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THE OKLAHOMA BAR Journal

Volume 89 — No. 20 — August 2018

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LAW**





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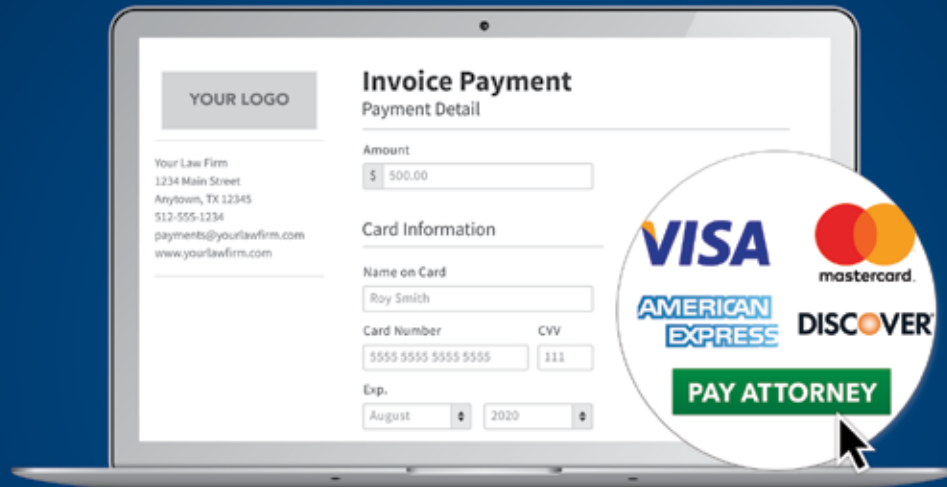
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You Can Be A Superhero

WHO IS YOUR FAVORITE SUPERHERO? I find it a challenge to select just one: Superman, Batman, Supergirl, Captain America, Wonder Woman, Power Rangers, Teenage Mutant Ninja Turtles, X-Men, Avengers or the Incredibles. A superhero is defined as “a fictional hero having extraordinary or superhuman powers; also: an exceptionally skillful or successful person.”¹

Based on this definition, all attorneys have earned the title of superhero. As attorneys, we are *exceptionally skillful* based on our knowledge of the law. When is the last time you put on your “superhero” cape or costume? The OBA is here to help! You can proudly claim your superhero status by registering as a volunteer attorney for Oklahoma Free Legal Answers.

The Oklahoma Access to Justice Commission, American Bar Association and the OBA have joined forces to offer an interactive website to provide free legal information to needy Oklahoma citizens. The best news for your new superhero status is that you can help fellow Oklahomans without leaving your office, and you remain anonymous (always important for a superhero). Register online as a volunteer attorney, aka superhero, by going to Oklahoma.freelegalanswers.org and clicking on Volunteer Attorney Registration. It's really easy.

Here is how it works. Qualifying Oklahomans post civil legal questions on the website and receive basic legal information and advice from approved volunteer attorneys. All attorney volunteers are covered by a professional liability insurance policy purchased by the ABA. You select the areas of law where you can exercise your superpowers (answering a legal question). You choose to accept only the questions for which you feel comfortable providing help and then you have 24 hours to post an answer. Most attorneys compose a response in less than half an hour.



Kimberly Hays

President Hays practices in Tulsa.
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In Oklahoma a large percentage of the population has unmet legal needs because they are unable to find or afford legal assistance. Legal Aid Services of Oklahoma must turn away more than 50 percent of those who qualify for its services. As a result, many low-income Oklahomans face an impossible choice – try to represent themselves or simply walk away from the relief and justice to which they would otherwise be entitled. As attorneys, we have the exceptional skills to

help our fellow Oklahomans. Thank you to the 99 Oklahoma superheroes who have already registered and participated in Oklahoma Free Legal Answers!

During the month of May, 1,263 questions were submitted with 35 percent in the category of family/divorce/custody, 13 percent in the category of landlord/tenant and other categories included wills/inheritance, debts, bankruptcy, personal injury, contracts, employment/

labor law and many other areas of law. Oklahoma Free Legal Answers offers all attorneys the opportunity to flex those legal superhero muscles!

I believe we are blessed to have the opportunity to practice law, and we should give back to our community and state by helping those who are less fortunate. Let's double the number of the current volunteer attorneys in the next 30 days! I challenge you to register TODAY as a volunteer. Next, you can order your new superhero costume – hopefully, it is eligible for Amazon Prime – and then start answering legal questions. By giving just a little of your time, you will be offering Oklahomans a positive superhero image of our legal profession.

ENDNOTE

1. Merriam-Webster.com. Merriam-Webster, n.d. Web. 2 July 2018.

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Navigating FERPA to Access Student Records

By Jessica Sherrill

AS ATTORNEYS, WE KNOW THE IMPORTANCE OF DOCUMENTATION. When it comes to matters involving children, it is common for educational records to be utilized. It is important to understand the application of Oklahoma law¹ as well as federal law, specifically FERPA, when it comes to which records are deemed as educational records versus directory information. Some records are available to any patron while others require parental consent,² and some are only accessible via court order.

This article will delve into each area and provide you with guidance on which records might be more helpful than others in reference to cases involving children.

WHAT IS FERPA?

The Family Educational Rights and Privacy Act (FERPA)³ was enacted in 1974 and governs access to confidential information of public educational agencies and institutions that receive U.S. Department of Education funding. Certain private schools may not enjoy the protection of FERPA because no federal funding is received. However, policy may still preclude disclosure to anyone other than the parents and legal guardians.

In layman's terms, FERPA protects against widespread disclosure of public school students' attendance records, videos, report cards, test scores and more. Outside of public school employees who need to know student information for educational purposes, only the parents, legal guardians and eligible students⁴

have access to review, request records be amended and control disclosure to other persons.

FERPA can only be violated by an agent or employee of the public school district. For example, if a school district employee records a student football game and a patron records the same game, the public school could not release the video through a directory information request, but the patron could share it with anyone and everyone.

WHAT RECORDS ARE PROTECTED UNDER FERPA?

FERPA protects and makes confidential all "educational" records (or personally identifiable information contained therein). Educational records are not just confined to paper documents as they also encompass videos, audio recordings, computer files, photos and any other type of media. The public school is prohibited from releasing these records unless permitted within FERPA or by consent of the parents, legal guardians or eligible students. A public school

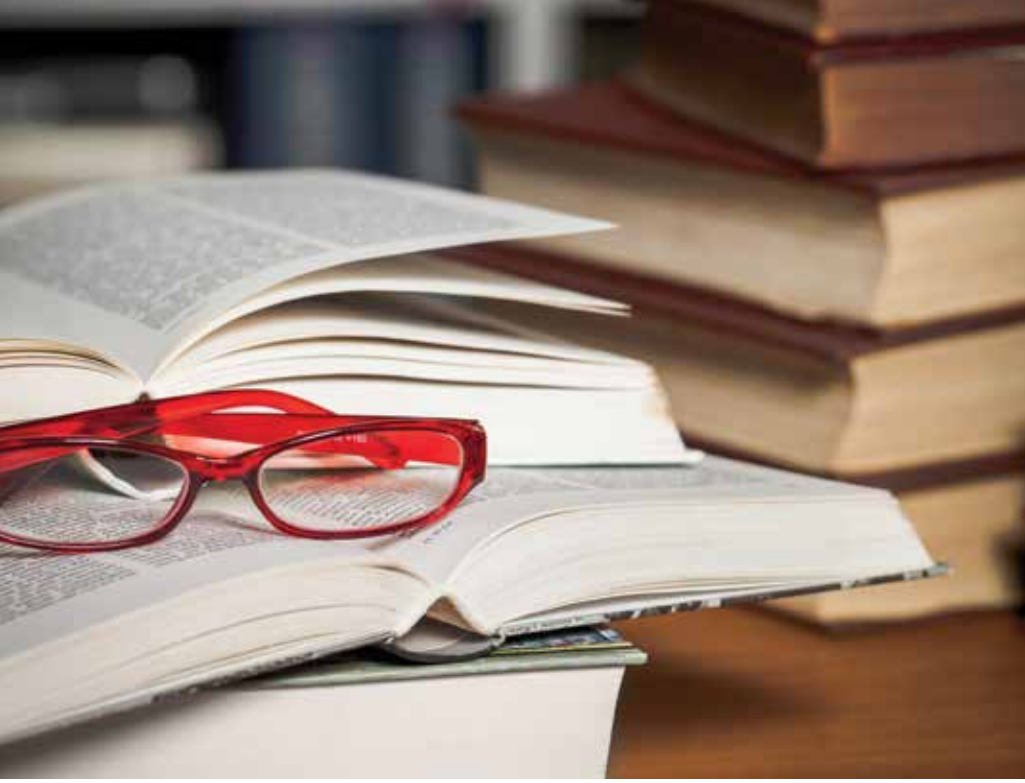
cannot itself waive any student's FERPA protection as it is not the school that is protected, rather it is the student's privacy in mind. In some cases, the school could redact confidential information in order to release certain documents, but this is a slippery slope.

FERPA does not protect all records created and/or maintained by the public school, just those deemed educational in nature. Noneducational student records are considered "directory information."

WHAT IS DIRECTORY INFORMATION?

FERPA allows disclosure to any third party of student "directory information," which is information generally not deemed to be harmful or an invasion of a student's privacy if released. Each school district must adopt and maintain a policy⁵ determining what is included in directory information; this policy varies district by district.

Typically, directory information includes student name, address, parents' or legal guardians'



names, activities and sports, and could include more, such as date and place of birth, weight, honors and more, dependent upon the school district's policy. In a practical sense, it is directory information that allows for a student yearbook with pictures of teams, groups and honors. Anyone can request and obtain directory information as described in school district policy for students without notification or further authorization of the parents or legal guardians.

However, the school district must annually notify the parents, legal guardians and eligible students of their right to opt out of disclosure of directory information, which would deny access to anyone who requested it, other than the parents or legal guardians themselves. This would also preclude the use of names and photos on the school's website, Facebook page and yearbook, etc.

It is important to know that our state law protects directory information of students in the custody of state child protective services⁶ or foster care. Student names, photos and activities are to be kept confidential for the protection of the students.

FERPA EXCEPTIONS

FERPA permits disclosure of educational records without parental consent through certain exceptions,⁷ including but not limited to:

- School officials with legitimate educational interest,
- Other schools to which a student is transferring,
- Specified officials for audit or evaluation purposes,
- Appropriate parties in connection with financial aid to a student,
- Organizations conducting certain studies for or on behalf of the school,
- Accrediting organizations,

- To comply with a judicial order or lawfully issued subpoena,
- Appropriate officials in cases of health and safety emergencies, and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

OBTAINING RECORDS FROM A PUBLIC SCHOOL

An attorney seeking student records would best start by reviewing the school district's policy on directory information. Again, directory information would provide general student information that may or may not be helpful to the attorney's case. It is best to follow the process provided by administration to obtain records, and it might be helpful to review the policy and procedures on open records requests as well. If more information is sought, such as student attendance and tardy records, student grades, individualized education plan documents or teacher and administration records about student behavior, then the attorney will want to determine next steps in accordance with FERPA.

As only the parents, legal guardians and eligible students can consent to disclosure outside the public school, an attorney for any of those parties should first seek written consent for such disclosure

It is best to follow the process provided by administration to obtain records, and it might be helpful to review the policy and procedures on open records requests as well.

to provide to the school district. It is important to know that both parents and all legal guardians have access to student records and can determine who else could have access. More specifically, each parent and/or legal guardian or eligible student can authorize disclosure of FERPA-protected information to other parties not otherwise authorized. An eligible student could even prohibit disclosure to her parents should she so decide. It does not matter which parent has custody, so long as a parent maintains parental rights, access to records is absolute. Conversely, a custodial parent cannot prohibit disclosure to a noncustodial parent or authorized legal guardian.

A written authorization of disclosure from a parent, legal guardian or eligible student would be more successful than a subpoena. Absent this, a court order would also provide access.

ABOUT THE AUTHOR

Jessica Sherrill is director of unemployment for the Oklahoma State School Boards Association. She is a member and past president of the Oklahoma School Board Attorneys Association. She is a graduate of the OCU School of Law. She is currently Rotary District 5750 governor and member of OKC Midtown Rotary.

ENDNOTES

1. 70 O.S. §24-101.4; 51 O.S. §24A.16.
2. Parental consent is replaced with legal guardian consent, when applicable.
3. 20 U.S.C. §1232g.
4. Eligible students are those who have reached the age of 18 or are attending school beyond high school level.
5. 51 O.S. §24A.16.
6. Oklahoma Department of Human Services (aka OKDHS).
7. 34 CFR §99.31.

The advertisement features a dark green background with a geometric pattern of triangles. At the top, the '3000' logo is displayed in large, white, stylized numerals. Below the logo, the text '3000 INSURANCE GROUP' is written in a smaller, white, sans-serif font. In the center, there are two logos: 'Beale' in a white oval with a diamond shape to its left, and 'A&S' in a large, white, serif font. Below these logos, the text 'We proudly serve and support the' is written in a white, italicized, serif font, followed by 'Oklahoma Bar Association' in a large, white, bold, sans-serif font. A horizontal white line separates this text from the list of insurance services below. The services are listed in a white, bold, sans-serif font: 'Health | Life | Disability | Business Overhead Expense | Home | Auto | Workers' Compensation | Business Owner's Policy'. At the bottom, the text '3000 Insurance Group' is written in a white, bold, sans-serif font, followed by the phone number '405.521.1600' and the website '3000ig.com' in a white, sans-serif font.

Disability Accommodation in Higher Education

By Michael J. Davis

STUDENTS WITH DISABILITIES WHO ATTEND INSTITUTIONS of higher education have been protected against discrimination on the basis of their disability since the passage of the Rehabilitation Act of 1973.¹ Since then, other laws such as the Americans with Disabilities Act of 1990,² and a set of amendments that strengthened its protections in 2008,³ have radically changed the landscape of inclusion and access at colleges and universities across the country. Because of the complexities and obligations of these laws, disability accommodation has become a full-fledged profession in higher education, with most institutions having designated coordinators for disability services or similar professional positions on their campus as a central resource for students who request accommodations or have difficulty with access barriers.⁴

Despite the ramping up of services and resources by institutions, disability-related discrimination complaints, including complaints about unsatisfactory or inadequate accommodation, remain the second largest category of complaints lodged with the U.S. Department of Education Office of Civil Rights (OCR) – totaling 5,936 disability-related complaints in FY 2016 alone.⁵ Additionally, both major disability discrimination laws create a private right of action.⁶

Since the potential liability can be significant and the ordeal of an OCR investigation or compliance review can be intense, college and university administrators are well-advised to audit their institution's training, policies and procedures on accessibility and accommodation. More importantly, these statutes are merely the legal floor for inclusion and access. Making our educational

institutions more welcoming is a noble public service with plenty of room to go above and beyond in the interest of equal access and basic fairness.

INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 states, "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Since federal financial aid, obtained by students through completion of the Free Application for Federal Student Aid (FAFSA) is routed to students through nearly every college and university in the country, this law binds almost all accredited colleges from coast

to coast.^{7,8} The later passage of the Americans with Disabilities Act of 1990 (ADA) added extra clarity and rigor to the legal floor for inclusion of people with disabilities, and both laws have since evolved in important ways. Title II of the ADA applies to all state and local government entities, including public institutions of higher education, and Title III of the ADA applies to places of public accommodation, which includes private institutions of higher education. There is a specific exemption from the ADA for postsecondary institutions that are controlled by religious organizations, but no such exemption for the applicability of Section 504.

In 1998, a new Section 508 was added to the Rehabilitation Act⁹ requiring recipients of federal funds to make their electronic information and technology accessible to people with disabilities, and the ADA was



amended in 2013 to protect persons with a broader array of disability impairments than the original interpretation of the statute.

These and similar laws are crucial because of the sizable post-secondary education gap between disabled and nondisabled persons. According to the Bureau of Labor Statistics, 16.4 percent of people with a disability have completed a bachelor's degree, compared with 34.6 percent of people without disabilities.¹⁰

Despite being wholly different statutes, Section 504 and the ADA have largely overlapping language and applicability to postsecondary institutions. A cursory reading of the statutes and their implementing regulations will result in finding identically phrased definitions and expectations in many sections, and this is largely because the earlier law was used

as a template in the drafting of the latter in order to avoid conflict. The ADA, importantly, tackles far more challenges than Section 504 by applying its protections beyond the federal government and its funding recipients, to nearly all areas of American public life including public and private places that are open to the general public. Because of their largely concurrent nature, and simultaneous applicability to many entities, courts usually interpret provisions in Section 504 consistently with provisions in the ADA.

WHAT IS A DISABILITY?

In order to be protected against discrimination an applicant or student must be a "qualified individual with a disability."¹¹ The term "qualified" means a person with a disability who has the capability, with or without the provision of

reasonable modifications, of fulfilling the essential requirements of the program. Institutions can still have academic entrance exams or admissions requirements, merely, those admission requirements must not have the effect of disqualifying persons because of their disability. A school should not ask applicants if they have a disability, as such an inquiry is irrelevant to any legally permissible admission criteria. On the other hand, it is perfectly permissible for an institution to elicit students to disclose, after their admission, if they have a disability so that proper accommodations and auxiliary aids can be put in place. No student should be required to disclose anything in regard to a disability.

The term "disability" is defined as "...[A]ny person who (i) has a physical or mental impairment

which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.”¹² Major life activities include a broad range of activities such as caring for oneself, walking, standing, breathing, studying and concentrating, among many other normal human activities. Major life activities also include producing normal cells and having a typically functioning circulatory system, endocrine system, etc. If the function of any of these life activities is “substantially limited” by a physical or mental impairment, then they are considered a person with a disability under the law. The Department of Justice says that the phrase “substantially limits” shall “be construed broadly, in favor of expansive coverage.” The implementing regulation itself states, “‘Substantially limits’ is not meant to be a demanding standard.”¹³

This definition of disability is so expansive as to surprise some who read the language. Rest assured, this was the explicit intention of Congress. After the Supreme Court ruling in *Sutton v. United Air Lines, Inc.*,¹⁴ which determined that impairments under the definition should only be considered with mitigation, and the ruling in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,¹⁵ which determined that the definition of disability needed a “demanding” standard, Congress reacted to loosen the definition so more people, and indeed more disabilities, would be covered. In the pre-2008 interpretation of the definition, it was not at all clear that students with epilepsy, HIV/AIDS, diabetes or even cancer met the requirements for coverage under the law. In the post-2008 interpretation, institutions are fully expected to err on the side of inclusion.

REASONABLE ACCOMMODATION

Institutions must make their services accessible to people with disabilities at no extra cost to those persons. This is best accomplished through inclusive design of buildings, curriculum and customer-service processes – but even the most progressive inclusive design strategies sometimes fall short of equitable inclusion. Reasonable accommodations, required under both Section 504 and the ADA, are implemented for the purpose of making services accessible. These accommodations must be reasonable and effective, and should be arrived at through an interactive process between the institution and the person with a disability, so that the implemented accommodation is custom tailored to the barriers created by the impairment (or by a failure to inclusively design the service in the first place).

Reasonable accommodations can be significant and may include academic adjustments such as course substitution, or lengthening the time period within which a degree must be completed. Where reasonable, the college or university is expected to provide auxiliary aids to students who request accommodation. These aids may include alternative format textbooks or sign language interpreters. Accommodations are also to be made available outside the academic context for any other services the institution provides, such as enrollment advice, mental health counseling and involvement in registered student organizations and activities. A reasonable accommodation request can be as simple as permission to use a laptop computer to take notes, or as complex as moving whole classes into the same building to reduce the distance a certain student must walk between classes. In each case,

the modifications to practice, policy or curriculum will fit the particular circumstances so as not to give a student any undue academic advantage, privilege or benefit – but merely to make the services provided equally accessible.

The institution’s duty is to provide reasonable and effective accommodation, but not necessarily the best possible accommodation. If more than one accommodation is similarly effective, the institution can choose from among them even if they opt for one the accommodated person prefers the least. Additionally, certain accommodations may be opted against if they create an “undue burden,” *i.e.*, “a significant difficulty or expense.” As a matter of course, OCR is always highly skeptical of any undue burden rationale unless the expense constitutes a sizable portion of the school’s overall budget. To be an undue burden, it is more helpful to think in terms of impracticability rather than mere difficulty.

Importantly, schools have the ability to designate certain academic requirements that are “essential to the instruction being pursued” and which cannot be modified, including academic requirements relating to licensing requirements that are embedded in the program.¹⁶ Schools are not ever expected to be required to lower their academic standards, nor is a reduction of academic rigor expected to form any part or parcel of an accommodation. It is important that the rationale behind which academic requirements are “essential” be rather ironclad, as both OCR and the courts can view such designations as merely pretextual, or post-hoc assertions.¹⁷

For example, a student with dyscalculia, a learning disability that inhibits cognitive function in relation to mathematics, might

The documentation a college or university requests from a person with a disability in relation to an accommodation request must be reasonable and limited to the need to understand the nature of the impairment that necessitates the accommodation request or auxiliary aid.

ask for a course substitution for a mandatory general-education algebra class for a less math-reliant class with similar curricular outcomes such as a logic class. Many factors come into play here. The institution would be on stronger ground in asserting algebra was “essential” to the curriculum if the student were an engineering major, as opposed to a creative writing major. It is also helpful to look at what the institution has held out, prior to the request, as essential. Does the school of business advertise an emphasis on financial and accounting skills, and/or market its graduates to the workforce based on this curricular emphasis? If so, then those classes are far more defensible as “essential” parts of the curriculum.

DOCUMENTATION CRITERIA

The documentation a college or university requests from a person with a disability in relation to an accommodation request must be reasonable and limited to the need to understand the nature of the impairment that necessitates the accommodation request or auxiliary aid. There is no law or regulation

that requires documentation to be requested or obtained in order for a person with a disability to show that they are eligible for the protections of Section 504 or the ADA. While institutions may request or even require reliable documentation, they should avoid hard and fast designations of what type of documentation meets the threshold for making an accommodation request.

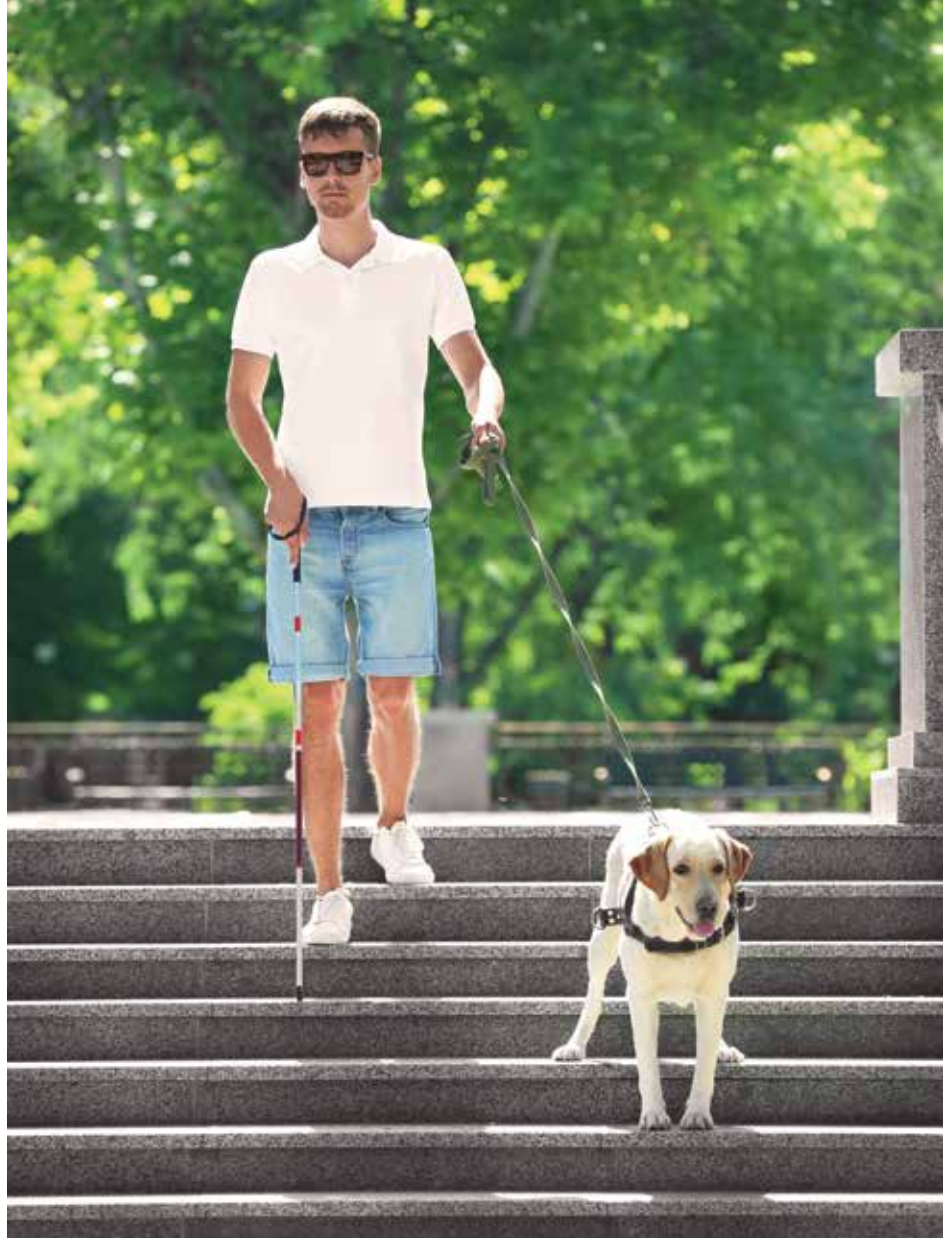
The Association on Higher Education and Disability developed a set of guidelines in 2012¹⁸ that are helpful for disability accommodation professionals in determining what types of documentation are appropriate under varying circumstances. Individuals who have a disability that is apparent or obvious should not need any paper documentation at all, as the “documentation” in their case is readily observable. For example, an amputee need not obtain a letter from a doctor proving she has had her limb removed, as understanding the nature of the impairment and the barriers created by the impairment require no such proof. An institutional representative receiving that person’s accommodation request can reasonably conclude that all physical manipulations that could have been accomplished with that limb are now mitigated, and that the requesting individual may indeed be in need of note-taking assistance, extended time for the completion of exams or other potential modifications or aids.



ANIMALS

It is important to distinguish between the two major types of protected animal classifications in accessibility law. “Service animal” is a term of art, and while the phrase is sometimes thrown around with abandon, it has a specific legal meaning in certain contexts. The U.S. Department of Justice, which is responsible for regulating Title II and Title III of the ADA (the sections that apply to government agencies and public accommodations), specifically states that a service animal is only a dog that is individually trained to do work or perform tasks for a person with a disability.¹⁹ This category of accessibility animal has the broadest protection, and must generally be permitted to accompany people with disabilities anywhere members of the public are allowed to go. Among many other possible functions, these animals include the traditional seeing-eye dog for the blind, dogs trained to alert individuals to an imminent seizure or dogs trained to intentionally lick, nuzzle or nudge individuals with post traumatic stress disorder to calm a panic attack. Because of their broad protection as service animals, persons with disabilities may bring these animals into hospital rooms, cafeterias, classrooms, dormitories or anywhere they generally need the accompaniment of the individually trained dog. They are expected to be leashed unless the tether would impair the dog from performing its function, and the only limitation on their presence is if the sterility of the environment necessitates the exclusion of the service animal (such as surgical rooms or certain scientific laboratories).

Institutional policy about service animals should instruct employees about the broad protections for service animals. Staff



are not allowed to ask about the person’s disability, about how recently the dog received training and are not permitted to require that students receive permission from the university for the presence of the animal. In fact, regulations only permit for two questions to be asked when the service the animal provides is not apparent: 1) is the dog a service animal required because of a disability, and 2) what work or task has the dog been trained to perform. Institutions may not ask for documentation or request that the disabled person make the animal demonstrate its training. The animals’ presence cannot be

refused for allergy reasons, and people with service animals cannot be isolated or excluded from activities or services.

Beyond Title II and III of the ADA, animals used in the context of disability assistance, accommodation or emotional support have far less specific definition. For example, the Air Carrier Act and the Fair Housing Act use the phrase “assistance animal” with minimal added guidance. Even a “service animal” in the Title I (employment) context of the ADA, which is regulated by the EEOC instead of the Department of Justice, is a more open-ended or fluid designation. This makes the

creation of college and university policies fairly maddening, as each year it seems a new legal case results in a determination that adds more nuance and complexity to this rapidly shifting area of disability law. Nonetheless, having a well-developed and updated policy will assist institutions of higher education greatly in this area.

There are three pathways for assistance animals on college campuses. These animals, to be specific, are animals that may or may not be a dog, and might not be individually trained to perform a task or function for a person with a disability, but whose presence may nonetheless have an accommodating effect for a person with a disability.

The first pathway is through Title I of the ADA, the employment-related section of the law, as many students on college campuses also have on-campus jobs, including students who receive work-study money through their federal financial aid. Because the EEOC has no specific definition of a service animal, the process for requesting the presence of the animal as an employee disability accommodation takes the same form as any other accommodation request. The employer is required to engage the employee in an interactive process

to determine the nature of the disability related impairment, to understand how the presence of the animal could mitigate any access barriers and to come to a final accommodation plan. This process may, if the nature of the disability is not apparent, include a proper request for documentation about the disability from the employer. If there are equally effective alternative accommodations, the employer is free to choose from among those options.

Common instances of reasonable accommodation that involve animals usually revolve around anxiety reduction and emotional support. Animals (usually with a soft coat of fur like a cat or dog) can operate as a cathartic and calming distraction for an employee who is prone to panic attacks, intense anxiety-related episodes or depressive episodes. Emotional support animals are more common in office-style workplaces as opposed to manual labor and retail. Employers can deny an accommodation request if approving it would create an undue hardship such as making the workplace unreasonably dangerous, disrupting business or if it fundamentally alters the nature of the business in a

negative way. Usually the presence of an animal is not particularly disruptive or distracting.

The second pathway is a student request for having an assistance animal as a traditional disability accommodation. The Rehabilitation Act of 1973 does not have the same narrow definition of “service animal” as Title II and III of the ADA, meaning that it is still possible for a student to request the presence of an animal as an auxiliary aid to mitigate barriers created by their disability. In these cases, documentation can be requested by the institution, and if the disability is confirmed, the institution may grant the presence of the animal as a reasonable accommodation. Importantly, in this context the institution may ask about the animal’s training, about how it interacts with the disabled person and may also explore other effective alternatives as a reasonable accommodation.

The third pathway has only recently become clear, as a result of litigation involving the University of Nebraska at Kearney.²⁰ In 2011, the Department of Justice sued that institution, alleging their denial of accommodating a student who requested an emotional support animal in her campus dormitory was a violation of the

There are three pathways for assistance animals on college campuses. These animals, to be specific, are animals that may or may not be a dog, and might not be individually trained to perform a task or function for a person with a disability, but whose presence may nonetheless have an accommodating effect for a person with a disability.

Fair Housing Act. Initially it was not clear that the FHA applied to dormitories, as the language of the act defined covered dwellings as, “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”²¹ However, the FHA argues that a “family” includes a single individual. Now that the FHA has been determined to apply to college and university housing, this serves as yet another route for students with disabilities to exercise.

DIGITAL ACCESSIBILITY

The profusion of technology in course content delivery has been fundamentally changing the accessibility priorities for higher education compliance professionals. As the number of online and hybrid classes increase, the primary

one online course as part of their higher education experience, which accounts for just over a quarter of all students enrolled in colleges and universities across the country – a number that increases by about 4 percent each year.²² Additionally, the experience outside the classroom has become more web-based as well, with students using digital search engines to find scholarly research in peer-reviewed journals, online remote tutoring services becoming commonplace and primary interaction with college and university services such as enrollment, bill paying and graduation registration taking place through computer interfaces more often than paper transactions.

In this emerging digital education environment, text magnification and video captioning functions can be just as important as wheelchair ramps and handrails on the

the least equipped to receive their education or services in the web-based environment. Unfortunately, institutions of higher education have sometimes been slow to recognize this development. Such well-resourced institutions as the Massachusetts Institute of Technology, the University of California at Berkeley, Florida State University and Harvard University have found themselves on the receiving end of lawsuits from students who, because of a disability-related impairment, had difficulty navigating their online portals or academic curriculum.

College and university attorneys and administrators should require their information technology departments to become familiar with the implementation of the Web Content Accessibility Guidelines (WCAG 2.0) developed by a nonprofit international organization called the World Wide Web Consortium. While these guidelines did not originate from any federal regulatory agency, they have been adopted by OCR as the minimum standard for online information access for persons with disabilities. OCR is the primary regulatory body for disability access laws as applied to educational institutions. When OCR receives a complaint from a student alleging that an educational institution’s technology is inaccessible or otherwise does not meet the accessibility criteria, they are the agency that will investigate. Complainants also preserve a private right of action under the ADA and Rehabilitation Act that do not require the exhaustion of administrative remedies.

The WCAG 2.0 guidelines are not by any means a low bar. The criteria, among other things, require nontext content to be reduced to text, video captioning, contrast between text and background color, keyboard (as opposed to only mouse) control of the interface and a consistent navigation



platform for the curriculum is shifting as well – from lectures to narrated videos, from class dialogue to web-based discussion boards. Approximately 5.8 million students are now taking at least

analog campus. Where students with mobility impairments may have found the traditional campus difficult to navigate, now students with visual and hearing impairments often find themselves

outline across webpages. Part of the goal of these guidelines is to permit low- or no-vision individuals to navigate webpages or instructional content through the use of a verbal screen reader and without the need for visual-only interactive controls such as a mouse or even the screen itself. As an experiment to see whether your web interface is functional for the blind, try to control navigation by using only the tab and return function on your keyboard. You will immediately see how technology is built primarily for sighted individuals.

OCR requires that any workarounds built into the web interface be “equally effective” as traditional use or communication. In 2013, OCR entered into a resolution agreement with the University of Montana after a complaint was filed about inaccessibility of digital and online information. One section of that resolution agreement explains just how high of a bar is expected: “Equally effective means that the alternative format or medium communicates the same information in as timely a fashion as does the original format or medium.” This means that, generally, navigation of web platforms by the disabled should be just as easy or nearly as easy as by individuals without impairments. Because of the difficulty of achieving this, colleges and universities are best advised to start auditing their web-based platforms for WCAG 2.0 compliance immediately if they have not already started.

CONCLUSION

Students with disabilities are enrolling in postsecondary education institutions at a higher rate than ever before and, in most cases, are protected against discrimination and entitled to accommodation and the provision of auxiliary aids. These accommodations might include permission to have an assistance animal under certain circumstances, as well as a vast range of other customizable

arrangements that are tailor fitted to meet the barriers faced by the student as they navigate the school’s services and curriculum. As institutions shift more of the curriculum into software-based delivery mechanisms they should resolve to update their web platforms to be accessible. In the persistently evolving world of disability law, it behooves administrators at all postsecondary institutions to keep up-to-speed on these areas of civil rights equity and legal liability. Risk of a potential OCR investigation or civil litigation are motivating factors, but nothing is as motivating as the potential that a student could withdraw because they were unable to access an education to which they had a right of access.

ABOUT THE AUTHOR

Michael J. Davis is the director of compliance and safety at Southeastern Oklahoma State University in Durant. Since 2016, he has served as Title IX coordinator, equal employment opportunity officer and as a member of the institution’s Executive Team.

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Student Protests in the Era of 'Parkland' and Black Lives Matter

By Brandon Carey



ON WEDNESDAY, MARCH 14, 2018, THOUSANDS of high school students across the nation walked out of their classes in remembrance of the 17 individuals murdered at Marjory Stoneman Douglass High School in Parkland, Florida, and to protest gun violence in the United States. The protests came in many forms. Some groups, with support from district staff, congregated on athletic fields and solemnly released balloons, while others used their voices to make the point, shouting “We want change!” or “Enough is enough!” For the most part, the protests were peaceful, although some included shouting matches between those with opposing viewpoints.¹

Student protests have long been a part of the educational experience,² and the last few years have been no exception. For example, in November 2017, students at Brookline High School in Massachusetts walked out of class to protest what they believed to be a racially hostile environment;³ in February 2018, high school students in Houston walked out in protest of the U.S. Immigration and Customs Enforcement’s decision to detain a fellow student.⁴ Plus it is hard to forget the student athletes across the country that modeled Colin Kaepernick’s silent protest of kneeling during the national anthem.

Students in Oklahoma have also engaged in protests. Students across the Oklahoma City metro area joined the March 14 protests against gun violence,⁵ and John Marshall High School students did

the same just one week before.⁶ Oklahoma students have even protested the Legislature’s inadequate funding of education.⁷ In short, student protests are not a new phenomenon and, arguably, have only grown in popularity.

THE STANDARD

In order to effectively advise school district clients how to prepare for and respond to student protests, it is important to educate them on students’ basic rights to free speech and expression. The foundational case regarding student speech and expression is *Tinker v. Des Moines Independent Community School District* (No. 21).⁸ In December 1965, as the U.S. was engaged in the war in Vietnam, a group of students in Iowa decided to wear black armbands to school as an expression of their

disagreement with the war. Mary Beth Tinker and other students who engaged in the protest were sent home and informed that they were suspended until they agreed to remove the armbands. Rather than simply comply, the students’ parents sued the district, and in 1968 the U.S. Supreme Court granted *certiorari*.

The opinion, written by Justice Fortas, became the standard used to determine the constitutionality of regulating student speech. In the majority opinion, Justice Fortas stated that “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”⁹ He went on to dismiss the argument that districts should be able to prohibit speech or expression based on nothing more than

fear or concern that it could cause disruption. Rather, he explained that, to prohibit student speech or expression, district officials must be able to reasonably forecast that

officials must examine the facts of each specific case and articulate how and why the activity would materially or substantially disrupt their ability to properly and safely

that displayed the confederate flag, as district officials were able to point to past race-based incidents as evidence that the speech could cause major problems for the school environment.¹⁷ Also, as discussed above, speech or expression that is lewd or obscene or that promotes illegal drug use can always be prohibited, and school officials can regulate speech that is school-sponsored.¹⁸

However, it is important to remember that speech should not be prohibited simply because it is uncomfortable or unconventional.¹⁹ As Justice Fortas so eloquently stated in *Tinker*, “Our history says that it is this sort of hazardous freedom – this kind of openness – that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.”²⁰ For example, the 3rd Circuit Court of Appeals found that a school district’s decision to prohibit middle school girls from wearing bracelets stating “I ‘heart’ boobies,” which were worn to promote breast cancer awareness, was not based on a reasonable forecast of a material and substantial disruption to the school environment.²¹

However, it is important to remember that speech should not be prohibited simply because it is uncomfortable or unconventional.

the speech or expression would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.”¹⁰ The district must specifically articulate how the activity could materially or substantially disrupt their ability to operate the school.

Since the *Tinker* decision, the court has established a few other limitations on student speech that exist alongside the *Tinker* standard. Most notably, districts may prohibit speech or expression that is lewd, vulgar or obscene,¹¹ that promotes illegal drug use¹² or that is school sponsored, as long as the prohibition was “reasonably related to pedagogical concerns” (e.g., school-sponsored student newspapers).¹³

APPLYING *TINKER*

It is important to remember that student speech or expression is permitted *unless* school officials can reasonably forecast that it would materially or substantially interfere with the school day.¹⁴ The implication being that the prohibition of student speech is the exception, not the rule. To prohibit or later discipline students for speech or expression, district

operate the school.¹⁵ For example, student codes of conduct are adopted specifically to ensure the orderly operation of the school and the safety and well-being of students and staff, so speech that violates the code of conduct may be prohibited (e.g., protests that take place during class time or disrupts classes with excessive noise, behavior that includes failure to follow reasonable directives from staff, etc.).

Speech may also be prohibited when it creates risks to student safety or could damage school property (e.g., the passing out of materials that can be used to damage school property or endanger students, protests that actually damage school property, etc.).¹⁶ Also, school officials are well within their rights to prohibit speech that violates the rights of others, such as acts of bullying, harassment and/or discrimination. In fact, one court even upheld one district’s decision to prohibit the wearing of clothing





PREPARING FOR STUDENT PROTESTS

It is important for school districts to proactively prepare for student protests. First, district boards of education should adopt a policy related to student protests or demonstrations. The policy should clearly and simply explain student rights of speech and expression, indicate that anything that materially and substantially disrupts the school day will not be permitted, and provide notice that students engaging in unprotected speech may be subjected to discipline in accordance with the student code of conduct. A simple, clear policy will provide a mode of operation for the district and notice to students that some forms of expression are not acceptable.

Second, district officials should be encouraged to review and understand district policies on student protests, and work with staff to ensure everyone understands their role if and when a protest occurs. Staff need to understand how to respond if the protest is acceptable, a violation of school rules but peaceful, a danger to students and

staff, etc. A prepared and trained workforce will reduce the chances of disorder and safety issues.

Third, it is important to ensure that students understand acceptable and unacceptable speech, and the consequences for engaging in prohibited speech. Even further, if district officials obtain prior notice that a student protest will occur, it may be prudent to meet with students and offer an alternative method of expressing their opinions. When emotions are running high, a facilitated, safe manner of expression is always preferable and has the benefit of teaching students to engage in a constructive, civil manner.

KNEELING DURING THE NATIONAL ANTHEM

Kneeling during the national anthem as a form of protest grew in popularity after NFL quarterback Colin Kaepernick began doing so during the 2016 season. His high-profile act caught the attention of professional and amateur athletes across the country, many of whom began doing the same. Since kneeling to protest racial injustice is a form of expression, the *Tinker* standard applies, and it would be hard to argue that the simple act of taking a knee causes a material and substantial disruption to the school day. It should also be noted that another

When emotions are running high, a facilitated, safe manner of expression is always preferable and has the benefit of teaching students to engage in a constructive, civil manner.

Supreme Court case is applicable to this situation and arguably adds another layer of protection. Specifically, in *West Virginia State Bd. of Educ. v. Barnette*,²² the Supreme Court struck down a school board's policy of requiring students to stand for the pledge of allegiance, stating that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."²³ The court's words surely apply to the anthem just as much as the pledge of allegiance, as both are similar patriotic expressions.

A student demonstration/protest policy, as described above, would cover any such national anthem protests. However, since the extracurricular setting is unique, it would be wise to ensure client districts have a plan of action. For example, if a district's athletic teams are on the field or court during the anthem and one or more players engage in a peaceful protest that does not violate the student code of conduct or materially and substantially disrupt the school activity, the speech should not be prohibited. If school officials receive prior notice of a planned anthem protest, students should be reminded that actions in violation of the code of conduct will subject them to the consequences prescribed therein. If the district athletic teams generally remain in the locker room during the anthem, but one or more athletes express a desire to exit the locker room and peacefully protest, it will be up to the district whether to facilitate such an action.

In conclusion, the courts have consistently expressed two principles: 1) student speech and expression enjoys the protection

of the First Amendment, even in the educational environment; and 2) there are clear (and sometimes not so clear) instances where school districts will be justified in prohibiting or limiting student speech and expression. It is important that school districts seek to understand this balance, as public schools are one arena in which young people learn how to be full participants in our democracy. As attorneys, we must guide our school district clients through these sensitive decisions, and enable them to cultivate and refine students' abilities to contribute to our national discourse in a civil and effective manner.

ABOUT THE AUTHOR

Brandon Carey is a staff attorney for the Oklahoma State School Boards Association. He is a 2005 graduate of the OCU School of Law, where he served as editor-in-chief of the *Law Review*. Mr. Carey also obtained an LL.M. from American University Washington College of Law.

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ABBREVIATED PUBLIC NOTICE FOR REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current term of office for United States Magistrate Judge Frank H. McCarthy at Tulsa, Oklahoma, is due to expire on April 9, 2019. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term.

A full public notice for the magistrate judge position is posted in the office of the clerk of the district court at the Page Belcher Federal Courthouse, 333 West 4th Street, Room 411, Tulsa, Oklahoma 74103. The notice is also available on the court's website at www.uscourts.oknd.gov.

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to:

Merit Selection Panel
c/o US District Court Clerk
Page Belcher Federal Courthouse
333 West 4th Street, Room 411
Tulsa, Oklahoma 74103

Comments must be received by September 30, 2018.

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The Legal Issues Associated With a Teacher Work Stoppage

By Julie L. Miller, Rooney Virgin and Kim Bishop

IN MARCH 2018, OKLAHOMA WAS MADE AWARE of the possibility of a teacher work stoppage. Oklahoma's public school teachers, fed up with politics and business as usual, commenced discussions via social media of the possibility of going on strike. One social media group garnered more than 75,000 members in a short period of time.

Very quickly those of us involved in providing legal information to Oklahoma's public school districts realized there would be several issues to address in each school district as the proposed teacher work stoppage date approached. At issue initially was whether or not a teacher walkout violated state law.

Oklahoma law contains one statute that addresses the issue of a strike. Specifically:

The procedure provided for herein for resolving impasses shall be the exclusive recourse of the organization. It shall be illegal for the organization to strike or threaten to strike as a means of resolving differences with the board of education. Any member of an organization engaging in a strike shall be denied the full amount of his wages during the period of such violation. If the organization or its members engage in a strike, then the organization shall cease to be recognized as representative of the unit and the school district shall be relieved of the duty to

negotiate with such organization or its representatives.¹

The referenced statute does not mandate that teachers who strike are automatically fired. The statute above addresses a strike against a school board related to negotiations.

The next question becomes what do we do if our teachers walk out? If a strike or walkout is not supported by a local board of education, the administration or board of education may decide to take adverse actions against employees who refuse or fail to report to work. This is an issue of local control. In order to terminate the employment of a teacher, Oklahoma's Teacher Due Process Act of 1990² must be followed. Due process procedures vary for teachers depending upon their status. By law, a teacher is either probationary or career.

"Probationary teacher" means a teacher who:

a. is employed by a school district prior to the 2017-2018 school year and has completed fewer than three (3) consecutive

complete school years as a teacher in one school district under a written teaching contract, or

b. is employed for the first time by a school district under a written teaching contract during the 2017-2018 school year and thereafter and has not met the requirements for career teacher as provided in paragraph 4 of this section.³

"Career teacher" means a teacher who:

a. is employed by a school district prior to the 2017-2018 school year and has completed three (3) or more consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract, or

b. is employed for the first time by a school district under a written continuing or temporary teaching contract during the 2017-2018 school year and thereafter:

(1) has completed three (3) consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract and has achieved a district evaluation rating of “superior” as measured pursuant to the TLE as set forth in Section 6-101.16 of this title for at least two (2) of the three (3) school years,

(2) has completed four (4) consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract, has averaged a district evaluation rating of at least “effective” as measured pursuant to the TLE for the four-year period, and has received district evaluation ratings of at least “effective” for the last two (2) years of the four-year period, or

(3) has completed four (4) or more consecutive complete school years in one school district under a written continuing or temporary teaching contract and has not met the requirements of subparagraph a or b of this paragraph, only if the principal of the school at which the teacher is employed submits a



A bigger issue for Oklahoma's public school districts was who would replace the fired teachers?

petition to the superintendent of the school district requesting that the teacher be granted career status, the superintendent agrees with the petition, and the school district board of education approves the petition. The principal shall specify in the petition the underlying facts supporting the granting of career status to the teacher.⁴

TERMINATION OR NONRENEWAL OF A TEACHER

In order for a school superintendent to present a legal recommendation for termination or nonrenewal of a teacher, the superintendent must first present a recommendation to the board of education. In order to dismiss a probationary teacher, cause must exist. In order to dismiss a career teacher, statutory grounds

must be utilized.⁵ There is never an "automatic" termination of employment in Oklahoma.

School superintendents could have presented recommendations to school board members to terminate employment of probationary teachers for failing to report to work as the cause for the recommended action. However, this process would require statutory notice be provided to the teacher and a due process hearing would need to be set as required by statute. The hearing could not be held sooner than 20 days, nor later than 60 days from the date the teacher was notified of the hearing.

For career teachers, a recommendation to terminate employment could not be brought until such time as the teacher had been placed on a plan of improvement and given time to improve. Even though Oklahoma does include "abandonment of contract" as a statutory

ground for dismissal of career teachers, the term is defined as:

As used in this section, "abandonment of contract" means the failure of a teacher to report at the beginning of the contract term or otherwise perform the duties of a contract of

employment when the teacher has accepted other employment or is performing work for another employer that prevents the teacher from fulfilling the obligations of the contract of employment.

Due to the fact that career teachers had engaged in a walkout, the above referenced statutory language would not be applicable.

A bigger issue for Oklahoma's public school districts was who would replace the fired teachers? Oklahoma has over 1,900 emergency certified teachers currently serving in public schools across the state. If large numbers of teachers were fired, where would replacements come from? This left many schools with no choice but to close school during the teacher walkout as school districts could not provide a safe environment for students without teachers to supervise them.

OUTCOME OF THE TEACHER WALKOUT

The teacher walkout ended after nine days of lost instruction for many schools. The local school boards and superintendents worked to modify school calendars to meet statutory requirements for student attendance and to adhere to time requirements set forth in teacher contracts.

On March 28, 2018, the Oklahoma Legislature voted to pass House Bill 1010xx during



the second special session of the 56th Legislature of the state of Oklahoma. HB 1010xx included tax increases for gross production, motor vehicle fuel, tobacco and hotel/motel taxes. This legislation was historic in that it was the first piece of legislation passed by the Legislature by a supermajority as is required by the Oklahoma Constitution for revenue raising measures. The revenue generated by HB 1010xx was intended to pay for a teacher pay raise that was contained in HB 1023xx, also passed by the Legislature on March 28, 2018. Since the two measures were tied together, the Legislature included language in HB 1023xx that made operation of the teacher pay raise contingent upon the enactment of HB 1010xx.

After the second special legislative session was adjourned on April 19, 2018, a group called Oklahoma Taxpayers Unite began the process of filing for a veto referendum petition⁶ against HB 1010xx. The veto referendum is essentially a voter veto – it allows voters to decide whether to veto legislation that has been signed by the governor if enough signatures are gathered on a referendum petition within 90 days after adjournment of the legislative session. The veto referendum process is a constitutional right in Oklahoma. However, the process includes specific constitutional and statutory

requirements which petitioners must comply with. Part of the process includes a 10-day period during which any taxpayer can file a protest as to the sufficiency of the referendum petition.

Two protests were filed and on June 11, 2018, the Oklahoma Supreme Court heard oral arguments. The protests outlined several deficiencies in the petition filing. Generally, the description of the bill on the signature sheets omits mention of two of the tax increases authorized in HB 1010xx, the description was misleading and the petition did not include an exact copy of the bill. The protests also raised questions about the effect of a referendum petition against HB 1010xx on the effectiveness of HB 1023xx.

On June 22, 2018, the Oklahoma Supreme Court ruled in *Oklahoma's Children, Our Future, Inc. v. Coburn*⁷ that the petition filed by Oklahoma Taxpayers Unite was invalid and ordered it stricken from the ballot. The court concluded that the petition was misleading and failure to include an exact copy of the bill violated the statutory mandate. However, the 90-day window for filing referendum petitions against HB 1010xx and obtaining the signatures had not yet expired. The group could file a new petition and restart the process of referendum, however, the group would have to obtain new signatures as any obtained prior to June

22 could not be applied to the new referendum petition.

The court also ruled that HB 1023xx was made contingent upon enactments of HB 1010xx and that a bill is enacted when it is passed by the Legislature and all the formalities required to make it law have been performed. Because HB 1010xx was enacted, the contingency requirements in HB 1023xx have been met, and it will become effective Aug. 1, 2018.

ABOUT THE AUTHORS

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ENDNOTES

1. 70 O.S. Section 509.8.
2. 70 O.S. Section 6-101.20, *et seq.*
3. 70 O.S. Section 6-101.3.
4. 70 O.S. Section 6-101.3.
5. 70 O.S. Section 6-101.22.
6. Referendum Petition No. 25, State Question 799.
7. 2018 OK 55.

Suspension and the Special Education Student

By David Blades

TWO IMPORTANT POLICY ISSUES COME INTO PLAY when students with special needs engage in behavior that gives rise to suspension of the student. First, the school district is obligated to maintain order in the classroom to create a proper learning environment. However, when dealing with special needs students, the district must determine if the conduct giving rise to discipline is a manifestation of the student's disability. If the offending behavior is a manifestation of the student's disability, the district is limited in how long it may suspend the student and must make changes to the student's education plan to improve his or her education experience. This article will examine the procedures and legal standards used to define the rights of special needs students juxtaposed with the districts authority and obligation to maintain discipline in the classroom.

There are misconceptions regarding the provision of a free and appropriate public education (FAPE) as it relates to discipline. For example, many parents believe because their child is disabled they cannot be suspended. Conversely, some people hold the opinion that disabled students can be suspended in the same manner and to the same degree as a student without special needs. Both positions are incorrect. Federal law balances the rights between districts and special needs students. Generally, districts have the right to establish rules where violation can lead to suspension. Conversely, the law limits the district's ability to discipline a special needs student and even requires schools to develop a plan to correct the offended conduct in the future.

The framework outlining the rights of a special needs student

and school district's responsibilities are found in the Individual with Disabilities Education Act (IDEA).¹ Principally, the IDEA requires public schools to provide all eligible students with a FAPE. A FAPE is specially designed instruction that meets the unique needs of the special needs student. Also, as part of the provision of a FAPE, the district must provide support services to assist the student to benefit from instruction.² The education plan is a document designed to allow each student to benefit from individualized instruction. This document is referred to as the Individual Education Program (IEP).³ Educators and parents formulate the IEP in a collaborative effort contemplating the unique special needs of the student.

A student receiving special education services can be suspended but with significant limitations compared to the suspensions visited

upon students without special needs.⁴ School officials may suspend a special needs student to the same extent they could suspend a student without special needs but only up to 10 days.⁵ This statute also limits the placement of special needs students in an alternative setting, such as in school suspension. Any effort to remove a student from the classroom for more than 10 school days constitutes a change of placement. When a change of placement occurs procedural safeguards for the special needs student take effect.

CHANGE OF PLACEMENT

A change of placement can occur even if 10 days of suspension are not consecutive. If a student is subjected to a series of removals that constitute a pattern, those removals may constitute a change in placement if they are more than 10 days in total.⁶ To



constitute a pattern, the removals must be based on incidents that are substantially similar to behaviors that resulted in previous removals. Additionally, the length of each removal and the proximity of each removal to the other are factors in determining whether a change of placement has occurred. What constitutes a pattern of removal is highly subjective and can only be ascertained on a case-by-case basis.

If the decision is made to remove a special needs student from the classroom for more than 10 school days, a manifestation determination must take place. The procedure governing manifestation determinations is found at 20 U.S.C. 1415(k)(1)(E) and 34 CFR 300.530(e). It requires that within 10 school days of the decision to change the placement of a special needs student, a review of all relevant information regarding the student's conduct and disability is conducted.

The review is to be conducted by the student's IEP team.⁷ The review is to ascertain whether the conduct leading to the change of placement was either caused by or had a direct and substantial relationship to the child's disability or if the conduct was the result of a failure to implement the student's IEP. The review should examine all relevant information. Relevant information can include, but is not limited to, the child's IEP, teacher observations, testing information, information provided by the parents, supplementary aids and if behavior strategies for the student were appropriate given the goals set out in the student's IEP.⁸ Team members may consider the unique circumstances on a case-by-case basis when determining whether to suspend a special needs student for a violation of the student code of conduct.⁹

The review must be specific to the student's behavior as it relates to his or her disability. For example, a team conducting a review must examine the student's actual behavior when making a manifestation determination. The team cannot make general findings and apply them to a student's specific behavior. For example, a team cannot find that since there is usually no relationship between particular conduct and a disability that there would be no such relationship in this specific case. Therefore, it would be irrelevant what behaviors some students with autism engage in as a general rule. A review should only be undertaken of the behavior of the autistic student facing suspension.¹⁰

If the team determines that the student's behavior was not a manifestation of his or her disability, then the district may suspend the special needs student to the same extent as it would for the same student code of conduct violations of all students. However, the school



district must continue to provide school services to a suspended special needs student so that student can continue to receive a FAPE. Indeed, should the district fail to provide a FAPE to the suspended student, a hearing officer has the authority to modify or rescind the change in placement.¹¹

NEW BEHAVIOR INTERVENTION PLAN

A decision that the student's behavior is a manifestation of his or her disability requires the district to implement a new behavior intervention plan or review a behavior plan that was already in place.¹² There is no statutory framework that dictates the form of a behavior plan, however, the plan must properly identify the behavior that led to the code of conduct violation and then be designed to eliminate that behavior. It should go without saying that classroom teachers, counselors, principals, etc. can address behavior that is intermittent and not very severe. For instance, a student with ADHD who habitually fails to turn in homework may have a behavior plan requiring the use of an assignment notebook to help organize his or her thoughts. A teacher could monitor the student's use of the notebook to help the student complete his or her work in a timely manner.

More severe behavior issues, particularly if they are frequent, require direct observation of the student's behavior in the environment in which it occurs. A person with expertise in behavior usually conducts these observations. The purpose of these observations is to collect measurable and useable data. There is a plethora of data that can be collected concerning a child's behavior. Some examples of data that can be collected include:

- charting the frequency of the offending behavior;
- where the behavior occurred;
- recent changes in the student's life in or out of school; and
- levels of academic instruction and expectations.

The collected data is used to write a plan with modifications to the level of instruction and behavior management to correct the student's behavior. If the behavior plan fails to achieve its objective, the evaluation and revision process starts all over again.

There are three exceptions, called special circumstances, to the 10-day rule that permits the school to immediately place a student in an interim alternative education setting for up to 45 school days.¹³ These exceptions apply if a special needs student brings a dangerous weapon, inflicts serious bodily injury upon another or knowingly possesses, uses, sells or attempts to sell illegal drugs while at school or a school function.¹⁴ Additionally, an administrative hearing officer can order an interim change in placement for up to 45 school days if it is proven that by continuing the student in his or her current placement there is a substantial likelihood of injury to the student or others.¹⁵ In either event, the school district must continue to provide the student with a FAPE while he or she

The collected data is used to write a plan with modifications to the level of instruction and behavior management to correct the student's behavior.

is placed in an interim placement.¹⁶ Services provided by the district should include services to address the behavior that led to the suspension in the first place.

If a parent disagrees with a decision to remove their student from school, they may request an expedited administrative hearing before an independent hearing officer.¹⁷ The hearing officer has the authority to determine whether the removal of the student from school constituted a change in placement and if there was a change in placement, was the behavior that led to that change a manifestation of the student's disability. In this type of hearing, the burden of proof falls on the one challenging the manifestation determination.¹⁸ The hearing officer will take testimony from witnesses as necessary and review all relevant data when making his or her determination.¹⁹ The hearing officer's decision can be appealed. In Oklahoma, that appeal is to a second level of administrative review. Once the administrative remedies have been exhausted, appeal can be taken to either state or federal district court.

At the conclusion of the hearing, the hearing officer has several options. If it is determined the student's behavior was a manifestation of his or her disability, the hearing officer could order the student be returned to the placement from which the student was

While school districts have the authority to develop and enforce a code of conduct, they are limited in how they may suspend special needs students.

removed. Also, even if it is a manifestation of the disability, the hearing officer may order a change in placement if it is determined that maintaining the current placement is substantially likely to result in injury to the student or others.²⁰

CONCLUSION

School districts have an obligation to maintain order in the classroom. At the same time, protections are in place for special needs students. While school districts have the authority to develop and enforce a code of conduct, they are limited in how they may suspend special needs students. These procedural and substantive limitations are not designed to excuse behavior of students. They are, however, intended to design a program for special needs students to eliminate the inappropriate behavior and learn to behave appropriately in the school setting.

ABOUT THE AUTHOR

David Blades has been practicing law in Oklahoma for 25 years. He is currently serving as an administrative hearing officer for the Oklahoma State Department of Education.

ENDNOTES

1. 20 U.S.C. §1400 (IDEA). While this article focuses on students under the rubric of the IDEA (commonly referred to as special education), there are other statutes that provide for similar rights for the disabled student. Namely, Section 504 of Rehabilitation Act of 1973 as amended requires the same protections against undue suspensions, as does the IDEA.
2. 20 U.S.C. §§1401 (9),(26), and (29).
3. 20 U.S.C. §1401 (9)(D).
4. 70 O.S. §24-101.3.
5. 20 U.S.C. §1415(k)(1)(B).
6. 34 C.F.R. 300.536(a).
7. The IEP team can include teachers, administrative representative, counselors, school psychologists and parents. Specific requirements of the types of individuals who should be on the team can be found at 34 C.F.R. 300.321.
8. 34 C.F.R. 300.530(e).
9. 34 C.F.R. 300.530(a).
10. See *Bristol Twp. Sch. Dist. v. Z.B.*, 67 IDELR 9 (E.D. Pa. 2016).
11. See *District of Columbia v. Doe*, 611 F3d 888 (D.C. Cir. 2010).
12. 14 U.S.C. §1415(k)(1)(F)(i) and 34 CFR 300.530(f).
13. 20 U.S.C. §1415(k)(1)(G).
14. See 34 C.F.R. 300.530(g)(h)(i). Controlled substance is defined in 121 U.S.C. 812(c) but does not include a controlled substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that act or under provision of federal law. Serious bodily injury is defined 18 U.S.C. §1365 (h)(3). Dangerous weapon is defined in 18 U.S.C. §930(g)(2).
15. 20 U.S.C. §1415(k)(3)(A).
16. 20 U.S.C. §1415(k)(1)(D).
17. 34 C.F.R. 300.532(a). The hearing regarding a manifestation determination is not the forum to challenge whether the student's conduct violated a school's conduct policy. That issue should be addressed by whatever suspension policy the school district has adopted.
18. See *Schaffer v. Weast*, 546 U.S. 49 (2005).
19. The hearing is to be conducted in an expedited manner. The hearing must occur within 20 school days of the request and the hearing officer must render a decision within 10 school days of the completion of the hearing. 34 C.F.R. §300.532.
20. 34 C.F.R. §300.532(b).

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Legal Representation of a Public School District in Oklahoma

By Julie L. Miller, Jessica Sherrill, Rooney Virgin, Kim Bishop and Brandon Carey

ON OCCASION, THE ADMINISTRATION OF A SCHOOL DISTRICT or members of a school board will require legal assistance. There are typically three different types of attorneys working with school districts: 1) state association legal counsel, 2) retained legal counsel and 3) in-house legal counsel. When an issue arises, the various members of the board of education, school administrators or school employees may through a series of conversations and communications involve the state association's legal staff, the school district's in-house legal counsel and an outside law firm. Adding all of these lawyers to the discussion of an issue creates an opportunity for conflicting legal information and inconsistent legal advice for school districts, but may also provide the school district with more than one path to address the issue. When this happens, legal considerations come into play about the participation of the attorneys involved.

When all three of these types of school attorneys are involved in conversations and solutions to a potential issue, different ideas may emerge regarding the conversation and potential solutions. There are times when these differences are minor and times when the differences may be significant. The challenge for the attorneys involved is making sure that the organization, the membership and those directly performing legal services for school districts understand the role of each party involved in order to do what is in the best and ethical interest of the client.

The Oklahoma State School Boards Association's legal staff does not have attorney-client privilege for our general phone callers. However, when individual board members, administrators or

employees of school district members contact one of the attorneys for legal information, the specifics of those conversations are maintained in a confidential manner. This creates a relationship of trust with a school board member, administrator or employee that benefits the organization and the school district. If the lawyer were to make information "public" or did not maintain confidentiality between callers, trust in that association would be lost, and the association would no longer be a viable resource for information.

State association counsel should let member districts know the privilege does not apply at the outset and with the district when membership is renewed.

THE ROLE OF IN-HOUSE COUNSEL

Many school districts employ in-house counsel who is generally an employee of the district and provides legal advice and services to the school board and administration. This attorney's role is similar to that of a corporation's counsel, which brings up unique obligations and scenarios, especially around the identity of the client, the nature of attorney-client communications and relationships with fellow employees.

Who Is In-House Counsel's Client?

The in-house counsel has one client – the school district. This nebulous legal entity takes concrete action through its constituents. In fact, Oklahoma Rules of



Professional Conduct Rule 1.13, which specifically deals with clients as organizations, states that the attorney represents the organization or district “acting through its duly authorized constituents.”¹ The “constituents” are the board of education, superintendent and, at times, other administrators and employees who are acting in their official capacity as district employees and within the power given them by district policy.

It is important to understand the exact nature of these constituents. Generally, individual board members do not act on behalf of the district; rather, the board as an entity, acting in its official capacity during a legally called public meeting, is the constituent of the district. The superintendent, to whom the board delegates the authority to manage the administration, is also a constituent of the district when acting in her or his official capacity, as are employees in leadership positions within the administration.

It is also important that employees understand the first client is the school district and training should be provided to new employees to understand that individual employees (*e.g.* superintendent, deputy superintendent, CFO, etc.) must be acting on behalf of the district, and not for personally competing interests, to qualify as a constituent

of the district. For example, if the board has indicated a desire to discipline or even terminate the superintendent, the board is the constituent acting on behalf of the district, and the superintendent has a competing, personal interest – his or her own employment. In this instance, the in-house counsel must represent the district by advising the constituent board, as the superintendent is acting on behalf of her or his personal employment interests, which are in conflict with the constituent board.

As explained in Rule 1.13, this idea of the district as the in-house counsel's client bestows a certain responsibility to protect the district in a manner that may cause an awkward dynamic with other employees. For example, if the in-house counsel becomes aware of acts by the superintendent that could cause substantial injury to the district (e.g. illegal treatment of employees, fraudulent practices, etc.), the duty to the client may require that she or he notify the board or even law enforcement. This duty places the in-house counsel in a unique position in relation to other employees, even superiors.

When Are Communications Protected?

The in-house counsel, just as all other attorneys, must not disclose information relating to the representation of a client except in the instances listed in

Rule 1.6.² With regard to in-house counsel, the privilege may extend to communications with the board and certain individual employees if acting in their official capacity and on behalf of the district. The comments and Rule 1.13 from the ABA Model Rule state in comment 2 that when a constituent of an organization, acting in their official capacity, communicates with the organization's attorney, the communication is protected by Model Rule 1.6.³ This privilege clearly extends to legal communications with the district's board in executive session, and legal communications with the superintendent and other administrators, if acting as constituents for the district.

Communications with middle- or lower-level employees may also be privileged, depending on the circumstances. The U.S. Supreme Court, in *Upjohn v. United States*,⁴ 449 U.S. 383 (1981), found that in-house counsel communications with employees are privileged if these communications are 1) at the direction of district superiors, 2) made to obtain legal advice from counsel, 3) concerning matters within the scope of the employees' duties, 4) made to obtain legal advice from counsel and 5) the employees were aware that the purpose of the conversation was to provide legal advice to the district client.⁵ Therefore, an administrative assistant's conversation with in-house counsel will be protected by the privilege if it meets

the above-listed criteria. However, during any such conversation, counsel should clearly explain that she or he is acting as counsel for the district, not the employee.

A common misconception by board members is that their individual communications with in-house counsel are protected by the privilege and cannot be disclosed to the full board. Unless authorized by the full board to represent the district in a certain capacity, individual board members are not constituents of the district and generally will not have the benefit of the privilege in individual conversations with in-house counsel. Even if the privilege extends to an individual member, she or he will not have the authority to require counsel to keep the conversation from the full board. It is important for the in-house counsel to clearly communicate these rules to the board and again to an individual board member, if the situation requires it.

Even when the in-house counsel is speaking with a constituent of the district, the substance and context of the discussion is still important in determining whether the privilege applies. It is not uncommon for an in-house counsel to provide advice on business matters rather than legal topics. When the nature of the communication is to provide thoughts on business matters (e.g. efficiency of operations, effectiveness of certain

As explained in Rule 1.13, this idea of the district as the in-house counsel's client bestows a certain responsibility to protect the district in a manner that may cause an awkward dynamic with other employees.

venders, etc.), the conversation will not be protected. Only conversations that are meant to provide legal advice to the client, through a district constituent, will receive protection. Therefore, it is important to clearly define the nature of the discussion and, when possible, to separate communications that provide legal advice from those that do not.

THE ROLE OF RETAINED COUNSEL

Retained legal counsel is typically engaged by a school board to provide legal services to the school district. In some states, a state association's legal staff may become retained counsel depending upon duties provided. In addition, school districts will commonly have a law firm on retainer and the law firm will work directly with the administration and/or board of education. When questions arise as to whom the retained counsel represents, that issue is covered by the Oklahoma Rules of Professional Conduct and the American Bar Association's Model Rule 1.13 and its accompanying comments, in effect in that jurisdiction.⁶ The school district itself is the client.

When working as retained counsel for a school district, the attorney may often have to remind clients that the overall client for the attorney or the law firm is the school district itself. This can create additional legal issues when the interests of a school board member or members, the administration and/or school employees become diverse. There will be times when an individual board member or employee of a school may be told they will need to retain a personal attorney as the school district's legal counsel cannot defend them in a particular situation.

THE ROLE OF STATE ASSOCIATION COUNSEL

State associations typically employ attorneys to provide a variety of services to member school boards. Many states provide a type of free "legal information" to membership. During business hours (and on occasion during board meetings in the evening), a member or members of the association's legal staff is available to provide legal information during meetings. In addition, members of the legal staff may perform a variety of other services for school districts such as policy making, providing staff development training, whole board training and/or working on education legislation at the state and federal level. It is critical that members of the association's legal department make it very clear to school district board members, administrators and employees that

Some state associations also provide legal services that would include representation of school districts in legal matters. This type of service typically involves retainer agreements or a specific contract that outlines the scope of work to be performed and identifies any fees that may be imposed as a result. With this type of representation, attorneys must be mindful of Oklahoma Rules of Professional Conduct Rule 5.4 and its accompanying comments in effect in that jurisdiction⁸ that expresses the professional independence of the attorney. It is critical leadership of the state association and all employees understand that the attorney providing legal services cannot have their professional judgment as an attorney directed or controlled by a nonlawyer.



the legal information provided is not considered to be legal advice and therefore is not subject to special protection from disclosure. Oklahoma Rules of Professional Conduct Rule 5.7 addresses the provision of law-related services.⁷

COLLABORATION OF ATTORNEYS

Attorneys working directly with school districts in Oklahoma have, for the most part, enjoyed a wonderful working relationship for several decades. Many years ago

a member of a law firm working with school districts began a conversation with a managing partner about whether or not the attorneys working with one of the firm's client school districts were violating the Rules of Professional Conduct by interfering with a legal relationship. This brings into discussion the Oklahoma Rules of Professional Conduct Rule 4.2.⁹ Rule 4.2 places all attorneys on notice that they should not be communicating with someone who is known to be represented by and involved with legal counsel in a matter.

State association counsel is typically not a party to a lawsuit or involved in litigation. As a result, Rule 4.2 does not come into play. In order to provide the attorneys at the state association with peace of mind, the organization requested an opinion on the issue of whether state association attorneys would be interfering with retained counsel by taking phone calls from school board members and administrators in districts that are represented by retained legal counsel. The Oklahoma Bar Association issued an informal opinion which provided that the attorneys working with the state association would not be interfering with the role of retained counsel by answering questions posed by board members and employees of schools as it related to legal information.

The members of the state association legal staff have consistently worked to refer school board members and school employees who have questions involving legal advice and specific direction on a legal matter to their retained legal counsel. This is most important when association counsel is aware of a pending lawsuit or the likelihood of one. So great care is taken to not knowingly interfere with the role of district legal counsel.

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ENDNOTES

1. Rule 1.13 – Organization as Client
 - (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
 - (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.
 - (c) Except as provided in paragraph (d), if
 - (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
 - (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
 - (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.
 - (e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.
 - (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
 - (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.
2. Rule 1.6 Confidentiality of Information
 - (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
 - (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (6) to comply with other law or a court order; or
 - (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (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.

3. ABA Comment on Rule 1.13

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This

does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

4. 449 U.S. 383 (1981).

5. *Upjohn v. United States* at 394.

6. ORPC Rule 1.13 and ABA Model Rule 1.13 are the same. See endnote 1.

7. The full text of ORPC 5.7 is as follows:

Rule 5.7: Responsibilities Regarding Law-related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

- (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
- (2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

8. The full text of ORPC Rule 5.4 is as follows:

Rule 5.4: Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer

- may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (3) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

9. The full text of Rule 4.2 is as follows:

Rule 4.2 Communication With Person Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

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Update to Cryptocurrency Article

By Fred H. Miller



IN THE MAY 2018 ISSUE OF the *Oklahoma Bar Journal* an article by Kaimee K. Tankersley, Ashley Davis and Alexander Ah Loy titled “Legal and Regulatory Developments Arising From The Growth of Cryptocurrency” discussed those developments on the federal level and among the states, but concluded its discussion of state regulation as of November 2017. The purpose of this section note is to update that part of the article.

The National Conference of Commissioners on Uniform State Laws, or the Uniform Law Commission (ULC) for short, is a state-funded organization of practicing lawyers, judges, legislative staff and law professors founded in 1892 at the suggestion of the American Bar Association. It studies and then drafts and seeks enactment of uniform state laws. Oklahoma has been a member for many years whose delegates are selected by the governor, the House and the Senate. Some of its well-known products Oklahoma has enacted include the Uniform Commercial Code, various business organization acts and numerous family law acts.

Last year, after careful study and the involvement of members of the industry and participants in cryptocurrency (aka virtual currency) transactions, the ULC approved an act entitled the Uniform Regulation of Virtual Currency Businesses Act (URVCBA). This

year at its annual meeting in July, the ULC was expected to approve a companion act that will provide tested commercial rules for virtual currency transactions.

The benefit of the URVCBA as opposed to merely amending so-called money transmission statutes (MTAs), which only deal with transmission of legal tender, as a general rule are:

- MTAs are not uniform, the uniform act when enacted will make the law substantially the same among exacting states,
- The uniform act will lead to cooperation among state regulatory agencies and contains reciprocity provisions to reduce the regulatory burden for interstate businesses,
- The uniform act is specifically focused on virtual currency transactions and thus affords certainly to businesses; indeed, it is supported by virtually all industry participants,
- The uniform act contains far more consumer/user protections than do MTAs, and further coordinates with federal laws; it also contains extensive enforcement powers for the state regulatory agency, and

- The uniform act contains provisions that foster innovation and the trial of various business models before the full burden of licensing occurs.

A brief summary of the two proposed acts follows.

URVCBA regulates persons, wherever located, that conduct or offer to conduct virtual currency business activity for residents of the enacting state and who have control of virtual currency.¹

Virtual currency business activity consists of:

- The exchange of virtual currency for other virtual currency or for fiat currency or bank credit, or vice versa,
- The transfer of virtual currency by crediting it to the account of another person, moving it from one account of the person to another account of the same person, or relinquishing control of it to another person, or
- Storing virtual currency.²

Virtual currency is a digital representation of value that is used as a medium of exchange, unit of account or store of value and is not fiat currency whether or not it is denominated in fiat currency. Virtual currency does not include:

- A transaction in which a merchant grants as part of an awards program value that cannot be taken from the program or exchanged for fiat currency, bank credit, or other virtual currency, or
- A digital representation of value issued and used solely within an online game or family of games offered on the same game platform.³

The URVCBA does not regulate:

- Virtual currency itself,
- Person to person transfers without the use of an intermediary virtual currency business,⁴ and
- Whether virtual currency is subject to: escheat laws, the treatment of virtual currency as a security or a commodity, or virtual currency business that is *de minimus*, defined as not in excess of \$5,000 in volume per year.⁵

OTHER STATE/FEDERAL LAWS APPLICABLE TO VIRTUAL CURRENCY

Most states have money transmitter laws. As enacted they govern transfers of fiat currency, but several states are in the process of amending these laws to also cover virtual currency, for example Hawaii. Aside from a lack of uniformity, this results in pushing a square peg in a round hole even if various but often lesser user protections are added.

On the federal level, the Bank Secrecy Act (BSA) is like state money transmitter laws and the Financial Crimes Enforcement Network (FinCEN) has issued an “interpretive guidance” governing persons creating, obtaining, distributing, exchanging, accepting or transmitting virtual currencies. As under URVCBA, “users” (essentially persons who obtain virtual currency to purchase goods

or services) are not money service businesses and are not subject to BSA regulation. An “administrator” (a person engaged as a business in putting into circulation virtual currency with the authority to withdraw it), and an “exchanger” (a person engaged

minor activity perhaps to develop a business model or for research, and who pose little risk if unregulated, to engage in virtual currency activity without regulatory burden.

Similar considerations may apply to a business that wants to

Most states have money transmitter laws. As enacted they govern transfers of fiat currency, but several states are in the process of amending these laws to also cover virtual currency, for example Hawaii.

as a business in the exchange of virtual currency for fiat currency, funds or other virtual currency), are money services businesses and are subject to MSB registration, reporting and record keeping under the federal law, unless a limitation or exemption applies.

This is important because a) a state should not both amend its money services statute and also enact the URVCBA – it should enact the URVCBA as the better design and recognize it coordinates with the money services statutes (*see* §703), and b) a business doing virtual currency business activity in a state that has amended its money services statute but not enacted the URVCBA, which some opponents of any regulation seem to be arguing for, unless the business recognizes the change, may be liable under 18 U.S.C. §1960.

As noted, the URVCBA exempts businesses whose annual volume of virtual currency business activity is \$5,000 or less per year. This allows persons who engage in only

test a business model in a particular market or for some other valid business reason does not want to go “whole hog” in a particular state. Because the business nonetheless poses risk to users, the URVCBA does not exempt the business but if the expected annual volume does not exceed \$35,000 allows a “license light” approach called “registration” in §207. However, this approach comes with a two-year time limit.

A variety of businesses engaging in virtual currency business activity are excluded, basically to avoid overlapping regulation. These include:

- Activity to the extent subject to the Electronic Fund Transfer Act, the SEC Act, the Commodities Exchange Act or state blue sky laws,
- Activity by the U.S., a state, or an agency or instrumentality of either or of a foreign government,
- Banks,

- Persons who essentially only supply operational support,
- Attorneys and title insurance companies providing escrow services, and
- Secured or lien creditors enforcing their debts.⁶

Before engaging in or holding itself out to engage in virtual currency business activity with or on behalf of a resident of an enacting state, a business must be licensed in the enacting state or in another state with which the enacting state has a reciprocity agreement.⁷

To apply for a license from the enacting state, an applicant must provide among the following:

- Legal name and address, and the same for officers and certain others;
- Description of current and former businesses;

- Any criminal convictions and proceedings;
- Any litigation, arbitration and the like proceedings;
- Any bankruptcy, receivership and like proceedings;
- Addresses to contact the business;
- Insurance information;
- Information about the form and structure of the business;
- Any registration with FinCEN;
- Employment experience of officers and certain others; and
- The applicable fee.⁸

An applicant must:

- Meet security, net worth and reserve requirements.⁹
- Meet recordkeeping requirements.¹⁰

- File interim reports.¹¹ Also reports on any change in control¹² and reports on any merger or consolidation.¹³
- Make required disclosures to residents, including among other matters fees and charges, any insurance coverage, whether a transaction is irrevocable, liability for unauthorized mistaken or accidental transfers, error resolution rights, information about a transfer, any right to stop payment, and that virtual currency is not legal tender.¹⁴
- Maintain virtual currency of customers in its control and not subject to it claims of creditors.¹⁵
- Maintain policies and procedures for or against a) information security, b) business continuity, c)



disaster recovery, d) fraud, e) money laundering, or the funding of terrorist activity and f) to ensure compliance with applicable laws.¹⁶

To alleviate the burden of multistate licensing, the URVCBA allows a business operating in a number of states two options.

The first option if the enacting state adopts it, is to use the Nationwide Multistate Licensing System developed by the Conference of State Bank Supervisors and file an application with the registry. The applicant also must notify the enacting state agency and submit to it:

- The license history from each state in which the applicant is licensed to conduct virtual currency business activity,
- The applicable fee,
- Documentation of compliance with security and net worth requirements, and
- A certification of compliance with the URVCBA enacted in the state.

The second option, if the registry option is not available or used, if the state agency determines that the state in which the business already is licensed has a law substantially similar (or more protective of the rights of users), is to file a notice stating the intent to rely on reciprocal licensing, a copy of the license from the other state, license history, the fee, documentation of compliance with security and net worth requirements, and a certificate of intent to comply with the act.¹⁷

The URVCBA provides the state agency with a wide range of administrative enforcement tools including authority to conduct examinations,¹⁸ license suspension or revocation of a license or registration, cease and desist orders, receivership, injunctive

relief, civil penalties, ability to recover on the security required under Sec. 204 and imposition of conditions on continued activity.¹⁹

There is no private right of action under the act, the rational being that providing one might prompt inconsistent rulings since the subject is new and administrative enforcement is likely to be more consistent. But if a violation of the act would furnish a cause of action under other law, that is not curtailed,²⁰ nor is criminal prosecution under other law precluded.

Virtual currency is a type of intangible personal property. Existing commercial law may characterize it as a payment intangible for classification as collateral under UCC Article 9, but little else is clear as the applicability of the Article 9 rules do not fit virtual currency well. Moreover, whether UCC Article 2 applies to the exchange or sale of virtual currency or ancient bailment law applies well to a custodial transaction, is doubtful at best. To amend those laws to accommodate virtual currency would be impracticable. Characterizing virtual currency as a financial asset to fit in the indirect holding system under UCC Article 8 Part 5, and the resulting application of the rules not only of Article 8 but also Article 1 and a clear path under Article 9, is the approach being used in a proposed companion act scheduled to be completed by the Uniform Law Commission this summer.

One may question whether such a companion act is needed as submitting virtual currency as a financial asset by agreement of the user and the securities intermediary is possible now. However, to do so much drafting of the agreement to obtain a workable fit makes this a less attractive approach.

Expect at most a few states in 2018; more after studies in 2019.

Both proposed acts will be introduced in a number of states in 2019.

ABOUT THE AUTHOR

Fred H. Miller is professor emeritus at the OU College of Law, where he joined the faculty in 1966. He graduated in 1959 from the University of Michigan and received his J.D. from the same university in 1962. He has served as commissioner from Oklahoma to National Conference of Commissioners on Uniform State Laws since 1975, and is also former executive director, chair of the Executive Committee and past president of the conference.

ENDNOTES

1. Sec. 103(a).
2. Sec. 102(25). Other more specialized activity includes a) engaging in virtual currency administration b) holding electronic precious metals or electronic certificates representing interests in precious metals or issuing the latter or c) exchanging digital representations of value within one or more online games for virtual currency offered by the same person from whom the digital representations were received or fiat currency or bank credit outside the game. Activity can involve virtual currency that has a centralized repository or that is decentralized and that uses the "block-chain," such as in the case of Bitcoin. We will focus on the latter.
3. Sec. 102(23).
4. Sec. 103(b)(7).
5. Sec. 103(b)(8).
6. Section 103.
7. See §102(11) defining that term.
8. Sec. 202.
9. Sec. 204.
10. Sec. 302. See also Sections 303-304.
11. Sec. 305.
12. Sec. 306;
13. Sec. 307.
14. Sec. 501.
15. Sec. 502.
16. Secs. 601 and 602.
17. Sec. 203.
18. Sec. 301.
19. Secs. 401-406.
20. Sec. 407.

Six New OBA Member Benefits Focus on Practice Management

By Jim Calloway

CHANGES IN THE LEGAL profession continue to impact us all. We have gone from the days where there was a debate on whether a lawyer should even have a computer on his or her desk to today where the computer network going offline means that the law firm is largely unable to function.

One of the significant changes is that many smart lawyers use practice management solutions to organize all of their client information into digital client files. Six new member benefits can help Oklahoma lawyers better manage their practices, and OBA members who are new subscribers to these cloud-based practice management services will receive discounts.

Clio, CosmoLex, MyCase, PracticePanther, Rocket Matter and Zola Suite are all cloud-based practice management solutions for law firms that now offer various

discounts to OBA members who sign up for new subscriptions.

Practice management solutions organize digital copies of all client documents, lawyer's notes, calendar information, pending tasks and all other client information under easy-to-access dashboards. Lawyers can review documents, record time, assign tasks to others in the firm and do many other tasks, all within these applications.

"Supporting Oklahoma lawyers as they incorporate modern technology tools into their law practices is an important goal of the OBA. Better efficiency and security tools benefit both lawyers and their clients," said OBA President Kimberly Hays.

Businesses (and law firms) today use email more than traditional U.S. mail for correspondence, but each story of inappropriate email disclosure or email hacking

raises concerns about whether email is an appropriate way to transmit confidential information. The client portals provided by these practice management solutions provide a secure and client

friendly way to share information using client portals. This is a great way for a lawyer who doesn't consider themselves a technology expert to upgrade their client communication security.

Although lawyers were initially concerned by the concept of cloud computing, these cloud-based services, which were designed to protect confidential client information, provide better security for client data and better remote access than email. Complete digital client files are important for today's lawyers. Using one of these solutions, which have been vetted by the Oklahoma Bar Association, is a great way to organize your digital client files. These providers also provide free training for their customers, and there are client-training modules available as well.

HOW TO FIND THESE BENEFITS

Brief descriptions of the practice management solutions and the discounts they provide are available online. To access them, log in to your MyOKBar account through www.okbar.org and click the "Practice Management Software Benefits" link in the links box under your information.

Mr. Calloway is OBA Management Assistance Program director.



New www.okbar.org: More Than Just a Facelift

By Laura Stone

GREAT NEWS! BIG CHANGES are coming to the bar association website. Everyone loves change, right?

Actually, this is one change we think everyone can embrace. Though the web address will stay the same, the new site will be a much-upgraded experience for our visitors. Don't worry though, all the things our members need most – like quick access to MyOKBar, Fastcase, MCLE information and CLE registration – are still right on the front page.

Several months ago, a group of volunteer members ran usability tests, analyzing how easy the current site could be navigated and how long it took users to find specific services. After reviewing the results, as well as

facelift. Based on the usability tests and feedback, improved infrastructure features like clearer navigation, increased readability, better mobile responsiveness and a more relevant search feature will make it easier for members to find what they need – beyond just front-page items – and give the public better access to resources generously provided by our committees and sections.

"Everything is new," said IT Director Robbin Watson. "New platform, new hosting, new look – and we've tested every one of our new and enhanced features to be sure they integrate smoothly. We've worked hard to create a beautiful website that's easy to use for all our audiences."

and fix any problems with the code, then integrate the corrected content into the new design. This exhaustive process ensures every page not only has the most up-to-date information, but has also helped reveal pages or whole sections of the existing website that are rarely accessed due to either poor navigability or duplicated, irrelevant information. By better organizing the information, every other aspect – like the search or navigation menus – will work more efficiently. It will also make it easier for search engines like Google to analyze the pages, giving better visibility to the resources the general public may be seeking.

"It's been a lot of work," said Executive Director John Morris Williams, "but the staff have done a great job, and the members involved have been a real asset. We know members' time is valuable and increasing efficiency when they go online to access their services is one way we can help them better utilize that time. As with all our technology, we will continue to evolve and make improvements, but this is a big step forward."

Testing and final review for the new website is currently underway. Website visitors can expect to see the new design in mid-August.

We know members' time is valuable and increasing efficiency when they go online to access their services is one way we can help them better utilize that time.

member feedback, a plan was established and a team of four staff from the Communications and IT departments was assembled to transition from the current website into an all-new design.

Although the new website has an updated look, it got more than just a

In addition to upgraded infrastructure and functionality, the content on the website has also been improved. The process of transferring information requires the team to review each one of the thousands of pages on the existing site to update the information

Laura Stone is a communications specialist in the Communications Department.



MCLE CREDIT 6/1

2018 LABOR AND EMPLOYMENT LAW UPDATE

COSPONSORED BY THE OBA LABOR AND EMPLOYMENT LAW SECTION

SEPTEMBER 13

9 A.M. - 2:50 P.M.

OSU Tulsa Events Center
700 N Greenwood Avenue
Bank of Oklahoma Room #140

SEPTEMBER 20

9 A.M. - 2:50 P.M.

Oklahoma Bar Center
LIVE Webcast Available

PROGRAM PLANNER/MODERATOR:

Lauren Lambright, *Smolen, Smolen & Roytman, PLLC, Tulsa Program*
Paige Good, *McAfee & Taft, OKC Program*

TOPICS COVERED:

- The US Supreme Court's Ruling on Class and Collective Action Waivers in Arbitration Agreements
- The #MeToo Movement
- Recent Developments with the Fair Labor Standards Act
- The Continuing Evolution of Title VII
- Ethics in Employment Law
- Considerations for Releases, Non-Solicitation, and Confidentiality Agreements

Early-bird registration by Sept. 6th for Tulsa and Sept. 13th for OKC is \$150. Registration received after those dates will be \$175 and walk-in registrations are \$200. Registration includes continental breakfast and lunch. To receive a \$10 discount on in-person programs register online at okbar.inreachce.com and enter coupon code Fall2018 at checkout. No live webcast available for Tulsa date. 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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An Illness No One Talks About

I JUST RETURNED TO WORK after being off for a little more than six weeks. No, I had not been on an extended vacation backpacking across Europe. I had spent time in a mental hospital followed by six weeks of outpatient day treatment. I have bipolar disorder and was suffering through a severe bout of depression.

My direct supervisor knew where I was and what was going on in my life. No one else did. I did not hear from anyone while I was gone. I know my supervisor did not share my situation, and the people in my office did not want to intrude. They are kind and caring folk, but because no news was shared with them, they did not call my family to check on me or to see if they needed help. No one baked us a casserole. No one brought flowers. That was my choice, I suppose. Or, was it?

There is still a major stigma attached to mental illness, especially in the legal profession. I know that Lawyers Helping Lawyers has worked diligently to combat that stigma, and I appreciate the effort. I hope it works because a 2015 study conducted by the American Bar Association in partnership with the Hazelden Betty Ford Foundation found that attorneys do not usually seek help because they do not want others to find out they need help and they worry about confidentiality. Both reasons speak to the stigma associated with mental health illness and care.

This is the place where I should stand up, identify myself and make the argument that the only way to reduce the stigma is for us all to be honest about mental illness and mental health. But I am an attorney, and I am not that person. At least I am not that

person to the entire readership of the *Oklahoma Bar Journal*.

I am taking baby steps. When I returned to work, I opened up to several people and let them know about my diagnosis and how overwhelming the depression had become. When I did that, I found that each of them also had stories of how mental illness had impacted them or someone they loved. They admitted they refrained from sharing their stories because of the stigma. None of us have “come out” to the rest of the firm. However, each of us is taking baby steps.

Two of us have begun attending the monthly Lawyers Helping Lawyers discussion group in Oklahoma City and have found a safe and supportive place to share what is going on in our lives. It is not easy for me to open up about myself and share personal details about my life with other attorneys.

However, I have started doing just that, and it has been okay, even positive. In fact, no one has treated me any differently – which provided my worried mind with relief. I am still not ready to reveal my identity, but I hope this helps someone out there to seek help from the resources available through the OBA. I hope I never reach the depths of depression I recently experienced, but, if I do, I hope I will be able to let my co-workers know about it so that my family and I will receive the support so desperately needed during those times. And, yes, I hope someone brings a casserole.



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Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Committee

2019 OBA Board of Governors Vacancies

Nominating Petition

Deadline: 5 p.m.

Friday, Sept. 7, 2018

OFFICERS

President-Elect

Current: Charles W. Chesnut, Miami
Mr. Chesnut automatically becomes OBA president Jan. 1, 2019
(One-year term: 2019)
Nominee: **Vacant**

Vice President

Current: Richard Stevens, Norman
(One-year term: 2019)
Nominee: **Vacant**

BOARD OF GOVERNORS

Supreme Court Judicial District Three

Current: John W. Coyle III, Oklahoma City
Oklahoma County
(Three-year term: 2019-2021)
Nominee: **Vacant**

Supreme Court Judicial District Four

Current: Kaleb K. Hennigh, Enid
Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Harper, Kingfisher, Major, Roger Mills, Texas, Washita, Woods and Woodward counties
(Three-year term: 2019-2021)
Nominee: **Vacant**

Supreme Court Judicial District Five

Current: James L. Kee, Duncan
Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties
(Three-year term: 2019-2021)
Nominee: **Vacant**

Member At Large

Current: Alissa Hutter, Norman
Statewide
(Three-year term: 2019-2021)
Nominee: **Vacant**

SUMMARY OF NOMINATIONS RULES

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

Not less than 60 days prior to the annual meeting, 50 or more voting members of the OBA from any or all judicial districts shall file with the executive director a signed petition nominating a candidate to the office of member atlarge 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 presidentelect 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. 9, during the Nov. 7-9 OBA Annual Meeting.

Terms of the present OBA officers and governors will terminate Dec. 31, 2018.

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

Sovereignty Symposium XXXI

Oklahoma City | June 6-7, 2018

1. Oklahoma Supreme Court Chief Justice Douglas Combs (left) and newly appointed Oklahoma Supreme Court Referee John Holden



2. From left: Blas Preciado, Kiowa Black Leggings Warrior Society vice commander, members of the Tinker Air Force Base Color Guard and Lyndreth Palmer of the Kiowa Black Leggings



3. Citizen Potawatomi Tribal Court Chief District Judge Philip Lujan (left) and Citizen Potawatomi Tribal Chairman John "Rocky" Barrett



4. Essie Garde (left) and Suzanne Edmondson



5. From left: jeweler Kenneth Johnson; Oklahoma Supreme Court Justice Yvonne Kauger; Lt. General Lee Levy III, keynote speaker and commander, Air Force Sustainment Center, Air Force Materiel Command, Tinker Air Force Base, Oklahoma; and Oklahoma Supreme Court Chief Justice Douglas Combs during the presentation of the silver gorget to General Levy



7. Harvey Pratt, winner of the National Native American Veterans Memorial design contest, (left) and Kelly Haney, former Oklahoma state senator and finalist in the National Native American Veterans Memorial design contest



8. General Levy and Rhonda Levy speak with Oklahoma Supreme Court Justice James Edmondson at the Dignitaries' Luncheon



9. From left: Criminal Law Panel members (seated) Edward Snow, assistant U.S. attorney for the Eastern District of Oklahoma; Christopher B. Chaney, unit chief, Criminal Justice Information Law Unit, FBI Office of the General Counsel; Jessica Jarvis, assistant U.S. attorney for the Western District of Oklahoma; (standing) Robert Troester, acting U.S. attorney for the Western District of Oklahoma; Arvo Mikkani, panel co-moderator and assistant U.S. attorney for the Western District of Oklahoma; Oklahoma Court of Criminal Appeals Judge Dana Kuehn; Oklahoma City attorney John Cannon; Mithun Mansinghani, Oklahoma solicitor general; and Shon T. Irwin, U.S. magistrate judge for the Western District of Oklahoma

10. From left: Gaming Panel members (standing) Matthew Morgan, director of Gaming Affairs, Division of Commerce, Chickasaw Nation; D. Michael McBride III, Crowe & Dunlevy; Jonodev Osceola Chaudhuri, chairman of the National Indian Gaming Commission; Wiley Harwell, executive director, Oklahoma Association for Problem and Compulsive Gambling; Brian Wyman, principal consultant, The Innovation Group; William Norman, Hobbs, Straus, Dean and Walker; Dean Luthey, GableGotwals; (seated) Nancy Green, Green Law Firm; Elizabeth Homer, Homer Law; and Kathryn Isom-Clause, vice chair of the National Indian Gaming Commission

11. Court of Criminal Appeals Judge Dana Kuehn (left), OBA President Kimberly Hays and Oklahoma Supreme Court Justice Richard Darby.



16. From left: Economic Development-Supporting Infrastructure Panel members Dr. Jim Collard, director, planning and economic development, Citizen Potawatomi Nation; Janie Simms Hipp, director of the Indigenous Food and Agriculture Initiative, visiting professor of law, University of Arkansas School of Law; Mike Patterson, director, Oklahoma Department of Transportation; Joy Hofmeister, Oklahoma state superintendent of public instruction; Tim Gatz, executive director, Oklahoma Turnpike Authority; Kelli Mosteller, director, Citizen Potawatomi Nation Cultural Heritage Center; and Nathan Hart, economic development director, Cheyenne and Arapaho Tribes

17. Eric Tippeconnic, historian and creator of the 2018 symposium artwork, *The Briefcase Warrior*, after receiving his Friend of the Court medal (left) with Oklahoma Supreme Court Chief Justice Douglas Combs

18. From left: Implications of Assimilation Panel members R. Jay Hannah, executive vice president of financial services, Bancfirst; Professor Joan Howland, professor of law, University of Minnesota; Kirke Kickingbird, Hobbs, Straus; and Oklahoma Supreme Court Vice Chief Justice Noma Gurich



All photos by Stu Ostler



9.



11.



10.



15.

12. From left: U.S. Magistrate for the Western District of Oklahoma Suzanne Mitchell; Oklahoma Supreme Court Justice James Winchester; and Jerry McPeak, interim tribal administrator, Muscogee (Creek) Nation

13. Oklahoma Supreme Court Justice Tom Colbert (left) and Bishop Robert Hayes

14. Vanessa Jennings, noted Oklahoma regalia, cradleboard and bead artist

15. James Pepper Henry, director/CEO, American Indian Cultural Center Foundation (AICCF)



16.



17.



18.

Breaking the Jar

By John Morris Williams

IN MY PREADOLESCENT DAYS, I liked to plant things. I still do – but not with the same ambition. Any seeds I could order, purchase or otherwise get my hands on made me feel rich. Oftentimes I would start them in a jar in my bedroom. Back in those days all the jars were glass. I was recycling before it was trendy.

I was about 10, and I planted a pecan in a glass mayonnaise jar. Proudly it was displayed on my dresser. Glass jars were the best. You could see the roots if the seeds ever germinated. The pecan liked the jar and soon roots and a tiny sprout came up. Quickly it grew and out of pride I exclaimed to my father that we needed to plant it in the yard. My father was particular about his lawn, so I figured he would outright reject the idea. But he didn't.

I was very concerned about getting this now almost foot-tall tree out of the jar. It seemed like it would be impossible or the tree would suffer from being pulled out. I knew it needed to be free soon. The jar revealed a cluster of roots, and I knew that with it growing so quickly I needed to act fast. I knew nothing of bonsai at that time.

My father simply took the jar outside and broke off the bottom with a hammer. Alas, the tree was free by coming out the bottom. Something I never thought of. Well, I did lose the jar. Mission accomplished. After the freeing of the tree from the remaining part of the jar, my father handed me a shovel, and the rest is history.



As lawyers we have many opportunities to break the jar for people. We see the solution so clearly and often clients see no way out that does not do lasting or even legally fatal harm. This is especially true of people with mental challenges and children. Without the help of legal counsel, often the trees of their dreams die in the jar.

Compassionate, competent counsel can change lives and keep dreams alive. Sometimes it does not take much. Sometimes it's a large undertaking. Sometimes they can assist with the shovel. Sometimes they cannot. Sometimes they are grateful and sometimes not. Sometimes they are overly concerned with losing the jar and incapable of making good decisions for themselves.

By doing pro bono work we not only meet an ethical obligation to provide access to justice, we touch lives and help people to find their best destiny. As I often say, it's good business. Our communities are better when domestic violence victims are made safe. Future generations are more secure when children are protected and assured a safe place to grow up. We even spend less money on jails and prisons when the right resources are in place for early intervention. It's good business to help vulnerable people. Our world is better when lawyers give of their time and beyond the blessing of giving; in dollars and cents, it makes a difference in the long run.

A couple of years ago I went by my childhood home in Stonewall. I had not been by in a while. To my amazement in the backyard where I had dug 45 years ago was a 40-foot pecan tree. It is mature and bears fruit. I wish my father was around to see it. Sometimes that's how it goes. You break a jar, free a tree and some 10-year-old gets to see his dream come true. So, get out there and break some jars.

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

PRO SE WAIVER DIVORCE DOCKET CLE

What is the Pro Se Waiver Docket Clinic? Every Wednesday afternoon volunteer lawyers, law students and DHS-CSS (1st and 3rd Wednesdays) support the *pro se* waiver docket when Oklahoma County residents encounter problems with their uncontested *pro se* divorces. The Domestic Judges refer the litigant to our clinic for assistance (located In the Oklahoma County Law Library). Family lawyers volunteer once a month on a Wednesday that is convenient for them to participate in delivering these pro bono services. Please come to the free CLE and training and learn more about this volunteer opportunity.

SATURDAY, AUGUST 25, 2018

Oklahoma City University School of Law-800 N. Harvey OKC
Ron and Kandy Norick Lecture Hall, Room 503
4.5 HOURS of CLE with 1 hour of Ethics

SCHEDULE

- 8:30-8:50 a.m.: **Registration and Coffee**
- 8:50-9:00 a.m.: **Welcome:** Associate Dean of Admissions Laurie Jones
- 9 a.m.-9:50 a.m.: **Pro Se Waiver Divorce Docket Project Procedures and Document Preparation Training**
Presenter: Melissa Elaroua, Legal Aid Services of Oklahoma
- 9:50 a.m.-10:40 a.m.: **Nuts and Bolts of Family Law**
Presenter: Chris Batson Deason, Esq
- 10:40 a.m.-11:00 a.m.: **Break**
- 11:00 a.m.-11:50 a.m.: **Domestic Violence and Ethics Issues**
Presenter: G. Gail Stricklin, Attorney at Law
- 11:50 a.m.-12:30 p.m.: **Lunch**
Courtesy of Oklahoma City University School of Law
- 12:30 p.m.-1:45 p.m.: **Child Support Guidelines: Overview of the statute, prison orders, a guided tour of the CSS's child support calculator; Q&A session on Child Support Guidelines**
Presenters: Janet Johnson, Office of Impact Advocacy and Legal Outreach CSS State's Attorney

Lawyers and Law Students Welcome!

Rsvp to lawevents@okcu.edu or call 505.208.5354

Technology Competence for the Family Lawyer

By Jim Calloway

SOME LAWYERS WERE concerned when the Model Rules of Professional Conduct were changed to include a comment that competence as a lawyer included an appreciation of “the benefits and risks associated with relevant technology.” Many states began adopting this language into their own version of the rules with some variance in language.

Now 31 states have adopted some version of this language in comment 8 to Rule 1.1, according to legal technology journalist Robert Ambrogi who maintains regularly updated information about this topic on his blog.¹

Oklahoma’s version of the comment was adopted by the Oklahoma Supreme Court in September 2016.²

Lawyers practicing in the family law arena have had to learn about preserving social media evidence and getting it admitted in hearings as many people post things on social media that are very relevant to their custody battle or other claims they may be making in court. Today, merely signing up a new family law client and giving them basic initial advice requires technology competence on the part of the family lawyer.

An article that appeared in *The New York Times* this summer³ reminds us increasing reliance on technology tools and the

emergence of the internet of things (IoT) has multiplied the ways a bad actor in a divorce case can use technology to intimidate or torture their soon-to-be ex-spouse.

The article noted people saying they felt like they were going crazy because inexplicable things were happening:

One woman had turned on her air-conditioner, but said it then switched off without her touching it. Another said the code numbers of the digital lock at her front door changed every day and she could not figure out why. Still another told an abuse help line that she kept hearing the doorbell ring, but no one was there.

Others reported accounts of the thermostat suddenly turning up to 100 degrees or smart speakers suddenly blasting music. Today many homes also have security cameras, webcams connected to computers or a PlayStation with a camera. Any digital camera connected to the internet can be a tool for privacy invasion if controlled by someone outside of the home.

Often the home technology has been set up by one partner in a relationship with the other partner having limited understanding of its functions beyond the basic details.

As experienced family lawyers know, there are so many things happening with a marital split that online technology and its impact on security and privacy may not be foremost in the client’s mind unless their lawyer assists them with solid advice.

I haven’t practiced family law in many years, so none of this applied when I was practicing, but I thought I’d take this opportunity to outline a few things to tell a new family law client about how a separation or divorce impacts the technology they use every day.

SOCIAL MEDIA

All family lawyers likely warn their clients today about posts on social media which could harm their case. It is likely best to give several examples to assist the client in understanding how even innocent factual posts can be used in a divorce proceeding. In the early days of social media, some lawyers advised their clients to deactivate their social media accounts or never use them while the divorce case was pending. This is not a practical alternative for many of today’s clients, but at a minimum, they should be warned they should not post anything about their estranged spouse. Certainly, there are a few exceptions, such as pictures from a child’s birthday celebration where both parties

Password:

attended, but they should be rare. A few words about how “party pics” may come across in the courtroom might also be in order.

FIRST THE EMAIL PASSWORD

The most urgent advice to give a family law client is to change their email password immediately to something long and not obvious – for every email account. It really doesn’t matter that they don’t think their spouse knows their password, it still needs to be changed. Not only does having someone’s email password allow them to login to the web-based version of the email account to read their email or send emails posing as them, but password recovery and reset options for almost every online service can be done via email.

DIGITAL PRIVACY AND SECURITY

However, updating email passwords is just the beginning of the journey where password security sharing and remote access are concerned.

For example, it is convenient to be able to check remotely to see if someone forgot to close the garage door or to open it remotely when your neighbor needs in to borrow a tool, but it is dangerous for someone to be able to open your garage door remotely and leave it open all night.

Here is a nonexhaustive list of things you might want to discuss with your client and perhaps provide them with a handout/checklist.

- Change your email password on every email account.
- Change the home Wi-Fi network password. This

should interrupt the connection to every device in the home using Wi-Fi.

- Only reconnect the devices to your Wi-Fi using the new password that you actually want to use. You may decide not to reset something like the internet-connected lock on your front door for a while, but with smart locks and internet-connected thermostats, you also may have no other option. Some devices may have a reset button to assist you, but don’t forget that even if you have lost the installation instructions, you can likely locate them online by searching the name and model number of the device.
- Talk to your children about internet security and safety

and about sharing the Wi-Fi password with their friends. You might have a rule that every time they share the password with a new friend they have to send you a text message with the friend's name.

- Another good rule to tell children is no one is allowed to share the password with adults, who should contact you directly if they need it. Avoid saying bad things about the other parent. You can say nonjudgmental things like "Daddy doesn't live here so he doesn't need the Wi-Fi" or "Mom's an adult so the rule is adults have to ask me."
- You must have a lock code on every phone and portable digital device you and your children use. If you already have lock codes, reset them all.
- iPhones bring some particular concerns. Many couples sync their iPhones to share information and married couples often share an Apple ID or iCloud account, which gives access to emails, messages and other data without the other spouse knowing. This could lead to unanticipated consequences like that old iPad no one uses anymore still displaying text messages sent to you. Depending on your level of expertise, you may need professional help "unsyncing" devices or separating accounts.
- Don't forget that if someone has your Apple ID and password, they can use Find My iPhone to determine your physical location within a few feet at any time if you have your phone with you.
- If your cable TV service, streaming service or internet service provider is set up in both parties' names, then each has full access to much information, which may include remote login capability, data use and websites visited, pay-per-view movies watched, web-based email and other data. Get that changed as soon as possible. (Attorneys will want to advise about the impact of the automatic temporary injunction on this.) There is also likely a password, a PIN and security questions with these accounts that should all be changed.
- Passwords for online shopping accounts, online banking, retirement funds and credit cards should be immediately changed. This should also be done for all social media accounts, even if you don't use them often. You don't want someone posting in your name. Security questions and the answers should also be examined as the estranged

spouse likely knows the answer to many of those security questions. (On a side note, no one should be using "What is your mother's maiden name?" as a security question as most internet users can "crack" that using Google without even bothering to sign up for a genealogy history website that will definitely provide the answer.)

- You might consider using a password manager since you will ultimately be changing all the passwords you use and these tools can generate very long random passwords for you. (This may not be a tool that every client can confidently use.)
- Never use your work email account to correspond with your lawyer or to discuss private matters with anyone. Your employer has access to all that information via the network.
- The passwords for every additional online service you use should be changed and the security questions examined. This may take some time, so do the important ones first.
- Webcams connected to computers or the internet should be physically covered when not in use. This has less to do with your divorce and more to do with protection

You might consider using a password manager since you will ultimately be changing all the passwords you use and these tools can generate very long random passwords for you.

against hackers generally. You can buy inexpensive webcam covers for laptops with installed cameras that slide to expose the camera lens when you want to use it and can be closed when not in use.

- Does your telephone answering machine have a feature where someone can listen to the recorded messages remotely by calling your number and entering a code? If so, that code needs to be changed.
- If you have a home security system, you may need to contact the monitoring service to understand where the data is stored and how it operates. You want to know if videos of visitors to your home are stored and for how long, along with how they are accessed. There may be a PIN or password associated with that service. If you have a do-it-yourself setup, you may have to do some research on how to reset it.
- If you have particular privacy or security concerns, you may ask friends not to “tag” you on social media or post photos of you at an event until after you have left.

That’s a longer list than I intended, but it covers the basics. The executive summary is change your email password, change your home Wi-Fi password and then change passwords for any website that allows access to money or allows charges on your credit card.

Whether you call it technology competency or just good client service, today’s world requires lawyers appreciate the risks that we all face when using technology tools.

You don’t want to be the lawyer who sees your client being interviewed on the evening news broadcast or in the local media on how the client’s connected home somehow became a modern-day haunted house.

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

ENDNOTES

1. See www.lawsitesblog.com/tech-competence.
2. 2016 OK 91.
3. Nellie Bowles, “Thermostats, Locks and Lights: Digital Tools of Domestic Abuse,” *The New York Times*, June 23, 2018, www.nytimes.com/2018/06/23/technology/smart-home-devices-domestic-abuse.

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Attorney Discipline Decisions

By Gina Hendryx

THE FOLLOWING IS A summary of several attorney discipline matters recently issued by the Oklahoma Supreme Court. The court has exclusive, original jurisdiction over the licensure and discipline of Oklahoma attorneys.

STATE EX REL. OKLA. BAR ASS'N V. KRUGER, 2018 OK 53

A four-count disciplinary action was brought against attorney Joel L. Krueger alleging that he neglected clients and misappropriated client funds. The court found that Krueger withheld funds due to his client for child support payments and settled claims for past-due child support without his client's knowledge or consent. In

determining the appropriate discipline, the court noted the respondent's complete lack of respect for the disciplinary system, his clients and his lack of remorse or acknowledgement of the gravity of his wrongdoing. Krueger was disbarred by the Oklahoma Supreme Court. He cannot seek reinstatement for a period of five years.

STATE EX REL. OKLA. BAR ASS'N V. KNIGHT, 2018 OK 52

This is a reciprocal discipline matter filed based upon attorney David W. Knight's disbarment in Texas. Knight was licensed to practice law in Oklahoma and Texas. His disbarment in Texas was based upon misconduct in

the representation of five clients during 2015 and 2016. In June 2016, Knight's Texas license was suspended. He failed to notify his clients of the suspension or return any unearned fees. When represented with these complaints, Knight failed to respond to the State Bar of Texas. The Supreme Court of Texas held that Knight would have to pay restitution to each of these clients as an "absolute condition precedent for reinstatement." The order of the Texas court canceling Knight's Texas law license is *prima facie* evidence that Knight committed the acts described therein and are the basis for reciprocal discipline in Oklahoma. The Oklahoma Supreme Court found it was conclusively established that Knight neglected his clients, failed to return unearned fees, did not notify his clients of his suspension and engaged in the practice of law while suspended. Furthermore, Knight failed to notify the Oklahoma Bar Association of his discipline in Texas as required by the Rules Governing Disciplinary Proceedings. The Oklahoma Supreme Court held Knight's conduct warranted the reciprocal discipline of disbarment in Oklahoma stating that his professional misconduct and disregard for the disciplinary process presents a danger to the interests of the public, the courts and the legal profession.



**STATE EX REL. OKLA. BAR
ASS'N V. MENZER, 2018 OK 46**

The Oklahoma Supreme Court accepted James L. Menzer's resignation from membership in the Oklahoma Bar Association. Menzer submitted his resignation during the pendency of disciplinary proceedings wherein he acknowledged that the Office of General Counsel was investigating eight separate complaints that alleged he had accepted fees but failed to perform the legal services. The court accepted his resignation which is tantamount to disbarment. Menzer cannot apply for reinstatement for a period of five years, must reimburse the cost of the investigation and will be required to reimburse any funds paid by the Clients' Security Fund on claims received from his former clients as a condition precedent to reinstatement.

**IN THE MATTER OF THE
REINSTATEMENT OF
HASTING, 2018 OK 43**

Laurie L. Hasting was stricken from the rolls of Oklahoma licensed attorneys on June 25, 2013, following her suspension for nonpayment of membership dues and failure to comply with mandatory continuing legal education requirements. In 2017, Hasting filed a Petition for Reinstatement with the Oklahoma Supreme Court. The Office of the General Counsel conducted an investigation of

the petition and a hearing was held before the Professional Responsibility Tribunal after which the panel unanimously recommended her reinstatement. The court found that Hasting had met the requirements for reinstatement including that she possessed the competency and learning in the law, as well as the good moral character, required for readmission. Hasting was reinstated to the practice of law in Oklahoma conditioned upon the payment of 2018 membership dues.

Ms. Hendryx is OBA general counsel.

Meeting Summaries

The Oklahoma Bar Association Board of Governors met Friday, April 20, at the Oklahoma Bar Center in Oklahoma City.

REPORT OF THE PRESIDENT

President Hays reported she was involved in various communications regarding legislative matters, taped a segment of the *Ask A Lawyer* TV program and delivered remarks at the new admittee admission ceremony. She attended the OBA Family Law Section meeting, OETA pledge drive, Creek County Bar Association lunch, TCBF presentation of the film *100 Years* and OBA Annual Meeting planning meeting.

REPORT OF THE VICE PRESIDENT

Vice President Stevens reported he attended Day at the Capitol, the March and April Cleveland County Bar Association meeting/CLE, Law Day directive signing, Law Day awards ceremony and OBA Awards Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Chesnut reported he attended the Bar Leadership Institute in Chicago and Oklahoma Attorneys Mutual Insurance Co. Board of Directors meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he was interviewed by

NonDoc, a journalism and media website based in Oklahoma City, regarding the low number of lawyers in the Senate, which presents challenges. He attended the Bar Center Facilities Committee meeting, Bench and Bar Committee meeting, Day at the Capitol, OETA Festival, Bar Leadership Institute, swearing in of new members and Annual Meeting planning meeting.

REPORT OF THE PAST PRESIDENT

Past President Thomas reported she attended OBA Day at the Capitol and Washington County Bar Association meeting. She also participated as a judge at the OU College of Law Moot Court Competition.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Muskogee County Bar Association meeting and OBA Day at the Capitol. He also met with the OBA Law Day Committee chair to discuss planned activities in District 7. **Governor Coyle** reported he attended OBA Day at the Capitol and an Oklahoma County Bar Association meeting. **Governor Fields** reported he attended OBA Day at the Capitol, Pittsburg County Bar Association meeting and OBA Professionalism Committee meeting. **Governor Hennigh** reported he attended the Garfield County Bar Association meeting and OBA Day at the Capitol. **Governor Hermanson**

reported he attended OBA Day at the Capitol, OETA Festival, District Attorneys Council meeting, Oklahoma District Attorneys Association board meeting, Kay County Bar Association meeting, past OBA Governor John Raley's funeral at which he delivered the eulogy and by phone the OBA Communications Committee meeting. **Governor Hicks** reported he attended a Tulsa County Bar Foundation meeting, Tulsa County Bar Association March board meeting, TCBF Law Day planning meeting, TCBA April Board meeting, Tulsa lawyers supporting the Indian Nations Council BSA luncheon and special screening of the film, *100 Years*, dealing with the Indian Trust Fund litigation against the Department of the Interior, which was a TCBF Law Day event. He also participated in YLD Trivia Night at the TU College of Law as a member of the winning team. **Governor Hutter** reported she attended OBA Day at the Capitol, Canadian County Bar Association meeting and executive meeting and Bench and Bar Committee meeting. **Governor Morton** reported he attended OBA Day at the Capitol, Cleveland County Bar Association monthly meeting, William J. Holloway Inn of Court meeting, joint meeting of the William J. Holloway and Ginsburg inns of court and William J. Holloway Inn of Court closing ceremony. **Governor Oliver** reported

he attended Payne County Bar Association March and April meetings and OBA Law-Related Education Committee meeting by phone. **Governor Will**, unable to attend the meeting, reported via email he chaired the Bar Center Facilities Committee meeting. **Governor Williams** reported he attended OBA Day at the Capitol and Diversity Committee meeting. He also served as presiding officer for a reinstatement hearing of the Professional Responsibility Tribunal and assisted Judge Daman Cantrell's Pupilage Group 7 in the research, preparation and serving in a principal acting role in a historical trial presentation to the Council Oak/Johnson-Sontag American Inn of Court.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Richter, unable to attend the meeting, reported via email he attended OBA Day at the Capitol and the Canadian County Bar Association monthly meeting.

BOARD LIAISON REPORTS

Governor Hermanson said the Law Day Committee has finished filming the three main TV show segments, radio ads have been purchased in Oklahoma City and Tulsa, print ads purchased in the *Tulsa World* and *The Oklahoman*, plus 160 newspapers across the state through the Oklahoma Press Association, and the news release was translated into

Spanish. Governor Williams said the Diversity Committee is interested in doing a survey. Governor Fields said the Professionalism Committee is planning a CLE seminar and has formed a subcommittee to work on it. Governor Hutter said Bench and Bar Committee started its meeting with a legislative update from Executive Director Williams and is recommending a rule amendment regarding confidentiality, which will soon be submitted to the Board of Governors for its review. The committee is also working on distribution of its VPO video, a script for a video on forcible entry and detainer and a project involving unbundling of services. Governor Hutter said the Women in Law Committee will have a social mixer following its next meeting in Oklahoma City, determined the speaker for its Oct. 19 conference and has created subcommittees to work on the conference. Executive Director Williams said the Bar Center Facilities Committee met with a landscape architect to discuss plans for improvement and landscape proposals. The committee will also look at problems with leaks involving the roof. He said no money was budgeted for repairs. Governor Hermanson said the Communications Committee is working on finishing up a judicial selection education project for presentation to civic organizations, including video, talking points and a handout.

REPORT OF THE GENERAL COUNSEL

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

OBA AWARDS COMMITTEE RECOMMENDATIONS

Vice President Stevens said the committee met, reviewed current awards and customary practices. The committee has no recommendations for new awards and proposes the same awards be presented as last year. The board approved the recommendation to present the same awards as 2017.

HIRING OF OUTSIDE COUNSEL

Executive Director Williams reported Oklahoma City attorney Travis Pickens has been hired to handle an ethics matter due to a second conflict of interest of the Office of General Council. As reported in February, Mark Stonecipher was hired to handle a matter related to the Professional Responsibility Tribunal, which also created a conflict for the office. No invoice has been received for legal services.

RESOLUTION TO NOMINATE ABA AWARD NOMINEE

The board voted to issue a resolution approving the nomination of Oklahoma City attorney William G. Paul to receive the 2018 American Bar Association Medal.

DISTRICT ATTORNEYS COUNCIL APPOINTMENT

The board approved President Hays' reappointment of Greg Mashburn, Norman, to the council. His term will expire June 20, 2021.

2019 CALENDAR

President-Elect Chesnut brought up for discussion the scheduling of the 2019 Annual Meeting, currently set for Nov. 6-8 in Oklahoma City. He asked for opinions on whether there would be any benefit to moving the date to the following week. Discussion followed, and it was decided to keep the date as scheduled.

UPDATE ON LEGISLATIVE SESSION

Executive Director Williams briefed board members on current legislative issues.

JOINT BOARD OF GOVERNORS AND OKLAHOMA BAR FOUNDATION EVENT

President Hays shared details about the Thursday evening event at the Bricktown Ballpark. OBF President Souter will throw out the first pitch.

The Oklahoma Bar Association Board of Governors met Friday, May 18, at the Oklahoma Bar Center in Oklahoma City.

REPORT OF THE PRESIDENT

President Hays reported she attended the Tulsa County Bar Association Law Day luncheon, Payne County Bar Association Law Day banquet, Pittsburg County Law Day banquet, Section Leaders Council meeting and OBA/OBF joint event. She also presented certificates to graduating OBA Leadership Academy class members, attended the reception for academy graduates, spoke

at the Hughes/Seminole County Law Day event and helped staff the TCBA's Ask A Lawyer statewide hotline.

REPORT OF THE VICE PRESIDENT

Vice President Stevens reported he attended the OBA Leadership Academy graduation and reception, Seminole County Law Day luncheon and Section Leaders Council meeting. He also helped staff the Ask A Lawyer statewide hotline in Oklahoma City.

REPORT OF THE PRESIDENT-ELECT

President-Elect Chesnut reported he attended the OBA Leadership Academy graduation, Pittsburg County Law Day event in McAlester, Seminole County Law Day event in Wewoka, Ottawa County Bar Association monthly meeting, Oklahoma Bar Foundation meeting and joint OBA/OBF event. He also participated in the mock trial hosted by the county bar for fourth graders on Law Day, participated in the Ask A Lawyer program on Law Day hosted by the county bar and worked on appointments to the OBA Budget Committee.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended Law Day events in Pittsburg, Seminole, Oklahoma, Comanche and Payne counties in addition to the tri-county (Idabel) celebration. He presented CLE in Seminole County, participated in an Annual Meeting planning meeting and took part in a conference with an electronic election vendor regarding Judicial Nominating Commission elections. He attended the Legislative Monitoring Committee meeting, planning meeting with OBF staff regarding Annual Meeting,

swearing in of Justice Darby, monthly staff celebration, staff directors meeting, Section Leaders Council meeting, Leadership Academy graduation and joint OBA/OBF event.

REPORT OF THE PAST PRESIDENT

Past President Thomas reported she attended the OBA Leadership Academy graduation and reception, Washington County Bar Association monthly meeting, Ask A Lawyer program on Law Day hosted by the county bar and joint OBA/OBF event.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Muskogee County Bar Association meeting, county bar annual banquet and assisted in Law Day preparations for Muskogee County. **Governor Coyle**, unable to attend the meeting, reported via email he attended the OBA Leadership Academy graduation. **Governor Fields** reported he attended the Pittsburg County Law Day dinner, tri-county Law Day dinner in Idabel, Professionalism Committee meeting and OBA/OBF joint event. **Governor Hennigh** reported he attended the Garfield County Bar Association meeting and Leadership Academy graduation. **Governor Hermanson** reported he served on the faculty of the Prosecutor's Boot Camp Training. He attended the District Attorneys Council meeting, Oklahoma District Attorney's Association Board of Directors meeting, Courage Award presentation awarded to the victims of the Perry school molestation, Legislative Monitoring Committee and Law Day Committee meetings by phone, medical marijuana debate at the History Center in Oklahoma City, drug court graduation and picnic in Kay County and the OBA/OBF joint function at the

He said a large number of first responders are expected to take advantage of the Wills for Heroes program when it is offered, and volunteer lawyers will be needed.

Dodgers game. **Governor Hicks** reported he attended the OBA's Leadership Academy graduation ceremony and Tulsa County Bar Association/Foundation Law Week luncheon. He also helped staff the TCBA's Ask A Lawyer statewide hotline, participated in the TCBA/TCBF executive director search and selection process and played in the TCBF's Charity Golf Tournament. **Governor Hutter** reported she attended the Cleveland County executive meeting, Cleveland County Bar Association Law Day events and joint OBA/OBF event at the Dodgers game. **Governor Kee** reported he attended Law Day events in Stephens County, Pittsburg County, McClain County and the tri-county event in Idabel. He said the Garvin County Bar Association combined its activities with McClain County. Judge Leah Edwards held a mock trial in front of students from each county. **Governor Morton** reported he attended the Oklahoma County Bar Association Law Day awards luncheon, Legislative Monitoring Committee meeting and joint OBA/OBF event. He also helped staff the Ask A Lawyer statewide hotline giving free legal advice. **Governor Oliver** reported he attended the Payne County Bar Association Law Day banquet

and other Law Day activities and OBA/OBF joint event. He also had an email discussion with Chris Brumit, an accountant with audit firm Smith Carney, regarding the OBA's 2017 audit. **Governor Will** reported he attended the swearing-in ceremony for Justice Richard Darby and the OBA/OBF joint function. **Governor Williams**, who was unable to attend the meeting, reported via email he attended the OBA Leadership Academy graduation ceremony, Tulsa County Bar Association/Foundation Law Week luncheon, swearing-in ceremony for Supreme Court Justice Richard B. Darby and OBA Diversity Committee meeting. He also helped staff the TCBA's Ask A Lawyer statewide hotline and participated in the TCBA/TCBF executive director search and selection process.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Richter reported he attended the ABA YLD Spring Conference in Louisville, Kentucky, and Robert J. Turner Inn of Court meeting and closing banquet. He also participated in a YLD volunteer service project at the Festival of the Arts in Oklahoma City to support the Arts Council, transacted two separate requests

for the YLD to conduct Wills for Heroes events in Tulsa and Broken Arrow, met with Legal Aid Services to discuss access to justice issues and how the YLD might fit into solutions to promote access to justice in Oklahoma and helped coordinate the Canadian County Law Day events held at his office. He said another Kick It Forward application to pay for OBA dues was submitted and approved – bringing the number of bar members helped this year to six. He said a large number of first responders are expected to take advantage of the Wills for Heroes program when it is offered, and volunteer lawyers will be needed. President Hays suggested contacting the Tulsa County Bar Association with the request for volunteer help.

REPORT OF THE SUPREME COURT LIAISON

Justice Edmondson reported Justice Kauger issued an invitation to all board members to attend the upcoming Sovereignty Symposium. The full program is available in the current *Oklahoma Bar Journal*.

BOARD LIAISON REPORTS

Governor Hutter said the Women in Law Committee continues to plan for its Oct. 19 conference and to recruit sponsors. Governor Hermanson said the Law Day Committee held its

last meeting just before the event and will meet again in early June. Governor Hicks said the Access to Justice Committee is working with Administrative Director of the Courts Jari Askins on creating uniform forms for court clerks. Governor Morton said the Legislative Monitoring Committee will have a debriefing meeting after the legislative session ends with the date tentatively set for Aug. 14. The committee also plans to offer training for attorneys on how to propose legislation and to repeat training for new legislators called Law School for Legislators. Rep. Chris Kannady, who is an OBA member, said he thinks it is a good idea. President Hays said about half the sections participated in a Section Leaders Council conference call. The focus of discussion was the Annual Meeting. Governor Fields said the Professionalism Committee has planned a three-hour afternoon CLE seminar for Sept. 21. They are working with the OBA CLE Department.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx updated the board on pending civil litigation wherein the OBA is a defendant in a civil matter pending in Oklahoma County. A written report of Professional Responsibility Commission actions and OBA disciplinary matters for April was submitted to the board for its review.

PROPOSED AMENDMENTS TO RULES FOR THE COMMITTEE ON JUDICIAL ELECTIONS

Judge David B. Lewis said Judge Linda Morrissey presented recommendations to the OBA Bench and Bar Committee, chaired by Prof. David Swank and himself, for amendments to the Rules for the Committee

on Judicial Elections. Judge Morrissey explained the amendments are being proposed for the Committee on Judicial Elections, formerly known as the Baker Commission. She said the proposed changes involve the disclosure of the hearing panel's report and public statement of the appellate panel's final decision that would prevent misuse of the current rules and allow for discretion in publishing reports. She described two examples of abuses. The board approved the rule amendments that will be submitted to the Supreme Court for its consideration.

APPLICATIONS TO SUSPEND AND STRIKE BAR MEMBERS FOR FAILURE TO PAY DUES AND COMPLY WITH MCLE REQUIREMENTS

Executive Director Williams reviewed the process for suspension and striking of bar members and the extensive efforts made to notify members before applications are filed. The board authorized Executive Director Williams to file the applications to suspend for failure to pay 2018 dues, to suspend for failure to comply with 2017 MCLE requirements, to strike for failure to reinstate after suspension for nonpayment of 2017 dues and to strike for failure to reinstate after suspension for noncompliance with 2016 MCLE requirements.

APPOINTMENTS TO PROFESSIONAL RESPONSIBILITY TRIBUNAL

The board approved President Hays' appointments of Jeff Trevillion, Oklahoma City, and Melissa DeLacerda, Stillwater, to the PRT with terms to expire 06/30/2021.

UPDATE ON LEGISLATIVE SESSION

Executive Director Williams briefed board members on recent legislative actions and said there is the possibility of a special session.

NEW MEMBER BENEFITS

Executive Director Williams said the OBA Member Services Committee reviewed six products that are online practice management solutions and recommended them. He said an exclusive arrangement with one vendor is no longer a good strategy. A better strategy for the association is to offer member discounts on a variety of products that allow bar members to take advantage of the products that are the best fit for their practices. The OBA has executed agreements with Clio, CosmoLex, MyCase, Practice Panther, Rocket Matter and Zola Suite, which provide the OBA with a royalty based on member utilization. Management Assistance Program staff members will help members train on these products.

A better strategy for the association is to offer member discounts on a variety of products that allow bar members to take advantage of the products that are the best fit for their practices.

The Oklahoma Bar Association Board of Governors met Thursday, June 21, at the River Spirit Casino Resort in Tulsa in conjunction with the Solo & Small Firm Conference.

REPORT OF THE PRESIDENT

President Hays reported she delivered the welcoming remarks at the Sovereignty Symposium and presented 50-, 60- and 70-year service pins at the Oklahoma County Bar Association awards luncheon.

REPORT OF THE VICE PRESIDENT

Vice President Stevens reported he attended the joint OBA-OBf event at the ballpark and the June Cleveland County Bar Association meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Chesnut reported he attended the joint OBA-OBf event at the ballpark, Sovereignty Symposium and OAMIC Board of Directors meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the YLD board meeting, Legislative Monitoring Committee meeting, monthly staff celebration, meeting with a LHLAP service provider regarding proposed changes in program services, meeting with the OBA's legislative liaison and Oklahoma County Bar Association awards luncheon. He conducted staff evaluations and spoke at the HOBY Leadership Conference.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Muskogee County Bar Association meeting. **Governor Hermanson**, unable to attend the meeting, reported via email he spoke to the Perry Lions Club and chaired both the

Noble County Bar Association meeting and District Attorney Council's Technology Committee meeting. He attended the Ponca City Chamber of Commerce board meeting, OBA Legislative Monitoring Committee meeting by phone, District Attorneys Council board meeting and Oklahoma District Attorneys Association board meeting. **Governor Hicks** reported he attended the Tulsa County Bar Foundation golf tournament wrap-up meeting, TCBA special meeting to appoint a new executive director, TCBF Board of Trustees meeting, Tulsa race riot memorial event, Tulsa County Judicial Election Forum and TCBA interior renovation meeting. **Governor Hutter** reported she attended the OBA Women in Law Committee meeting and the Cleveland County Bar Association executive meeting and regular meeting. **Governor Morton** reported he attended the Legislative Monitoring Committee meeting and Oklahoma County Criminal Defense Lawyers Association monthly meeting. **Governor Oliver** reported he attended the Payne County Bar Association meeting and OBA Lawyers Helping Lawyers Assistance Program Committee meeting. **Governor Williams** reported he attended all-day interviews of candidates for the Tulsa County Bar Association/Tulsa County Bar Foundation executive director position, TCBA Board of Directors and Energy Law Section May meetings and OBA Diversity Committee meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Richter reported he chaired the YLD board meeting and attended the YLD Wills for Heroes Committee meeting. He just came from the Wills for Heroes event in Broken Arrow at which nine YLD members

prepared wills, powers of attorney and advanced directives for 16 first responders at no cost.

BOARD LIAISON REPORTS

Governor Oliver said the Lawyers Helping Lawyers Assistance Program Committee is working on training for member counseling and preparing for the ABA to come evaluate the program. The hotline is receiving increased calls about aging lawyers. The committee is meeting tomorrow at the conference and is considering another vendor to handle the hotline calls. Governor Hutter reported the Women in Law Committee has met twice since the last board meeting. The keynote speaker for its upcoming conference is Lis Wiehl, former Fox News legal analyst who will speak on "Breaking the Glass Ceiling." They have added a new event, which is a clothing drive for Suited for Success in August. Governor Williams said the Diversity Committee has confirmed a speaker for its awards dinner in the fall. Planning continues for its boot camp, which is a free review class for college students taking the LSAT exam. The committee is seeking award nominations for its Diversity Awards, and he will email information to the board. Governor Oliver said the Law-Related Education Committee is reviewing its webpages and advising OBA staff of updates, so updated content can be created for the OBA's new website. Governor Morton said the Legislative Monitoring Committee will hold a debrief session on Aug. 14 at the bar center.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the OBA is still involved in litigation as an association, and she shared details with board members. A written report of Professional Responsibility

Commission actions and OBA disciplinary matters for May was submitted to the board for its review.

APPOINTMENTS TO THE PROFESSIONAL RESPONSIBILITY TRIBUNAL

The board approved the recommendations of President Hays to reappoint Gerald L. Hilsher, Tulsa, and to appoint Roy D. Tucker, Muskogee, with terms expiring 6/30/2021, and Linda Pizzini, Yukon, to replace Murray Abowitz, whose term expires 6/30/2019.

BUDGET COMMITTEE APPOINTMENTS

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

House of Delegates members – Brandi Nowakowski, Shawnee; Dietmar Caudle, Lawton; Brian T. Hermanson, Newkirk; James R. Hicks, Tulsa; and Angela Ailles Bahm, Oklahoma City

Board of Governors – Nathan Richter, Mustang; Alissa Hutter, Norman; and Matthew C. Beese, Muskogee

Attorney Members – Sonja Porter, Oklahoma City; Jeremy Beaver, McAlester; Cody Hodgden, Woodward; and Susan Shields, Oklahoma City.

LEGAL INTERNSHIP COMMITTEE ANNUAL REPORT

Governor Hennigh reported the Legal Internship Committee has prepared its annual report for July 1, 2017 – June 30, 2018 to the Supreme Court. In 2016-2017 the committee worked toward proposed rule changes to enable more out-of-state law students the opportunity to participate as licensed legal interns, which the Supreme Court approved. A

revised rule allows those applying for academic licensure the option of submitting state-issued criminal background reports in lieu of an approved law student registration through the Board of Bar Examiners. In July 2017 the committee approved a new regulation that outlines procedures for submission and review of the background reports. The board accepted the committee's report.

CONTINUING LEGAL EDUCATION 2017 ANNUAL REPORT

Educational Programs Director Damron said although it is getting more difficult to compete with the increasing number of approved providers and free CLE available, OBA CLE remains the largest provider of CLE for Oklahoma attorneys. Programs are offered in a variety of formats – in person, live webcasts, audio, on-demand archived programs available 24/7 and in-house replays. The total number of people attending in-person seminars declined in 2017 in part because the Supreme Court did not cosponsor free movie nights, which were very popular. She said seminars in Tulsa are a hard sell because the county bar provides 12 hours of free CLE with bar membership. OBA sections continue to offer free CLE to section members, and typically only five sections partner with the CLE Department.

Overall, there was a slight decrease in net revenue, but online participation continues to grow. President-Elect Chesnut said next year a task force will be created to review CLE and to make recommendations. He asked board members to let him know if they have an interest in this subject. Director Damron announced as the result of poor customer service and quality of service that has deteriorated, the OBA is changing back to InReach, the OBA's original vendor

for online CLE programs. The transition will take place by July 1, which will be a significant savings each month. She said the magazine showcasing fall CLE programs will be coming out in August.

LAW DAY REPORT

Law Day Committee Co-Chairs Roy Tucker and Kara Pratt reviewed the results of this year's Law Day events. Highlights from the report were 909 contest entries from 55 schools in 19 counties. The volunteer efforts of 239 lawyers giving free legal advice in the Ask A Lawyer statewide project helped 1,418 people who called and 361 people who emailed legal questions. Lawyers volunteered 515 hours and donated \$77,325 in billable hours. The *Ask A Lawyer* TV show on OETA included segments on mental health court, estate planning and expungement. Promotion efforts resulted in an estimated 4.51 million impressions. The Law Day Committee was thanked for its work on the successful project.

RULES ON JUDICIAL ELECTIONS

Executive Director Williams suggested the board might want to reconsider the proposed amendments for the Committee on Judicial Elections suggested by the Bench and Bar Committee that were sent to the Supreme Court following last month's meeting. Discussion followed. The board voted to recall the information sent to the Supreme Court.

NEXT MEETING

The Board of Governors met in July via BlueJeans conferencing. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, Aug. 24, in Duncan.

Why We Invest in Oklahoma Courts

By Candice Jones-Pace

IMAGINE THE ANXIETY OF having one cassette tape left to record hearings on obsolete equipment or presenting your side of an important case with a malfunctioning audio/video system. These stories, along with many similar ones, are far too common in Oklahoma courtrooms. The phrase “we are experiencing technical difficulties” is popular among court staff who are doing their best to operate as efficiently as possible using antiquated equipment. Due to budget restraints, funds are not available

to make technological updates causing court staff to worry about future hearings and heavy caseloads.

In 2008, the Oklahoma Bar Foundation created a Court Grant Fund to help remedy issues like these. Ten years later, we have provided 54 of the 77 counties with grants totaling close to \$800,000. Helping improve the administration of justice in the Oklahoma court system has become a big part of the OBF mission, and it is our goal to provide all 77 Oklahoma counties access to the technology they need.

The five 2018 court grant recipients, each with unique needs, collectively handle over 242,000 cases per year. These heavy caseloads and the tech-related problems the courts experience remind us why we invest in Oklahoma courts.

These are the real stories of our 2018 grantees.

LINCOLN COUNTY DISTRICT COURT

Grant Amount:	\$18,042
Grant Type:	Audio/Video Renovation
Cases Per Year:	3,500
People Impacted:	2,500

In the Lincoln County District Court, it is a common occurrence to have major delays during jury terms because of technical difficulties. The audio system consists of a battery-operated microphone with limited reach making it difficult to hear. The visual system is 20 years old, and each party must provide their own access to the screen by running a set of cables across the courtroom floor. This is not only time consuming, but poses a hazard to those walking through the courtroom. This grant will fund a complete audio/video renovation with wireless capabilities.



Lincoln County bar members in front of the courthouse's newly installed audio/video equipment are (from left) Court Clerk Cindy Kirby, Larry Lenora, Sarah Bridge, Patrick Thompson, Judge Cindy Ashwood, Judge Sheila Kirk, Assistant District Attorney Patricia High and Charles Thompson.

OKFUSKEE COUNTY DISTRICT COURT

Grant Amount: \$17,889.63
Grant Type: Video-Conferencing System
Cases Per Year: 1,500
People Impacted: 5,000

In Okfuskee County, construction is underway for a new jail located several miles away from the county courthouse. Court staff worries when the new jail is complete, funds will not be available to hire enough adequately trained deputies and jailers to safely and effectively hold court on a consistent basis. This issue will not only impair their ability to hold hearings in a timely and organized manner, but could create public safety concerns by transporting inmates to and from the courthouse daily. This grant will fund a video-conferencing system allowing criminal hearings to be held via video conference.

OKLAHOMA COUNTY LAW LIBRARY

Grant Amount: \$1,347
Grant Type: Operating System Update and Repairs for Public Access Computers
Cases Per Year: 135,000
People Impacted: 60,000

The Oklahoma County Courthouse is a very busy place with 990,000 people reported coming through the doors in 2017. The Law Library Public Access Computer Room, previously funded by an OBF court grant, provides a place for attorneys and pro se litigants to access the Westlaw and LexisNexis databases. The law library reports the Westlaw database has been



Oklahoma County Law Library staff member Jovanna Johnson on one of 10 public access computers.

accessed 58,000 times in the last six months. This grant will update the current operating system on each computer which will increase security, program usability and website compatibility.

PAWNEE COUNTY DISTRICT COURT

Grant Amount: \$9,217
Grant Type: Courtroom Audio/Visual Equipment
Cases Per Year: 2,890
People Impacted: 3,000

At the Pawnee County District Court, each attorney and the DA must bring their own equipment to display exhibits, play video depositions or present audio/video evidence to the court. This process makes each trial very time consuming especially with jurors viewing exhibits one at a time. This grant will fund audio/visual equipment for the main courtroom which will improve sound during testimony for the judge and court reporter. The large screen will allow jurors to simultaneously view exhibits.

TULSA COUNTY DISTRICT COURT

Grant Amount: \$5,445
Grant Type: Interactive Display Board
Cases Per Year: 100,000
People Impacted: 1,500



Three of the 10 public access computers at the Oklahoma County Law Library.

The Tulsa County District Court wants to level the playing field between the average litigant and litigants in high-dollar civil trials. As it stands now, the average litigant is provided a laptop for use in trial with a presentation projector. The grant for an interactive display board will give both sides equal advantage to present evidence in both jury and nonjury trials.

INTERESTED IN APPLYING FOR AN OBF COURT GRANT?

District and appellate courts in Oklahoma can apply annually for grant funding for courtroom technology and needs related to the administration of justice. The OBF will be accepting applications in the spring of 2019. Follow us on Facebook, Twitter and LinkedIn to get grant updates and announcements. You can also email us at foundation@okbar.org to be placed on a notification list. We will email you the link for the court grant application once it is live.

For more information about court grants visit www.okbarfoundation.org/grants/court-grants.

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



WAYS TO SUPPORT THE **OKLAHOMA BAR FOUNDATION**



Fellows Program

An annual giving program for individuals



Community Fellows Program

An annual giving program for law firms, businesses and organizations



Memorials & Tributes

Make a gift in honor of someone — OBF will send a handwritten card to the honoree or their family



Unclaimed Trust Funds

Direct funds to the OBF by mailing a check with the following information on company letterhead: client name, case number and any other important information



Cy Pres Awards

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



Interest on Lawyer Trust Accounts

Prime Partner Banks give higher interest rates creating more funding for OBF Grantees. Choose from the following Prime Partners for your IOLTA:

**BancFirst • Bank of Oklahoma • MidFirst Bank • The First State Bank • Valliance
First Oklahoma Bank of Tulsa • City National Bank of Lawton • Citizens Bank of Ada
First Bank and Trust Duncan • Grand Savings Bank**



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Summertime Edition

By Nathan D. Richter



YLD members attending the Midyear Meeting enjoyed the camaraderie of a social event at the Flying Tee in Tulsa.

IT IS HOT! HOT OFF THE PRESS

That is. Despite vacations, pool parties and the general summer shenanigans we all enjoy while the kids are out of school, the YLD has continued to meet and work throughout the summer. Most recently, the YLD held its Midyear Meeting in June at the River Spirit Casino in Tulsa. The meeting was held in conjunction with the Solo & Small Firm Conference. For those of you able to attend, I know you had a wonderful time, and it was fantastic getting to see you. For those of you who did not have the chance to attend, mark your calendars for June 20-22, 2019. You will not regret it. The Solo & Small Firm Conference is the perfect opportunity to collaborate and get to know lawyers from across Oklahoma.

BAR EXAM SURVIVAL KITS

July means bar exam preparations have begun! The YLD prepared and distributed the bar exam survival kits to all of the people taking the Oklahoma bar exam. With hundreds of eager applicants sitting for the bar exam at testing sites in Oklahoma City and Tulsa, the bar exam survival kits program is no small undertaking. YLD board members assembled the kits prior to our July meeting using a highly sophisticated assembly line operation that would put Ford Motor Co. to shame! In all seriousness, only the diligent, hard work of our board members makes the operation a success, and their selfless sacrifice of summer weekend time with their families makes this project possible.



YLD board members gathered on a Saturday to stuff survival kits for students taking the bar exam.

YOUNG ADULT GUIDE

Our 2017 YLD Chair Lane Neal gave us the gift that keeps on giving! Mr. Neal lead the charge to update the "Young Adult Guide," a YLD publication with the purpose of assisting young people with their transition to adulthood. The YLD expanded this project by working with our application vendor to develop the Young Adult Guide application first for iPhone users and now for Android devices. Now, the guide may be downloaded on all mobile devices thereby allowing greater and more convenient access to its users.

WILLS FOR HEROES

Many moons ago, the division assumed responsibility for the Wills for Heroes project. For those of you who may not be familiar with the program, Wills for Heroes is designed to provide free wills to emergency personnel in Oklahoma. For more information, go to the YLD's committees and projects webpage. Recently, the YLD conducted a Wills for Heroes event in Broken Arrow serving Broken Arrow's finest by providing free wills to the city's first responders. The event was a success, and there are plans being developed for a second Wills for Heroes event in Tulsa. If you are interested in helping with these events, contact me or Dylan Erwin at derwin@holladaychilton.com for more information.

It has been a busy but fulfilling summer, and the YLD continues to set the standard for service. The young lawyers are dedicated to advancing the legal profession in Oklahoma while adhering to the profession's creed, values and ideals. While my tenure as YLD chair is more than halfway complete, working with the young lawyers has been and will continue to be my greatest honor. We can hardly contain our excitement for what's to come.

Mr. Richter practices in Mustang and serves as the YLD chairperson. He may be contacted at nathan@dentonlawfirm.com. Keep up with the YLD at www.facebook.com/yld.



JAMES WILLIAMSON NAMED SECRETARY OF STATE

Gov. Mary Fallin named James Williamson, who has served as her general counsel, as secretary of state. As secretary of state, he will serve as a senior adviser to the governor on policy, economic and legal issues.

From 2010 to 2012, Mr. Williamson served as senior policy analyst and chief legal counsel to then-Senate President Pro Tempores Glenn Coffee and Brian Bingman.

"James, as my general counsel, is a trusted adviser to my administration," Gov. Fallin said. "I appreciate his legal and legislative knowledge. As secretary of state, he will be in a better position to help in my efforts to implement fiscally conservative, pro-growth and conservative policies."

Before his gubernatorial appointment, he had been in private practice since 1975. He served 18 years in Oklahoma's Legislature, representing Tulsa in both the Oklahoma House of Representatives and the state Senate.

"I've enjoyed serving the governor, and am honored that she entrusted me with this added responsibility," Mr. Williamson said. "I look forward to having a more active role in helping her bring new jobs and additional opportunities to our state."

Mr. Williamson earned his bachelor's and law degrees from TU.



JIM ROTH APPOINTED OCU SCHOOL OF LAW DEAN

Jim Roth has been appointed as OCU's next law dean. Mr. Roth, a former Oklahoma County commissioner and Oklahoma Corporation commissioner, began his term as dean July 1.

"Jim's appointment follows a thorough national search process and his selection from the robust pool of applicants is a testament to his strong leadership skills and his vision to grow OCU law," OCU Past President Robert Henry said.

Mr. Roth is an alumnus of the OCU School of Law, earning his J.D. in 1994. He also holds graduate certificates from Harvard University's Kennedy School of Government, the United States Air War College's National Security Forum at Maxwell Air Force Base and the Institute of Public Utilities at Michigan State University.

In 2017, he served as the OCU School of Law inaugural distinguished practitioner in residence, teaching a class on energy regulation. He serves on the boards of United Way of Central Oklahoma, Central Oklahoma Humane Society and the Arts Council of Oklahoma City, among others.

Oklahoma Bar Association
urges caution regarding

SQ788

OBA URGES CAUTION REGARDING SQ788

Following the passage of SQ 788, a working group was established, and President Hays called a meeting to request the Rules of Professional Conduct Committee prepare language regarding the issue to be presented to the House of Delegates during the Annual Meeting. Until then, the OBA urges caution due to ramifications of state and federal law being in conflict. OBA members may also want to contact their malpractice insurance carrier if they intend to give advice or provide representation on issues relating to the passage of the state question. Members may also contact the OBA ethics counsel at ethics@okbar.org.

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.

OBA MEMBER REINSTATEMENTS

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

Jade Caldwell
OBA No. 31820
12316A N. May Ave., Ste. 216
Oklahoma City, OK 73120

Sarai Cook
OBA No. 31374
413 W. Britton Rd., Apt. 316
Oklahoma City, OK 73114

Charles N. Cottrell
OBA No. 32588
4511 Briarwood Terrace
Marshall, TX 75672

Grant Chase Garrard
OBA No. 30085
11248 Broomfield Ln., Unit 216
Broomfield, CO 80021

Joyce Ann Good
OBA No. 14722
1705 Smoking Tree Road
Moore, OK 73160-5725

John Thomas Green
OBA No. 32944
121 E. Grand Avenue
Ponca City, OK 74601

James Michael Grier
OBA No. 20916
3515 W. 75th Street, Suite 102
Prairie Village, KS 66208

Jacob Russell Lee Howell
OBA 30874
P.O. Box 767
Van Buren, AR 72957-0767

Katherine Eileen Koljack
OBA No. 31123
1543 S.W. Blvd., Apt. 9J
Tulsa, OK 74103

Michelle Lee Lester
OBA 18582
2317 S. Jackson, Suite 322
Tulsa, OK 74107

Randolph Lee Marsh
OBA No. 17313
5 Timber Creek Circle
Shawnee, OK 74804

Nathan Andrew McCaffrey
OBA No. 20090
112 N.E. 4th St.
P.O. Box 1739
Guymon, OK 73942

Jessica C. Ridenour
OBA No. 20758
1617 S. Cheyenne Ave.
Tulsa, OK 74119

Demetria Nicole Williams
OBA No. 20942
P.O. Box 5894
Albany, GA 31706

Kajeer Yar
OBA No. 18162
2651 E. 66th Street
Tulsa, OK 74136

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, Sept. 3, in observance of Labor Day. Be sure to docket the OBA Annual Meeting to be held in Tulsa Nov. 7-9.

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 and @OKBarAssociation on Instagram.



HELP YOUNG ADULTS UNDERSTAND THEIR RIGHTS AND RESPONSIBILITIES

Do you know a young adult or someone who soon will be? The Young Lawyers Division has updated the Young Adult Guide, and it is now available as a mobile app. The app is full of helpful legal information

young adults need and will be updated to keep pace with changes in the law. It is available for all devices. If you know students, parents, teachers or administrators who could use the app, it can be found by searching for "OBA Young Adult Guide" in the App Store and Google Play.

LHL DISCUSSION GROUP HOSTS SEPTEMBER MEETING

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

OBA MEMBER RESIGNATIONS

The following members have resigned as members of the association and notice is hereby given of such resignation:

Seth Brandon Baer
OBA No. 30333
2358 S. Delaware Ct.
Tulsa, OK 74114

Blake Marcus Bostick
OBA No. 13638
1302 Nadine
Ada, OK 74820

Steven Edward Bracklein
OBA No. 15116
P.O. Box 172
Victor, CO 80860

Christina Michelle Bray
OBA No. 16184
P.O. Box 341
Temple, PA 19560

Mary Ellen Christopher
OBA No. 33329
Shawnee County Courthouse
200 S.E. 7th Room B6
Topeka, KS 66603-3922

Chris A. Clements
OBA No. 17775
2029 Vanesta Pl.
Manhattan, KS 66503-0447

Rodney Lin Cook
OBA No. 1872
1212 N. Eastern Ave.
Oklahoma City, OK 73131

Rachel Therese Csar
OBA No. 22538
1820 E. Bell DeMar Drive, Apt. 221
Tempe, AZ 85382

Kelsey Dian Foligno
OBA No. 22385
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Laytonsville, MD 20882

Lucia Alexandra Walinchus Thayer
OBA No. 32162
5851 Copper Ct.
Grove City, OH 43123

ON THE MOVE

Alexandra G. Ah Loy and **Erin Blohm** were named partners with Johnson Hanan Vosler Hawthorne & Snider. Ms. Loy and Ms. Blohm's experience extends across all of the firm's practice areas with a focus on medical malpractice defense, civil rights defense, civil litigation and various in-house matters for corporate clients.

Robert E. Reavis II joined Morrow, Watson & James in Miami. He recently retired as associate district judge for Ottawa County and will be of counsel to the firm.

Rusty Smith opened Rusty Smith Law Group PLLC. The firm is located in Muskogee and the phone number is 918-912-2000. Mr. Smith focuses his practice on personal injury, catastrophic loss, wrongful death, insurance claims and general civil litigation statewide.

Robert Don Gifford opened the law firm of Gifford Law PLLC in Oklahoma City. The firm's practice will focus on federal criminal practice, tribal courts, family law, military law and civil rights. The firm can be reached at 405-810-5406.

Hetherington Legal Services PLLC has moved. Their new address is 301 E. Eufaula St., Norman, 73069, and their phone number is 405-329-6600.

Andrews Davis Law Firm has closed its doors after 77 years. The firm is thankful and proud of the role it has played in the business life of Oklahoma City and the state of Oklahoma.

Pamela Goldberg has been elected a new member of Hall Estill's Executive Committee, and **Samantha Davis, Kyle Freeman** and **Kent Gilliland** have been elected as new members of the firm's Board of Directors. Ms. Goldberg, a resident of Tulsa, practices primarily in the commercial transaction and commercial litigation areas. Ms. Davis concentrates her practice on estate planning, estate and trust administration, guardianship and taxation and works in the Tulsa office. Mr. Freeman, also Tulsa resident, concentrates his practice in the corporate and commercial area. Mr. Gilliland practices primarily in the banking and commercial areas and is located at the Oklahoma City office.

L. Mark Walker has been appointed chair of Crowe & Dunlevy's Energy, Environment & Natural Resources Practice Group. He will lead a team of more than 30 attorneys regarding energy and environmental matters.

Jeff Haughey and **A.J. Hofland** joined GableGotwals as of counsel in the Tulsa office, and **Jace White** joined the firm as an associate attorney in the Oklahoma City office. Mr. Haughey focuses his practice on mergers and acquisitions, securities and corporate matters. Mr. Hofland practices primarily general litigation, commercial law, white-collar criminal defense and government relations litigation. Mr. White practices general litigation.

Ryan Anderson joined McAfee & Taft's Tax and Family Wealth Group. His practice encompasses areas of individual and business taxation, tax structuring of business transactions, business entity selection and formation and the litigation of tax matters in state and federal courts.

Leslie L. Vincent joined the Department of Interior's Rocky Mountain Regional Solicitor's Office as an assistant regional solicitor. She will supervise the Federal and Indian Royalties Section.

Jesse Chapel joined Hartzog Conger Cason & Neville. He is a former shareholder of Andrews Davis and will join the firm's tax, estate planning and corporate law practice areas.

Mark B. Toffoli, formerly of counsel with Andrews Davis, joined the Gooding Law Firm PC. He will continue to represent debtors and creditors in bankruptcy proceedings and practice loan restructurings, business transactions and receivership and insolvency law.

Peter L. Scimeca, Ryan J. Duffy and **C. Morgan Dodd** joined Fellers Snider. Mr. Scimeca focuses his practice on criminal defense and business litigation. Mr. Duffy practices oil and gas law, estate planning and administration, federal and state tax, corporate organization, transactional law, real estate, securities, nonprofit organizations, commercial litigation and probate. Mr. Dodd has experience in oil and gas law and title examination.

Mike Turpen of Oklahoma City has been inducted into the TU College of Law Hall of Fame. This honor is bestowed annually to a small number of alumni and friends for their distinguished contributions to the legal profession and tireless support of the college of law.

Carl Buckholts, E.J. Buckholts II, Scott Stone, Carrie Hixon and Joe White received the Legal Aid Services Pro Bono Recognition Award. This award recognizes attorneys in the community who have offered outstanding pro bono services in the past year.

Cynthia Corley, who died earlier this year, was the recipient of the Stephens County Bar Association Liberty Bell Award. The Liberty Bell Award is given annually to recognize an outstanding member of the community for all the things they have done to give back. Ron Corley, Hank Corley and Cate Buckley accepted the award on behalf of Ms. Corley.

Robert Don Gifford of Oklahoma City was appointed civil district court judge for the Miami Tribe of Oklahoma. Mr. Gifford also serves as the chief judge for the Kaw Nation and as an associate justice for the Iowa Tribe Supreme Court.

Brandon Long of Oklahoma City was elected president of SouthWest Benefits Association. SWBA is an industry organization for benefits professionals. Mr. Long advises and represents clients in matters involving qualified retirement plans, health and welfare plans and executive compensation.

Edna Mae Holden of Enid has been elected to the Oklahoma Hall of Fame Board of Directors at the Gaylord-Pickens Museum in Oklahoma City. The OHF is tasked with “telling Oklahoma’s story through its people.”

Douglas J. Sorocco of Oklahoma City received the 14th annual Urban Pioneer Award. The award is given to individuals in the community who exemplify Oklahoma’s pioneering spirit with their leadership and commitment to urban revitalization.

Maren Minnaert Lively of Tulsa was selected to the 2018 professional class of “40 Under 40” by *Oklahoma Magazine*. The class represents the best the state has to offer in virtually all fields of business with a common interest to put Oklahoma on the map as a state of the future.

Sen. Kay Floyd has been elected Senate democratic leader for the 57th Oklahoma Legislature. She will be the first woman to lead a caucus in the Oklahoma Senate.

Angela Barker-Jones of Tahlequah received the Oklahoma Indigent Defense System 2018 John Adams Award for Outstanding Advocacy. This award honors an outstanding county contract attorney.

Holly Cinocca wrote *Greetings from LeFlore County*. The book details her family’s real-life adventures when her husband and law partner decides to become a United Methodist pastor in a small, rural Oklahoma town.

Brian K. Morton and Sonja Porter of Oklahoma City were awarded the Thurgood Marshall Appellate Advocacy Award from the Oklahoma Criminal Defense Lawyers Association. The award was for their constitutional challenge to Senate Bill 643 before the Oklahoma Supreme Court in *Hunsucker v. Fallin*.

AT THE PODIUM

Adria Berry of Oklahoma City presented concerns about the language in State Question 788 at public forums held in Edmond and Guthrie.

Alan Holloway of Oklahoma City spoke at the 42nd annual Advanced Estate Planning & Probate Seminar. The seminar is a four-day event attended by attorneys throughout the state of Texas and provides

in-depth coverage of issues in estate planning and probate, including tax planning, charitable gifts, fiduciary issues and trust administration.

IN MEMORIAM

Jerry Charles Blackburn of Edmond died Aug. 2, 2017. He was born Sept. 6, 1948, and attended John Marshall High School. He received his J.D. from the OCU School of Law. Friends and family will remember him for his compassion, lively and kind personality and his loyalty.

Justin Michael Blumer of Mannford died May 17. He was born Aug. 19, 1987, in Waynesburg, Pennsylvania. He graduated from West Green High School in 2005. He received his Bachelor of Arts in 2009 and his J.D. in 2013, both from OCU. Mr. Blumer worked for Sheehan Pipeline Construction Co. and then Manhattan Construction Co. in Tulsa where he worked until his death. He enjoyed taking his Anatolian shepherd fishing, going home to visit Pennsylvania, spoiling his nephew, discussing politics and all sports.

Donald Lee Cooper of Tulsa died June 14. He was born Dec. 24, 1938, in Oklahoma City. He graduated with his J.D. from the OCU School of Law in 1970. **Mr. Cooper was a veteran of the U.S. Army and served in Korea.** He will be remembered as a dedicated worker and man who loved his family and friends.

Haley Amy James of Oklahoma City died Oct. 10, 2014. She was born Jan. 9, 1965. She graduated from Cassady High School and attended Stephens College in Columbia, Missouri. She later attended the OCU School of Law and graduated with her J.D. in 1999. She had a passion for taking care of the disenfranchised and unfortunate and was recognized

for her work as a child advocate in the Oklahoma family court system. She loved horseback riding instruction and worked with a number of students who found the instruction therapeutic and healing.

Victor Roy Kennemer of Wewoka died June 23. He was born April 15, 1944, in Charlottesville, Virginia. He attended Shaddick, a military high school in Minnesota, OU and graduated from the OCU School of Law in 1973. **He served as a commissioned officer in the U.S. Army.** Mr. Kennemer served for 10 years as the municipal judge of Wewoka and as president of the Seminole County Bar Association. He was actively involved in the OBA serving on many committees and sections including the Real Property Section, Title Examination Standards Committee, Legislative Monitoring Committee and many more.

Paul M. Kimball of Oklahoma City died June 15. He was born Nov. 7, 1942, in Tulsa. He graduated from Central High School in 1961 and went on to attend OU. He received his J.D. from the OCU School of Law in 1969. Mr. Kimball furthered his law career as a partner with Kimball, Wilson and Walker and was a member of the Mineral Lawyers Society of Oklahoma. He was an avid outdoorsman and a loving husband, father and grandfather. Memorial contributions may be made to the American Cancer Society, Alzheimer's Association or Wounded Warrior Project.

Avis Lynn Swander Miller of Tulsa died June 28. She was born April 9, 1958, in Rolla, Missouri. She graduated from Bixby High School, OSU and the O.W. Coburn Law School at Oral Roberts University. Ms. Miller practiced law for several years before deciding to stay at home with her children. Later, she returned to work at the TU College of Law Boesche Legal Clinical. She loved traveling, reading, watching movies, attending TU basketball games and her church. She will be remembered for her hyperbolic descriptions, kindness, generosity and fun-loving personality. Memorial contributions may be made to TU, 800 South Tucker Drive, Tulsa, 74104.

Michael W. Mitchel of Woodward died July 1. He was born Oct. 12, 1948, in Perryton, Texas, and graduated from Perryton High School in 1966. He received his Bachelor of Science in 1970 from Northwestern Oklahoma State University. In 1973, Mr. Mitchel received his J.D. from the OU College of Law and moved to Woodward where he began his law practice. He was actively involved with the OBA having served as OBA vice president and on the OBA Board of Governors. He had a love for public service, which allowed him to impact public education as he served on the Oklahoma State Board of Vocational and Technical Education, Oklahoma State Board of Education and the Board of Regents for the Regional University System of Oklahoma. Memorial Contributions may be made to the Michael W. Mitchel Classic Bowl Foundation Scholarship.

Ellen Annette Marie Phillips of Yukon died May 28, 2014. She was born Nov. 17, 1967, in Kingman, Kansas. She was a graduate of El Reno High School. She received her J.D. from the OU College of Law in 1993. Ms. Phillips was the assistant attorney general for the Environmental Protection Agency and was a member of the St. George Greek Orthodox Church.

Christopher William Venters of Luther died June 7. He was born Dec. 26, 1949, in Puerto Rico. He graduated from OU and then Southern Methodist University Dedman School of Law in 1978. Upon graduating, he practiced law first with Legal Aid Services and then with his father, Harley E. Venters, for 20 years. He was working as a public defense attorney for Oklahoma County at the time of his death. He was passionate about his family, his law practice and politics and dedicated the majority of his life to helping animals and people.

Gloria S. White of Edmond died May 24. She was born Aug. 1, 1952, in Oklahoma City. She graduated from NW Classen High School in 1970, OCU in 1974 with a degree in biology and the OU College of Law in 1986. Ms. White served as assistant general counsel for the OBA and later as a staff attorney and ombudsmen for OU. She used her strong will and legal training to defend and assist anyone in need. She loved to garden, play bridge and her family. Memorial contributions may be made to Sister Rosemary's Sewing Hope Foundation.

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 to:

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

Articles for the October issue must be received by Sept. 4.



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OKLAHOMA BAR JOURNAL

EDITORIAL CALENDAR

2018 ISSUES

SEPTEMBER

Bar Convention

Editor: Carol Manning

OCTOBER

Sports Law

Editor: Shannon Prescott
shanlpres@yahoo.com

NOVEMBER

Torts

Editor: Erin L. Means
erin.l.means@gmail.com

DECEMBER

Ethics & Professional Responsibility

Editor: Leslie Taylor
leslietaylorjd@gmail.com

2019 ISSUES

JANUARY

Meet Your Bar Association

Editor: Carol Manning

FEBRUARY

Estate Planning

Editor: Amanda Grant
amanda@spiro-law.com
Deadline: Oct. 1, 2018

MARCH

Criminal Law

Editor: Aaron Bundy
aaron@fryelder.com
Deadline: Oct. 1, 2018

APRIL

Law Day

Editor: Carol Manning

MAY

Technology

Editor: C. Scott Jones
sjones@piercecouch.com
Deadline: Jan. 1, 2019

AUGUST

Appellate Law

Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2019

SEPTEMBER

Bar Convention

Editor: Carol Manning

OCTOBER

Indian Law

Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: May 1, 2019

NOVEMBER

Starting a Law Practice

Editor: Patricia Flanagan
Patriciaaflanaganlawoffice@cox.net
Deadline: Aug. 1, 2019

DECEMBER

Ethics & Professional Responsibility

Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2019

*If you would like to write an article on these topics,
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5 Ways to Make Your Days Better

Life is tough and days are unpredictable. Sometimes your day can be going smoothly when suddenly something happens and changes your day for the worst. Other times everything seems to go wrong all-day long. Here are 5 steps you can take to make your days better.

[Goo.gl/19zf73](https://goo.gl/19zf73)



Avoid Being Overwhelmed by Complex Tasks

Your ability to deal with things when working on a large job or in a high-stress situation can say a lot about you. Most of the time, we learn how to handle stress as time goes on, however, this is not always the case. Here are a few strategies to try when things seem to be getting out of hand.

[Goo.gl/QwCTd6](https://goo.gl/QwCTd6)



The Secret Science of Mingling

Sweaty palms, butterflies, dry mouth and heart palpitations can all occur just at the thought of having to walk into a room full of strangers and start conversation. Networking is hard, and we all hate it. Bull Garlington, an award-winning writer, explains the science of mingling and how to overcome your fear of networking.

[Goo.gl/un5sB](https://goo.gl/un5sB)



Understanding Social Media Algorithms

The U.S. is the largest social media advertising market in the world. Because of this, it is important for organizations to develop a strong social media strategy and to have knowledge of algorithms and how they work. Check out this quick guide to each social media platform's algorithm.

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

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POSITIONS AVAILABLE

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.

POSITIONS AVAILABLE

PROGRESSIVE, OUTSIDE-THE-BOX THINKING BOUTIQUE DEFENSE LITIGATION FIRM seeks a nurse/paralegal with experience in medical malpractice and nursing home litigation support. Nursing degree and practical nursing care experience a must. Please send resume and salary requirements to edmison@berryfirm.com.

THE LAW FIRM OF CHUBBUCK DUNCAN & ROBEY PC is seeking an experienced associate attorney with 1-3 years of experience. We are seeking a motivated attorney to augment its 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.

EXPERIENCED LITIGATION LEGAL ASSISTANT (minimum 3 years' experience) – downtown Oklahoma City law firm seeks litigation legal assistant with experience in civil litigation. Great working environment and excellent benefits. Salary commensurate with experience. Please send resume to Attn: Danita Jones, Chubbuck Duncan & Robey, P.C., located at 100 North Broadway Avenue, Suite 2300, Oklahoma City, OK 73102.

LANDOWNERFIRM.COM IS LOOKING TO FILL TWO POSITIONS in the Tulsa office: 1) a paralegal or legal assistant with strong computer skills, communication skills and attention to detail and 2) an attorney position – the ideal candidate will have excellent attention to detail with an interest in writing, drafting pleadings, written discovery and legal research. Compensation DOE. Please send resumes and any other applicable info to tg@LandownerFirm.com. Applications kept in strict confidence.

HARTZOG CONGER CASON & NEVILLE, AN OKLAHOMA CITY FIRM, SEEKS AN ATTORNEY with 5-10 years relevant experience to work in its corporate law practice area. Candidates must have a strong academic background, good research and writing skills and the ability to work in a fast-paced practice with frequent deadlines. The ideal candidate would have significant experience in M&A, private equity transactions and general corporate transactional work. Applications will be kept confidential. Send resume to Attn: Debbie Blackwell, HR Administrator, 201 Robert S. Kerr Ave., Suite 1600, Oklahoma City, OK 73102 or email to dblackwell@hartzoglaw.com.

POSITIONS AVAILABLE

SMALL EASTERN OKLAHOMA LAW FIRM, with multiple offices, is seeking associate to assist in general practice. Excellent opportunity for young lawyer to receive courtroom experience. Salary commensurate with experience. Please email resume to mclaughlinlaw@justice.com.

THE FIRM OF DEWITT PARUOLO & MEEK IS SEEKING AN ATTORNEY with a minimum of 1 years' 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, OK 73113 or by email to morton@46legal.com.

MCATEE & WOODS PC, AN AV RATED MIDTOWN OKC LITIGATION FIRM, seeks a lawyer with 3-5 years of experience, preferably in insurance defense work. Transmit a resume and writing sample to 410 NW 13th Street, Oklahoma City, OK 73103.

NORMAN BASED 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. No tax experience necessary. Position location can be for any of our Norman, OKC or Tulsa offices. Submit resumes to justin@polstontax.com.

THE LAW FIRM OF COLLINS, ZORN & WAGNER PC IS CURRENTLY SEEKING AN ASSOCIATE attorney with a minimum of 5 years' experience in litigation. The associate in this position will be responsible for court appearances, depositions, performing discovery, interviews and trials in active cases filed in the Oklahoma Eastern, Northern, and Western federal district courts and Oklahoma courts statewide. Collins, Zorn and Wagner PC, is primarily a defense litigation firm focusing on civil rights, employment, constitutional law and general insurance defense. Please send your resume, references and a cover letter including salary requirements to Collins, Zorn and Wagner, P.C., c/o Hiring Coordinator, 429 NE 50th, Second Floor, Oklahoma City, OK 73105.

POSITIONS AVAILABLE

ATTORNEY POSITIONS. The Office of Legal Counsel to the OSU/A&M Board of Regents has openings for two entry level attorney positions, one of which will office in Stillwater and the other in Tulsa. The Stillwater position will serve as a higher education generalist, dealing with a variety of legal issues, including, but not limited to, student conduct, open records, regulatory compliance, contracts, research agreements and intellectual property licensing. This position will work closely with and monitor outside counsel handling intellectual property and immigration issues as well. The Tulsa position will be dedicated to the OSU-Center for Health Sciences and will focus on regulatory compliance, contracts and healthcare law issues impacting a research center and Osteopathic Medical School. The precise duties assigned to both positions may vary from the above, based upon the experience and aptitude of the successful applicant. Each position requires a bachelor's degree and J.D./LL.B. degree from an accredited law school and membership in good standing in the Oklahoma Bar Association. Both positions also require superior oral and written communication skills, an ability to identify and resolve complicated, sensitive problems creatively and with professional discretion and an ability to interact and function effectively in an academic community. To receive full consideration, resumes should be submitted by Friday, Aug. 31, 2018. to: Attorney Search, Office of Legal Counsel, OSU/A&M Board of Regents, 5th Floor - Student Union Building, Stillwater, OK 74078. Additionally, applicants should submit a cover letter advising whether the candidate is applying for the Stillwater position, Tulsa position or both. The OSU/A&M Board of Regents is an Affirmative Action/Equal Opportunity/E-verify employer committed to diversity and all qualified applicants will receive consideration for employment and will not be discriminated against based on age, race, color, religion, sex, sexual orientation, genetic information, gender identity, national origin, disability, protected veteran status or other protected category. All OSU campuses are tobacco-free.

DOWNTOWN OKC FIRM SEEKS EXPERIENCED FAMILY LAW PARALEGAL with minimum of 3 years' experience. College degree and paralegal certification strongly preferred. Pay is commensurate with experience. Send resume to "Box FF," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

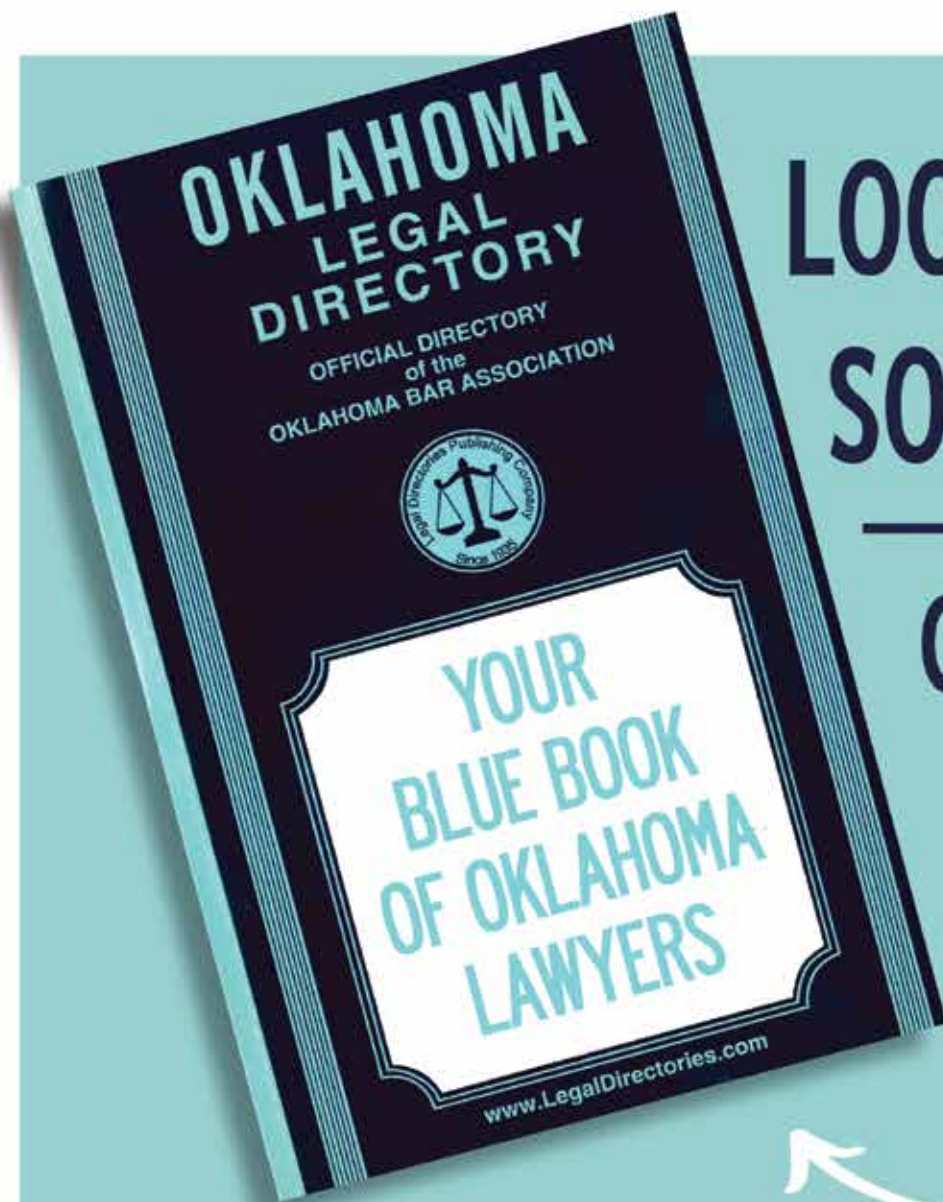
OKLAHOMA STATE BUREAU OF INVESTIGATION VACANCY ANNOUNCEMENT POSTING # 2018-12-U
POSITION TITLE: ASSISTANT GENERAL COUNSEL.
Salary: \$50,000- 72,000 with state employment benefits. Final salary commensurate with experience and qualifications Location: OSBI headquarters, Oklahoma City. The position primarily involves representation of the Oklahoma State Bureau of Investigation in expungement of criminal history arrest records litigation and in Self Defense Act representation at the district court and administrative level. Participate as a member of the legal unit staff to assist in addressing agency wide issues such as goals, budgets, legislation, etc. In addition, provide legal assistance to the OSBI chief legal counsel concerning OSBI litigation, draft and file court, legislative and administrative documents and research memoranda. Applicants should have between zero to five years' experience in the practice of law and exhibit an interest and aptitude for criminal justice law. Applicants must be admitted to the Oklahoma Bar Association. This position is established in the unclassified service. The selection process may consist of one or more of the following: oral interviews, performance examinations, written examinations and evaluations of training and/or education. Applicants meeting this criteria may apply by submitting a cover letter, resume, salary requirements and writing sample to Oklahoma State Bureau of Investigation, DeAnna Stillwell, HR Section, 6600 N. Harvey, Oklahoma City, OK 73116. Any qualified applicant with a disability may request reasonable accommodation to complete the application/interview process. The specific nature of the accommodation requested and the reason for the request should be provided at the time of initial application. Successful applicants must be willing to submit to a drug screen, polygraph examination, psychological evaluation (commissioned positions only) and a thorough background investigation. Certain events automatically disqualify an applicant, such as, felony conviction, admission of an undetected crime that, if known, would have been a felony charge, failure to pay federal or state income tax, positive confirmed drug urine test and illegal use of a controlled substance within certain time frames. Equal opportunity employer.

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OBA PRACTICE MANAGEMENT ADVISOR – The Oklahoma Bar Association is hiring a full-time practice management advisor (PMA) to work with attorneys and law office staff on improving law office systems and to take an active role in developing resources that assist lawyers in private practice. Outstanding verbal and written communication skills, including strong public speaking and presentation skills, are required. Job duties include speaking at CLEs around the state either alone or as part of a panel and working directly with lawyers and their staff to create or improve their docketing, conflicts of interest, accounting, billing and other law office systems. This includes answering questions by phone or email. Experience with and aptitude for law office technology (software, the cloud, hardware, social media) and law office systems is preferred, as is previous experience working as a lawyer in private practice. The position reports to the OBA Management Assistance Program director. Submit resume and cover letter outlining qualifications electronically to RameyM@okbar.org before Sept. 6, 2018, with PMA Search in the subject line.

THE OKLAHOMA OFFICE OF THE ATTORNEY GENERAL is currently seeking a deputy chief assistant attorney general for the Utility Regulation Unit in our Oklahoma City office. The successful candidate will advocate for utility customers in proceedings before the Oklahoma Corporation Commission, with some practice before state courts and federal administrative agencies. This position is also tasked with researching, analyzing and presenting complex financial and legal information. The Office of the Attorney General is an Equal Opportunity Employer and all employees are “at will.” A writing sample must accompany resume to be considered. Please send resume and writing sample to resumes@oag.ok.gov and indicate which particular position you are applying for in the subject line of the email.



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A Win's a Win

By Chance L. Deaton

MY FIRST CONTESTED hearing as a lawyer was representing a plaintiff on a forcible entry and detainer. I didn't expect it to be contested. It was on the small claims docket, but fresh out of law school and wet behind the ears, I was anxious about the hearing even before I knew it would be contested. I had no idea what to expect. You know that saying "Fake it until you make it"? I was hoping against hope that it would hold true and the faking would turn into making quickly,

through the docket, and I rose when he called my case, nervously responding, "Present for the plaintiff." After I sat down, another man stood and announced his presence on behalf of the defendant. My mind exploded. I was expecting an uncontested hearing. I wasn't prepared to argue the case against another attorney.

The judge instructed those involved in contested cases to go out in the hall and discuss settlement options. I walked out to the hall

and a disheveled tie that looked like a clip-on. We discussed the case but couldn't come to a solution, so I walked back to the courtroom to anxiously await my first "trial" experience.

While I waited for the judge to enter the courtroom, my mind raced. This other lawyer had to know more than me. He was older. He had to be more experienced, more knowledgeable, more articulate, more competent. About that time the judge walked in, and I no longer had time to worry about anything. The judge called us to the bench. I tensely presented my client's case. I have no idea what I said. I was so nervous it was like an out-of-body experience. At any rate, I said something, and then it was the opposing attorney's turn.

As he began to speak, the judge cut him off, apparently noticing the man's informal attire I had missed earlier. The judge said, "Wait a minute, are you a licensed attorney?" The man stammered and ultimately said, "No, but I've researched the Landlord Tenant Act, and I'm familiar with the laws."

The judge promptly dismissed the opposing "counsel" for the unauthorized practice of law, heard the defendant's futile arguments and then awarded judgment to my client. Hey, a win's a win, right?

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because the one thing I knew for sure was I hadn't yet "made it."

In the courtroom, as I was on the verge of hyperventilating from simulating all the possible disasters, the judge entered. He called

and nervously approached the man I understood to be the opposing counsel. I was so keyed up at the time that I failed to note the odd fact that the guy was not wearing a suit, just a rumpled white shirt





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