contested for the following positions. Results will be announced at the YLD Annual Meeting.

District Three



S. Shea Bracken

Shea Bracken is an attorney with Maples, Nix & Diesselhorst. His practice focuses primarily on medical malpractice, nursing home negligence, auto accidents, personal injury and wrongful death. He was born

in Shawnee but grew up in Stillwater. Following high school, he served in the United States Marine Corp as an infantry TOW gunner. He is a decorated war veteran with a combat deployment to Fallujah during Operation Iraqi Freedom II.

Mr. Bracken obtained his Bachelor of Arts from OSU in 2008. He graduated from the OCU School of Law in 2011. While in law school, he graduated near the top of his class and was a member of the *Law Review* and Phi Alpha Delta Fraternity. His honors included faculty and dean's honor roll, merit scholar and CALI awards for contracts.

He is an active member in the community, including being a member of VFW, Oklahoma City Young Professionals and Marine Corp League. He is also a volunteer with local organizations, including United Way of Central Oklahoma. He is member of the Oklahoma County Bar Association.

His hobbies include spending time with his wife, Lindsay, anything to do with sports, especially OSU and Thunder, exercising, reading, watching movies and relaxing. He has a passion for litigating cases and being in the courtroom. He is known for his laid-back personality and the ability to become friends with anyone he meets.

Cody J. Cooper

Cody J. Cooper represents individuals and companies in a wide range of intellectual property and civil litigation matters. His practice primarily concentrates on intellectual property, including patent prosecution and litigation, trademark and copyright matters and commercial litigation in state and federal courts.



Mr. Cooper graduated from the OU College of Law with honors. While in law school, he served as the managing editor of the *American Indian Law Review*, magister (president) of the legal honors fraternity Phi Delta Phi and was on the dean's honor roll. He was also a mentor on the Dean's Leadership Council for incoming law students and earned the American Jurisprudence Award for Civil Procedure II. He was a semifinalist at the University of West Virginia Energy Law Moot Court Competition.

He received his bachelor's degree in business administration from OU, majoring in finance and management information systems. He has a general science and engineering background, which qualified him to become registered before the United States Patent and Trademark Office as a practicing patent attorney. As an undergraduate student, he worked for a Fortune 100 company as a systems analyst intern in the Business and Technology Group, working with a number of complex software suites that provided critical services to the business.

Mr. Cooper is actively involved in community and charitable organizations and has volunteered with a number of organizations including Camp Cavett, NewView Okla-

homa, Salvation Army, various public schools throughout the Oklahoma City metro and others.

Born and raised in Norman, he now lives in Oklahoma City with his wife and two dogs. In his free time, he enjoys spending time with friends and family, playing sports and attending Oklahoma City Thunder and Sooner sporting events.



Dylan D. Erwin

Dylan D. Erwin is a civil litigator and criminal defense attorney who has been practicing with the Oklahoma City law firm Andrews Davis since December 2015. Prior to entering private practice, he was an assistant district attorney for Comanche and Cotton counties.

A fifth generation Oklahoman, Mr. Erwin graduated *magna cum laude* from OU in 2011 with a Bachelor of Arts in English and a minor in classical cultures. He received his J.D. from the OU College of Law in 2014. While in law school, he served as the president of the Student Bar Association, and the vice justice of the Harlan Chapter of Phi Alpha Delta Law Fraternity. He received the Student Bar Association Prize for his service to the student body, the Public Service Award for his pro bono work in both civil and criminal legal clinics.

He has served on the Oklahoma Bar Association Young Lawyers Division Board of Directors since 2015. During his time on the board, he has served as both the District 9 director and an At-Large director. This past year, he was given the opportunity to represent the OBA at the American Bar Association YLD Spring Conference in Montreal. He currently serves as the co-chair for the YLD Community Service Committee and looks forward to continuing to find ways for the bar to serve the greater Oklahoma community.

Aside from his volunteer work with the YLD, he also serves as a member of the OU College of Law Young Alumni Board, is a Fellow of the Oklahoma Bar Foundation and is the current vice justice of the Central Oklahoma Alumni Chapter of Phi Alpha Delta Law Fraternity, International.

In his spare time, you will find him reading all the books he still doesn't have enough time to read, enjoying all that Oklahoma City's vibrant arts community has to offer and forging ahead in his ongoing quest to make the perfect cup of coffee.

Jordan Haygood

Jordan Haygood has been a member of the Oklahoma Bar Association Young Lawyers Division board for two years and is the current OBA YLD secretary and District 3 representative. He is currently the co-chair for the OBA YLD Membership Committee, the OBA YLD liaison to the OBA Disaster Relief Committee and OBA Law School Committee and a member of the OBA Health Law Section. In 2016, he was awarded Director of the



Year by the OBA YLD chair for his service to the OBA YLD.

Mr. Haygood is currently serving young lawyers on a national scale as the American Bar Association Young Lawyers Division District 24 representative for Oklahoma and Arkansas. As part of his duties for the ABA, he is a voting member for the ABA YLD Board of Representatives, serves as both Oklahoma and Arkansas' liaison to the ABA YLD National Disaster Legal Services Committee and facilitates and manages communication between the ABA YLD and Oklahoma Bar Association and Arkansas Bar Association YLD affiliate programs.

He is currently a staff attorney for SSM Health Care of Oklahoma Inc. where he is responsible for assisting the regional general counsel in overseeing and managing legal affairs for the SSM Health Oklahoma region and its operating entities. He has been admitted to practice in the United States District Court for the Western District of Oklahoma and certified to practice in the United States Bankruptcy Court for the Western District of Oklahoma.

He is a member of the Oklahoma Ruth Bader Ginsburg American Inn of Court. He is also a member of the Central Oklahoma Alumni Phi Alpha Delta Law Fraternity, Interna-

tional where he served as the chapter clerk for two years. Recently, he was appointed to serve on the board for the Diversity Center of Oklahoma Inc.

Mr. Haygood graduated from the OCU School of Law in 2013 where he received the 2013 Deans Service Award for his outstanding service to the OCU School of Law. He is also a 2005 graduate of Texas Christian University where he received his B.S. in new-editorial journalism.



Chad Kelliher

Chad Kelliher is a 2011 graduate of the OCU School of Law where he was a dean's list and faculty honor roll recipient. Since graduating, he has spent his entire career at the Law Office of Daniel M. Davis where he represents plaintiffs in the areas of personal injury and civil litigation.

Laura Talbert

Laura Talbert is an attorney with Brown & Gould PLLC, a boutique civil litigation firm in Oklahoma City. Prior to joining Brown & Gould, she worked in the government sector, first as an assistant district attorney, where she was awarded Junior Prosecutor of the Year in 2014, and later as an assistant general counsel for the Oklahoma Department of Corrections.



With more than 30 jury trials under her belt, litigation is a passion for her. She earned her bachelor's and master's degree prior to receiving her J.D. from the OU College of Law. When she isn't in a courtroom, she can be found on a local volleyball court or cheering on the Sooners and Thunder.

District Six



Barrett L. Powers

Barrett L. Powers is an associate attorney with Norman Wohlgemuth Chandler Jeter Barnett & Ray, primarily practicing in commercial litigation. He received his bachelor's degree with distinction from OU in 2011 and graduated from the TU College of Law with highest honors in 2015. He is an officer of the Tulsa Lawyer's Chapter of the Federalist Society, a member of the Hudson Hall Wheaton American Inns of Court and is active in Tulsa's Young Professionals.



Caroline Marie Shaffer

Caroline Marie Shaffer is an associate attorney with Allen Garrett Peckio and Masters PLLC, practicing in complex civil litigation and bankruptcy. She is a graduate of the TU College of Law; however, she has been working in the legal field for six years as a paralegal and law clerk. She received her double undergraduate degrees in psychology and political science at the University of North Texas. She currently enjoys practicing in U.S. District Courts for the Northern, Eastern and Western Districts of Oklahoma as well as an active Oklahoma state court caseload.

While at the TU College of Law, she received the Order of Barristers, and she placed in several Board of Advocates events including Family Law Negotiation, Business Transaction Negotiation and the Redbud Classic Competition. She also participated in multiple organizations including being an officer of the Federalist Society and TU Outlaws, and she served as 1L delegate and attorney general for the Student Bar Association. One of her most rewarding experiences was helping the Tulsa community by working a semester in the Community Advocacy Clinic.

With her experience in the legal field, she is looking forward to developing her legal skills as a young attorney. She wants to use her own experience to help other young lawyers in the OBA build their skill set as mediators and litigators. She is looking forward to building new relationships throughout Oklahoma's legal community across practice lines, and on different sides of the "v," assisting other young lawyers to have a larger and stronger network. Ultimately, striving to better serve our clients and increase the civility in the practice of law.

District Eight



Garrett "Blake" Jackson

Garrett "Blake" Jackson, a 2016 graduate of the OU College of Law, is currently employed as a staff attorney at the Chickasaw Nation in Ada. A member of the Choctaw Nation of Oklahoma, his career focuses in the area of federal Indian law. He was recently elected to the post of secretary/treasurer of the Chickasaw Bar Association and serves on the Board of Directors of Oklahoma Indian Legal Services. He is passionate about involvement in the community, as well as his commitment to nutritional and physical well-being.



Tony Morales

Tony Morales is an associate with Stuart & Clover PLLC in Shawnee. He was born and raised in Shawnee and is a 2002 graduate of Shawnee High. He received his B.A. in journalism with minors in psychology and history from OU in 2006.

Tony earned his J.D. from the University of Denver Sturm College of Law in 2011 with a certificate in natural resources and environmental law. During law school, he interned with the U.S. Department of Interior, litigated as a student attorney with the school's Environmental Law Clinic and served as a staff editor for the *University of Denver Water Law Review*.

Directly after law school, he worked as an in-house petroleum landman for a Denver-based exploration and production company.

In 2014, he returned to his roots in Oklahoma to join Stuart & Clover. In addition to his general civil practice, he practices in energy and real property litigation across the state.

He is a member of the Pottawatomie County Bar Association, the OBA Energy and Natural Resources Law Section and is a graduate of Leadership Shawnee. He is also licensed to practice law in Colorado state courts and the U.S. District

Court for the Western District of Oklahoma.

He is married to his college sweetheart, Annie Coulson, a dental hygienist. They are owned by three cats.



Jimmy Oliver

Jimmy Oliver graduated from the OCU School of Law in 2010 and is a partner at DeLacerda & Oliver in Stillwater. He obtained his undergraduate degree from OSU.

Mr. Oliver currently serves on the OBA Board of Governors, the Board of Directors for the Saville Center for Child Advocacy and as the alternate city judge for the city of Guthrie.

He is also the president of the Payne County Bar Association. In 2015, while he was Law Day chair, the PCBA received the Hicks Epton Law Day Award from the Oklahoma Bar Association for outstanding Law Day activities. He has been selected and attended leadership academies through the city of Stillwater and the Oklahoma Bar Association.

His professional publications include "Family Law Conflicts: When Can You Represent a New Client Against a Former Client in a New Divorce Matter?" *Oklahoma Bar Journal*, Vol.

83, No. 33, Dec. 3, 2012; "What Should I Do With the Transcript Money?" *Oklahoma Bar Journal*, Vol. 84, No. 33, Dec. 14, 2013; "The Basics of DHS Records for the Family Law Practitioner" *Oklahoma Bar Journal*, Vol. 85, No. 20, Aug. 9, 2014.

He maintains an active practice in the areas of family law, probate, guardianship and criminal law.

At-Large Rural



Clayton Baker

Mr. Baker is an associate attorney at Logan & Lowry LLP in Grove. He was sworn in by the Supreme Court of Oklahoma in 2015. Mr. Baker is a member of the Tulsa County, Delaware County and Craig County bar associations. He is a member of the Counsel Oak/Johnson-Sontag American Inn of Court and serves on the TU College of Law Alumni Board.

Mr. Baker received a Bachelor of Science in criminal justice in 2011 from Midwestern State University in Wichita Falls, Texas. He graduated from the TU College of Law in 2015, with honors. During his time in law school, Mr. Baker served as president of the Student Bar Association, vice president of Board of Advocates and magister for Phi Delta Phi Legal Honors Society. He competed on the AAJ National Mock Trial Team

and the National Health Law Moot Court Team. Mr. Baker was elected to membership in the Order of Barristers, received the CALI Award for Excellence in Constitutional Law II and completed the Health Law Certificate Program.

Garrett “Blake” Jackson

See bio above.

Tony Morales

See bio above.

Jimmy Oliver

See bio above.

At-Large

S. Shea Bracken

See bio above.

Cody J. Cooper

See bio above.

Dylan D. Erwin

See bio above.

Jordan Haygood

See bio above.

Chad Kelliher

See bio above.

Laura Talbert

See bio above.

Barrett L. Power

See bio above.

Caroline Marie Shaffer

See bio above.

Clayton Baker

See bio above.

Garrett “Blake” Jackson

See bio above.

Tony Morales

See bio above.

Jimmy Oliver

See bio above.

UNCONTESTED ELECTIONS

The following persons have been nominated. They are running uncontested and will be declared elected at the OBA YLD Annual Meeting.

Treasurer

Jordan Haygood

See bio above.



Secretary

April J. Moaning

April J. Moaning is a native of Oklahoma and the owner of the Law Office of April J. Moaning PLLC. She holds a Bachelor of Arts in economics from OSU and received an academic scholarship from the TU College of Law where she earned her J.D. While in law school, she served as vice president of the TU College of Law Chapter of the National Black Law Students Association and maintained active involvement in community service organizations. She also received numerous accolades, including the CALI Excellence for the Future Award in Torts and the Rocky Mountain Black Law Students Association Best Oral Advocate Award.

After her admission to the Oklahoma bar, Ms. Moaning began her legal career practicing

family and criminal law. She then served as staff counsel at Liberty Mutual Insurance where she gained experience in commercial civil litigation matters involving personal injury and property damage. Currently, Ms. Moaning focuses her legal practice on family law, personal injury and criminal defense.

Ms. Moaning is active in the Oklahoma Bar Association, serving as an At-Large director on the OBA YLD Board of Directors, chair of the OBA YLD Diversity Committee and vice chairperson of the OBA Diversity Committee. She is committed to promoting diversity in the legal profession and helps coordinate the Law School Admissions Boot Camp, which is an event designed to help prospective law students navigate the law school admissions process.



District Two

Blake Lynch

Blake Lynch has been a member of the Oklahoma Bar Association young lawyers board for six years, representing District 2. During that time he has participated in numerous programs with the YLD including the Day of Service, Kick It Forward and has been recognized as the Outstanding Director. A 2009 graduate of the OU Col-

lege of Law, he also graduated from OU as an undergraduate and Dickson High School and OSSM. He is a member of the Eastern District, Cherokee, Choctaw, Chickasaw, Muscogee Creek bar associations.

Mr. Lynch is a founding partner of Wagner and Lynch PLLC in Wilburton and McAlester, a general practice firm that has received wide recognition after recent victories involving the constitutionality of certain obscenity statutes, appeals regarding tribal laws in the Choctaw Nation, the "Friendly Market" series of cases resulting in 28 acquittals in Cleveland County and seizure and forfeiture overreaches by the state. As a member of the Pittsburg County Bar Association he and his firm have raised thousands of dollars for autism and apraxia research and care, the PAWS associations of Pittsburg and Latimer counties and the Regional Food Bank. He also volunteers for other local civic organizations and is the vice president of Oklahoma HOBY, a community service-oriented leadership seminar that, in 2017 alone, helped produce almost 60,000 meals, package thousands of kits for the infant crisis

center and made blankets for children.

In addition to his motivation for community service, he has also made active efforts to develop professionally. He has taken on difficult and often pro bono cases and gained professional knowledge and leadership skills by attending the 2013-14 OBA Leadership Academy and the Gerry Spence Trial College. He is one of the senior members of the YLD board and hopes to be able to serve his district for his final years of eligibility in the YLD.

District Four **Dustin Conner**

Dustin Conner is a senior attorney for Gungoll, Jackson, Box and Devoll PC, located in the firm's Enid office. A native of Garber, he graduated from OSU with a Bachelor of Science in agribusiness in 2006. He attended the OCU School of Law where he received his J.D. with honors in 2011. While at OCU he was a member of the Phi Delta Phi Legal Honor Society. His practice areas include oil and gas title and litigation, agriculture law, civil litigation and estate planning.



Mr. Conner has served on the YLD Board of Directors for the past four years. He also serves as a board member for the Garfield County 4-H Foundation Board, the Enid A.M. Ambucs and Loaves & Fishes of Northwest Oklahoma. He also volunteers his time to serve as the shotgun coach for the Garfield County 4-H Program. In his spare time, he enjoys spending time with his family, hunting, trapshooting and attending sporting events.

ABOUT THE AUTHOR



Bryon Will practices in Oklahoma City and serves as the immediate past YLD chairperson. He may be contacted at bryon@bjwilllaw.com.

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Phone • Fax 405-522-6397 • Email s.marsee@occemail.com.

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

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OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2017 Issues

- October
Insurance Law
Editor: Renée DeMoss
rdemoss@gablelaw.com
Deadline: May 1, 2017
- November
Administrative Law
Editor: Mark Ramsey
mramsey@soonerlaw.com
Deadline: Aug. 1, 2017
- December
Ethics & Professional Responsibility
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Aug. 1, 2017

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

2018 Issues

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

Court of Criminal Appeals Judges Retire

Court of Criminal Appeals Judge Clancy Smith and Court of Criminal Appeals Judge Arlene Johnson have retired.

Judge Smith retired in June after almost seven years. She was appointed to the court in 2010 by then Oklahoma Supreme Court Chief Justice James Edmondson after then Gov. Brad Henry recused. She is a native of Hugo and previously served as a district judge and special district judge in Tulsa County.



Judge Clancy Smith



Judge Arlene Johnson

Judge Johnson has served on the court since she was appointed to the post by Gov. Brady Henry in 2005. She previously served as an assistant U.S. attorney for the Western District of Oklahoma for 21 years and as an assistant attorney general and state prosecutor. In total, she has spent more than 45 years in the legal profession.

Oklahoma County Law Library Named After Judge Bryan C. Dixon



Judge Bryan C. Dixon

The Oklahoma County Law Library was named after Retired Judge Bryan C. Dixon, who retired Sept. 1. The library will now be called the Judge Bryan C. Dixon Law Library.

Judge Dixon obtained his bachelor's degree in political science from OU in 1974 and his J.D. from the OU College of Law in 1977. He has been an Oklahoma County district judge for more than 31 years and stood for election eight times without opposition. He has tried 667 jury trials.

"It is a great honor," Judge Dixon said during a retirement reception. "It's been a pleasure serving as a judge all these years."

Judge Dixon is a past president of the Oklahoma County Bar Association, has served on the OCBA board and Bench and Bar Committee for many years, is a master and former president of the Bohanon Inn of Court and has served on the Oklahoma County Law Library board for 28 years.

He has received the OBA Award for Judicial Excellence, American Board of Trial Advocates Judge of the Year Award, OTLA Outstanding District Judge Award, OCBA Bobby G. Knapp Leadership Award, OCBA Professional Service Award and the OCBA Young Lawyers Division Beacon Award.

ABA Rolls Out New Fact Check Website

The American Bar Association launched a new web-based fact check service to help the public find dependable answers to swirling and sometimes confusing legal questions.



The site, ABA Legal Fact Check at www.abalegalfactcheck.com, is the first focusing exclusively on legal matters. The project is one of several initiatives launched by Hilarie Bass, who became the new ABA president at the close of the ABA Annual Meeting in New York.

"In a world with multiple sources of information, it is often difficult to distinguish between fact and opinion," Ms. Bass said. "Through our new ABA Legal Fact Check, the American Bar Association will use case and statutory law and other legal precedents to help set the record straight by providing the real facts about the law."

ABA Legal Fact Check will explore widely disseminated legal assertions. Initial postings examine whether individuals can be punished for burning the American flag, explore who has the constitutional authority to redraw U.S. circuit courts and offer explanations on the power of presidential pardons and hate speech, among other topics.

LHL Discussion Group Hosts October Meeting

"Depression, Anxiety and the Practice of Law" will be the topic of the Oct. 5 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to onelif@plexisgroupe.com are encouraged to ensure there is food for all.



Aspiring Writers Take Note

We want to feature your work on "The Back Page." Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry is an option too. Send submissions of about 500 words to OBA Communications Director Carol Manning, carolm@okbar.org.

Join the New International Law Section

The OBA is excited to announce the creation of the International Law Section. Section members will enjoy the chance to network with other practitioners and attend events featuring speakers who are experts in the field, including CLE opportunities. The first meeting has not yet been set but will take place mid-October. Dues are \$20 per year and members can join by mailing in the section membership form found at www.okbar.org/members/sections or by calling 405-416-7000. Payments received before Nov. 15 will apply to 2018 dues.



Connect With the OBA Through Social Media

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



Kudos

Reid E. Robison has been named a senior fellow of the Litigation Counsel of America. Mr. Robison practices business-related litigation in the Oklahoma City office of McAfee & Taft.

Gov. Mary Fallin appointed **District 2 District Attorney Angela Marsee** as a member of the Oklahoma Commission on Children and Youth. The commission works to improve services provided to children and youth in the state of Oklahoma. Gov. Fallin also announced the appointment of **Scott D. Meaders** as a Comanche County district judge and **Maxey Reilly** as associate district judge for Okfuskee County. Mr. Meaders previously served the city of Lawton as deputy city attorney. Prior to her appointment Ms. Reilly practiced with the Stinnett Law firm in Okemah.

Conner & Winters LLP announced the firm's newly elected management team. **P. Scott Hathaway** of Tulsa will assume the role of president and **Steven W. McGrath**, also from Tulsa, will serve as chairman. **Mark D. Berman** of Tulsa will serve as secretary and chief operating officer and **Jared D. Giddens** of Oklahoma City will become the chief financial officer. **Melodie Freeman-Burney** of Tulsa, **J. Ryan Sacra** of Tulsa, **Todd P. Lewis** of Fayetteville, Arkansas, and **G. Daniel Miller** of Washing-

ton, D.C., will also serve on the Executive Committee.

Paul George has been named reporter for the Uniform Law Commission's *Registration of Foreign Judgments to Harmonize the Law of Canada and the United States*. Mr. George graduated from the TU College of Law, clerked for Judge H. Dale Cook and now teaches law at Texas A&M in Fort Worth, Texas.

On The Move

Scott Butcher was named director at Crowe & Dunlevy. Mr. Butcher will continue to work from the firm's Oklahoma City office as part of the firm's energy, environment and natural resources and litigation and trial practice groups.

Brita Haugland Cantrell was elected to shareholder in McAfee & Taft's Tulsa office. Ms. Cantrell leads the firm's family law litigation practice.

Jenny Rosenfelt joined BancFirst Ardmore as VP/loan administration officer. Her responsibilities include coordinating and supervising loan operation functions to ensure compliance and operational efficiency.

Henry A. Meyer joined Oklahoma City-based firm Mulinix Goerke & Meyer PLLC. Mr. Meyer is a 1977 graduate of the Georgetown University Law Center.

Gregg J. Lytle, Kevin Krah and **John Krah** joined the Tulsa-based firm McDaniel Acord PLLC. Mr. Lytle will practice in the areas of medical malpractice defense, employment, construction defects and civil litigation. Mr. Kevin Krah will practice as a trial lawyer and mediator. Mr. John Krah practices both civil and criminal law.

Steven D. Goodspeed was promoted to shareholder at the Grapevine, Texas, firm Anthony & Middlebrook PC. He will continue to practice transactional law.

Sandra Benischek Harrison was named director of regulatory and legal affairs at the Oklahoma Hospital Association in Oklahoma City. Ms. Harrison is a 2000 graduate of the OU College of Law.

Gregory P. Chansolme, Andrew Ralph Harroz and **Chase H. Schnebel** announce the formation Chansolme Harroz Schnebel. The firm can be reached at 100 N. Broadway Ave., Suite 1800, Oklahoma City, 73102; 405-602-8098.

The Bruxton Law Group has moved to 1625 N. Classen, Oklahoma City, 73106. The firm can be reached at 405-604-5577.

At The Podium

Sandra Benischek Harrison presented on "Telemedicine and Patient Protections" at the Spring Summit for the Center for Telehealth and E-Law in Washington, D.C.

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 Nov. 18 issue must be received by Oct. 20

IN MEMORIAM

Stephen Price Barker of Shreveport, Louisiana, died May 13. He was born Oct. 9, 1964, in Falls Church, Virginia. He was a 1982 graduate of Ruston High School and a 1986 graduate of Louisiana Tech University, where he received his degree in business administration. Mr. Barker then received his J.D. from the Louisiana State University Paul M. Hebert Law Center in 1989. After law school, he joined Cook, Yancey, King and Galloway. In 2014, he helped start Kean Miller LLP. He served on various boards, including the Board of Directors of the North Louisiana Economic Partnership, lending his time and talents to countless community, civic and charitable organizations. He loved mountain biking with his son and friends. Donations in his honor may be made to First United Methodist Church, 500 Common Street, Shreveport, LA 71101 or Leukemia & Lymphoma Society, donate.lls.org.

Robert D. Craig of Luther died July 9. He was born Aug. 30, 1947. He attended Northwest Classen High

School. Mr. Craig received his bachelor's from OCU and his J.D. from the OCU School of Law in 1973. He practiced law in Luther from the 1970s until the last months of his life. For 10 years, he served on the Luther school board, several of those years as its president. He loved flying taildraggers and ultralights. In his work at Legal Aid, DHS, his own law practice and on the school board, he fought to ensure that everyone was treated fairly and decently, especially the little guy. Donations in his honor may be made to United Cerebral Palsy or the Oklahoma Blood Institute.

Mark Allen Derryberry of Tulsa died Nov. 2, 2016. He was born May 2, 1959, in Sherman, Texas. He was raised in Idabel before leaving home to attend Oral Roberts University in the fall of 1977. After receiving his bachelor's degree in criminal justice, he subsequently worked for DHS in Aid to Families with Dependent Children and as a child welfare investigator. Mr. Derryberry continued his education at night, and after

four years, received his J.D. from the TU College of Law in 1994. In 1995, he began his family law practice. He was on the board at Crossroads Church and the church school board for many years; including assisting in the rebuilding of the church when it burned down in 2003. He enjoyed collecting sports memorabilia and serving the local Cub Scouts and Boy Scouts troops as scout master. Donations in his honor may be made to the American Center for Law and Justice, the Boy Scouts of America or the National Park Reserves.

Leamon Freeman died July 17. He was born Feb. 16, 1929, in Ft. Cobb. Mr. Freeman graduated from Ft. Cobb High School in 1947. **He served in the U.S. Army as a surgical technician from 1947 to 1948. He also served in the U.S. Navy as a medical technician from 1950 to 1951.** After an honorable discharge, he continued his educational pursuits, receiving a business degree from OCU in 1954. While working as an accountant at Oklahoma Publishing

Company, he received his J.D. from the OCU School of Law in 1964. He was a member of the OCU first Moot Court team and received the first Marion Opala Award given by the OCU School of Law. Mr. Freeman went into private practice in 1966. He was appointed as special district judge in 1981 and district judge in 1983. After his retirement in 1996, he continued practicing law on the grievance panel with the Oklahoma Insurance Department. He was past president of the OCBA. Donations in his honor may be made to Mercy Hospice, 4300 W. Memorial Rd., Suite 143, Oklahoma City, 73134.

Richard W. (Dick) Gable of Tulsa died Aug. 8. He was born Nov. 7, 1938. He graduated from Tulsa Central High School in 1956. Mr. Gable received his bachelor's degree in mechanical engineering from OU in 1960 and his J.D. from the OU College of Law in 1963. He was a member of Phi Delta Theta social fraternity and Phi Alpha Delta Law Fraternity. He was a longtime partner and shareholder at GableGotwals. After his retirement, he practiced as of counsel with the firm. He practiced

commercial and real estate law. Mr. Gable was a member of the Cedar Ridge Country Club, Tulsa Ski Club, Rotary Club of Tulsa and the Royal Order of Jesters. He loved snow skiing, backpacking, fly fishing, golfing and traveling the world. Donation in his honor may be made to the Parkinson Foundation of Oklahoma.

John William Hron IV of Ponca City died Aug. 12. He was born Oct. 20, 1947, in Ponca City. In junior high and high school, he won numerous golf tournaments throughout the state. In 1969, he received a bachelor's degree in business from OSU. After graduation, he went to work at Continental Oil Company in production and pipeline accounting. In 1973, he graduated from the OU College of Law. He joined the firm of Burdick and Clark in 1974. In 1976, he and Guy Clark joined Northcutt Law Firm where he worked until his passing. During his career, he was president of the Kay County Bar Association. His love of golf led him to win the Ponca City Country Club Men's Club Championship on three separate occasions and the PCCC Fourball Match

Play Championship several times. Honorable donations may be made to the Po-Hi Golf Team or Northeastern State University Golf Team.

William C. Reppart Jr. of Jay died July 23. He was born Oct. 31, 1952, in Topeka, Kansas. He graduated from Ulysses High School. In 1974, he received his bachelor's degree in accounting from Washburn University in Topeka. In 1989, he returned to Washburn University to receive his master's degree in business administration and his J.D. in 1993. Mr. Reppart then joined Topeka Technical College where he served as an adjunct faculty member. He instructed numerous classes in business and law-related subjects. In 1993, he also became an associate attorney with a general practice law firm. In 1995, he moved to Grove to establish a legal practice with Brandon Johnson. In 2000, he established Mallow, Jenkins and Reppart. In 2006, he joined Davis and Thompson in Jay, where he worked until the time of his passing. Donations in his honor may be made to the Second Chance Pet Rescue of Grand Lake, P.O. Box 451205, Grove, 74345.



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Goo.gl/vN59YM



How to Create Emphatic Sentences

Karl Llewellyn, American jurisprudential scholar, said that every sentence ought to be arranged so the punch word or phrase comes last. Learn how to create emphatic sentences and become a better writer.

Goo.gl/zY1yfy



50 Tailgating Recipes

Fall is in the air and with that comes the start of the football season and tailgating. Chili, wings, little smokies or chips and dip, check out *Food Network's* top 50 recipes.

Goo.gl/DriyBF



Get More Done

Many lawyers can regularly work in excess of 12 hours per day and medical studies show that working long hours can lead to burnout or impair physical or mental health. Emma Spitz, director at the Executive Coaching Consultancy, shares her strategies for managing workload, staying focused and being productive.

Goo.gl/eGiAA9



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SEEKING EXPERIENCED IMMIGRATION ATTORNEY. Are you the type of person who likes to work with people from around the world to help them reach their dreams of coming to America? Would you like to help tell their story as incredible athletes, entertainers, doctors, techies, entrepreneurs or coming to join family members of US citizens and companies? Are you organized, have great attention to detail, excellent writing and speaking skills? Can you solve problems, have integrity, work hard, are consistent, are an achiever, use grit and have an optimistic attitude? If you have immigration law experience and can answer yes to all of the above; you may be a good fit to join our growing team as an immigration attorney for Velie Law Firm and OnlineVisas.com. In addition to immigration law experience, qualified candidates will possess the ability to: communicate effectively, research and writing, work collaboratively in a team setting, manage time and time of others, use Microsoft Word, Microsoft Publisher, and Microsoft Outlook and possess the ability to learn and use other forms of software applications easily, and thrive in a fast-paced, task oriented environment. Please send resume with writing sample to heidi.ochs@velielaw.com. We welcome resume and writing submissions from all experienced attorneys and case managers, regardless of immigration experience, as we are growing rapidly and may have other available opportunities. EEO, 100% company paid benefits after 60 days, casual work environment.

THE OKLAHOMA GUARDIAN *AD LITEM* INSTITUTE, a nonprofit organization, is looking to fill a newly created position as a staff attorney with funds from VOCA grant. Applicants must be licensed to practice law in Oklahoma and have 16 hours of domestic violence training. Preference will be given to candidates with guardian *ad litem* experience, child welfare experience, or nonprofit agency experience. Submit cover letter, resume and professional references to Hiring Department, Oklahoma Guardian *Ad Litem* Institute, 1701 Signal Ridge Drive, Suite 110, Edmond, Oklahoma 73013, facsimile 405-888-5449, or sharon@okgalinstitute.org. EOE.

AN AV RATED MIDTOWN OKC LITIGATION FIRM, SEEKS A LAWYER with 1-7 years of experience, preferably in insurance defense work. Transmit a resume and writing sample to "Blind Box X," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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.

The firm of NELSON TERRY MORTON DEWITT & PARUOLO is seeking an attorney with a minimum of 1 year's experience in civil trial practice, insurance defense litigation and insurance coverage. Please submit your resume, cover letter and a writing sample to Derrick Morton, P.O. Box 138800, Oklahoma City, Oklahoma 73113 or by email to morton@ntmdlaw.com.

TULSA AV RATED LAW FIRM SEEKS ATTORNEY WITH 2-5 YEARS EXPERIENCE who focuses in research and writing. Must be energetic and a self-starter; good communication skills required. The firm's practice concentrates primarily on medical malpractice defense and other healthcare related areas. Salary commensurate with experience, compensation includes health insurance and other benefits. Email resume, writing sample, salary requirement and references to rebecca@rodolftodd.com.

RURAL NE OK LAW FIRM WITH STATEWIDE PRACTICE SEEKS ATTORNEY with 2+ years' experience. Insurance defense or other litigation experience desired. Property background is a plus. Send resume to "Box AA," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

BUSY AND SUCCESSFUL EDMOND FIRM SEEKING ASSOCIATE. Candidates should have 0-5 years in practice. Preference to those with experience in estate planning, probate, bankruptcy, personal injury, and civil litigation. Salary commensurate with experience. Firm culture offers an excellent life-work balance and supportive environment. Send resume to: edmondlawjobs2017@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.

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

POSITIONS AVAILABLE

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

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

THE OFFICE OF THE OKLAHOMA ATTORNEY GENERAL IS CURRENTLY SEEKING A LICENSED ATTORNEY to work with the general counsel to the attorney general. The general counsel advises the attorney general and staff on policy and legal matters and is responsible for overseeing the attorney general opinion process, Open Records Act request process and ballot title review. Excellent research and writing skills are required. A writing sample must accompany resume to be considered. All applicants must agree in writing to complete, and satisfactorily pass, a background investigation by the Office of the Attorney General. All employees of the Oklahoma Attorney General's Office are "at will" employees. To apply for this position please send your resume and writing sample to resumes@oag.ok.gov and indicate which position (assistant attorney general, general counsel) you are applying for in the subject line of the email. EOE.

8TH DISTRICT ATTORNEY BRIAN T. HERMANSON IS TAKING APPLICATIONS FOR AN ASSISTANT DISTRICT ATTORNEY in Kay County. The position will include prosecuting a wide range of criminal cases with a focus on general misdemeanor and felony cases. Requirements: Strong writing and research skills are required, along with a desire to work closely with victims. Salary: Based on experience and will include state benefits. Please email a resume, a writing sample, references and a cover letter to Brian.Hermanson@dac.state.ok.us.

POSITIONS AVAILABLE

THE LAW FIRM OF CHUBBUCK DUNCAN & ROBEY, P.C. is seeking an experienced associate attorney with 2-5 years of experience. We are seeking a motivated attorney to augment our fast-growing trial practice. Excellent benefits. Salary commensurate with experience. Please send resume and writing sample to Chubbuck Duncan & Robey, P.C., located at 100 North Broadway Avenue, Suite 2300, Oklahoma City, OK 73102.

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

THE LAW FIRM OF PIERCE COUCH HENDRICKSON BAYSINGER & GREEN, LLP is accepting resumes for an associate position in the Oklahoma City office. Insurance defense and professional liability experience with emphasis in accounting or construction defects is preferred for those with 3-6 years of experience. Please submit resumes to lawyers@piercecouch.com.

THE CANADIAN COUNTY DISTRICT ATTORNEY'S OFFICE IS SEEKING APPLICANTS FOR AN ASSISTANT DISTRICT ATTORNEY. This position includes advising and representing county officials in various matters regarding all aspects of county government. Qualified applicants must have a J.D. from an accredited school of law and be admitted to the practice of law in the state of Oklahoma. Applicants must also have at least 5 years of experience in civil litigation, including initiation of litigation, discovery, motions, oral arguments, trials and settlements. Ideal candidates will have civil rights and employment law experience, as well as a working knowledge of the Oklahoma Governmental Tort Claims Act. Excellent research and writing skills are required. Salary based on qualifications and experience. Compensation includes salary plus full state benefits including retirement. Please submit a cover letter and resume with a list of professional references to Charles W. Gass, Deputy District Attorney, 303 N. Choctaw, El Reno, OK 73036 or by email to charles.gass@dac.state.ok.us. District Attorney District 4 is an Equal Opportunity Employer.

POSITIONS AVAILABLE

AN AV – RATED BUSINESS LAW FIRM IN EDMOND 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.

THE OKLAHOMA COUNTY PUBLIC DEFENDER'S OFFICE HAS AN IMMEDIATE OPENING FOR AN EXPERIENCED ATTORNEY to handle felony cases. Salary will be based upon experience. Jury trial experience required. Submit resume and cover letter by 5 p.m. Sept. 22, 2017. Contact Donna Law, Office Manager, Oklahoma County Public Defender's Office, 320 Robert S. Kerr Ave. Room 611, OKC, OK 73102 405-713-1562; donna.law@oscn.net.

POSITION WANTED

WANTED: POST-MILITARY ATTORNEY CAREER IN OKC AREA. Twenty years' experience in DoD acquisitions/contracts. FAR/DFARS expertise. Experience in IP/data rights. Contact Brian Putnam (OBA #21034) at 405-519-7836 or brian6947@gmail.com.

FOR SALE

NEW 2ND EDITION, 2017-18. *Sentencing in Oklahoma* by Bryan Dupler, with SQ 780, session laws, and case updates. The practical guide for judges and attorneys. \$30+tax/shipping. Email orders to oksentencinglaw@gmail.com. Firm/agency rates for 10+ copies.

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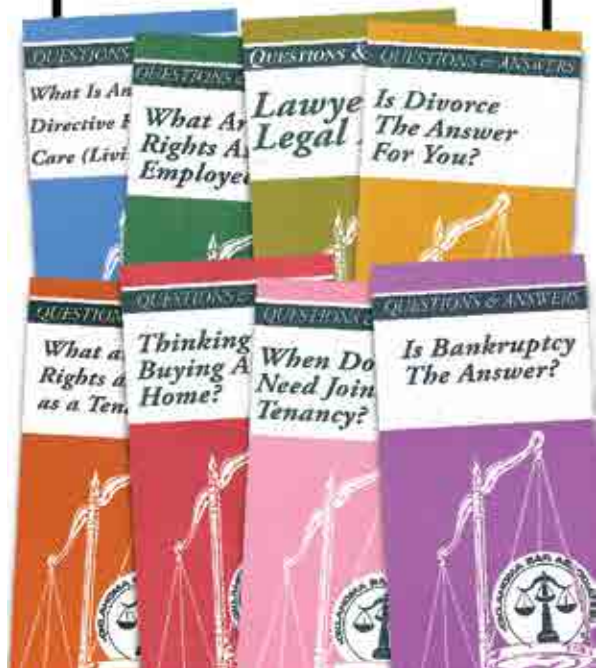
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Why Annual Meeting is Worth Your Time

By Rachel Pappy

The Oklahoma Bar Association Annual Meeting is one of the highlights of the year for me! I'm always surprised by the friends and acquaintances I run into, and I love catching up with attorneys I haven't seen in awhile!

For those who have never been, the OBA Annual Meeting is the yearly conference hosted by the bar for all attorneys in the state. It's a great mix of valuable continuing legal education alongside fun, well-planned social events.

I attended my first Annual Meeting 11 years ago in order to connect with others in the legal community, learn about their areas of practice and share war stories. To this day I am still friends with attorneys I met at my first Annual Meeting, and the relationships I have made have been invaluable. Over the years I have met a wide range of attorneys from all corners of the state, from the public sector to the private sector, and from solo practitioners to large-firm lawyers.

It is fascinating to hear about the array of practices represented at Annual Meeting. My firm, Polston Tax, only practices in

one specific arena – tax law. Thus, it has been especially helpful when I am able to count on someone I have met at

attorneys I have met over the years!

Oklahoma law school alumni events are also planned to coincide with Annual Meeting. I have found these events to be a great time to connect with former classmates and teachers, celebrate the accomplishments of alumni and learn of the positive impact the school has had on the community at large!

One more great feature of Annual Meeting is the flexibility to set your own schedule. There have been years I had deadlines to meet on cases and was tethered to my laptop in my hotel room, but at the end of the day it was wonderful to head to one of the hospitality suites and meet up with attorneys I knew to just relax and have a good time. Suffice it to say, I always find the OBA Annual Meeting to be a great time and something I genuinely look forward to each year!

Ms. Pappy practices in Oklahoma City.



From left, OBA members Justin Hutton, Rachel Pappy, former Judge Valerie Couch and Victor Stacy at an OBA Annual Meeting.

Annual Meeting to answer my question about an area of law I am unfamiliar with, and I have referred many cases to the

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MEDIATION AND ARBITRATION STRATEGIES FOR TODAY'S LITIGATION

PROGRAM PLANNER/MODERATOR:
Larry Lipe,
Conner & Winters, LLP. Tulsa

OCTOBER 5, 8:50 - 11:40 A.M.

OKLAHOMA BAR CENTER - "LIVE" WEBCAST AVAILABLE

Presentations from three of the most experienced mediators and litigators in Oklahoma and the American Arbitration Association's coordinator for Commercial Arbitration in Texas and Oklahoma.

TOPICS INCLUDE:

- Do's and Don'ts of Mediation for Advocates and Mediators: A Panel Discussion
- Trends in Arbitration
- Intelligent Use of Discovery in Preparation for Mediation or Arbitration


Early registration by Sept. 28th is \$75. Registration received after Sept. 28 will be \$100 and walk-in registrations are \$125. Registration includes continental breakfast. Registration for the live webcast is \$100. All programs may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org to register.

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