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JOURS 89-No. 23-September 2018



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TO BE HELD DURING THE 2018 ANNUAL MEETING

GETTING OUT OF THE WEEDS: What you need to know about the New World of Marijuana Regulation

WEDNESDAY, NOVEMBER 7

2 - 5 P.M.

Downtown Hyatt 100 East 2nd Street, Tulsa, OK

FOR INFORMATION OR TO REGISTER, GO TO WWW.OKBAR.ORG/CLE

in

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MCLE CREDIT 3/1

FEATURED PRESENTER AND MODERATOR: Lisa L. Pittman

Lisa is an accomplished commercial litigation and business attorney who runs the Austin, Texas, office for Feldmann Nagel Margulis. As her practice has begun to span all aspects of cannabis business law, Ms. Pittman now also works in the Boulder and Denver offices of Feldmann Nagel, LLC and Feldmann Nagel Public Affairs, LLC.

2:00 Greener Pastures: The Evolution of State and Federal Laws and Navigating Ethical Challenges

Lisa Pittman, Special Counsel, Feldmann Nagel Margulis, LLC, Austin, Texas

3:00 Oklahoma's Marijuana Law and Your Practice: Don't Go Up In Smoke

Get a first-hand overview of issues pertaining to enforcement and policy and address state laws and local policy governing medicinal marijuana. All traditional practice areas are implicated in the marijuana industry, and attorneys dealing with business formation, operation, litigation, insurance coverage, and other practice areas will examine how the overlay of conflicting federal and local marijuana laws impact their practice and the handling of cases.

Panel Members: Tom Bates, Interim Commissioner, Oklahoma Department of Health; Roger Beverage, President & CEO, Oklahoma Bankers Association; Virginia Henson, PHM Law Group, PC, Norman; Paul Middleton, Farmers Insurance Group, Oklahoma City; Kirk Turner, McAfee & Taft, Tulsa; More TBD

\$50 with Annual Meeting registration or \$75 without Annual Meeting registration if payment received by October 14th. A fee of \$25 will be assessed for CLE registrations received October 15th – November 7th; \$50 will be added for walk-ins.

THEME: OBA ANNUAL MEETING

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Editor: Carol Manning

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OBA Annual Meeting: Past, Present and Future

Y DAD TOOK ME TO MY FIRST OBA ANNUAL Meeting in 1993. I was a brand-new lawyer. I attended CLE, a luncheon and spent time with dad as he stopped to talk with fellow lawyers. I watched him have serious conversations with some colleagues and then engage in a group discussion recounting stories from recent trials or law school survival stories. Dad explained why it was important to attend the Annual Meeting each year. In addition to the CLE and OBA business, the networking and social connections made during the OBA Annual Meeting are invaluable resources to both newly admitted attorneys and long-time Annual Meeting attendees.

Dad passed away in April 1994. In November 1994, I went to the OBA Annual Meeting, where I attended the General Assembly that included the reading of the in memoriam (the names of lawyers who had passed during the last year) and heard his name read aloud. Since 1993, I have missed only six OBA Annual Meetings.

The 2018 OBA Annual Meeting will be held Nov. 7-9 at the Hyatt Regency in downtown Tulsa. The OBA Annual Meeting is a mix of past traditions – socializing with colleagues, law school lunches, hospitality suites, General Assembly and House of Delegates – with present day "upgrades" such as section and committee meetings, recognizing award recipients, Delegates Breakfast and CLE detailing cyber issues and medical marijuana in Oklahoma. The 2018 Annual Meeting will focus on the ever-changing future of our profession and our association.



Kimberly Halp

President Hays practices in Tulsa. kimberlyhayslaw@aol.com 918-592-2800

The Wednesday afternoon CLE will examine legal issues created by the passage of State Question 788, legalizing medical marijuana.

I attended the ABA Midyear Meeting in February, and I had the opportunity to hear Mark Lanterman's presentation about digital evidence, the digital underground, as well as his realistic advice for cyber protection. During his presentation, I noticed something about the audience – attendees were engaged, listening and *not* working on phones or laptops. After hearing his presentation, I knew Oklahoma attorneys needed the opportunity to be educated by Mr. Lanterman about the very real dangers to our practices and our clients' information with which we are entrusted.

The Thursday morning plenary CLE will examine digital evidence and cyber security, including Mr. Lanterman's presentation. During our Thursday Annual Luncheon, he will educate us on current developments in the digital underground and share recent highprofile cybercrime events, such as website breaches that have impacted courts and law firms.

Wednesday evening enjoy the President's Reception. Thursday evening the OBA, Oklahoma Bar Foundation and OBA sections are hosting a celebration with a 1980s throwback flair. You can come dressed as you are or throw on your best parachute pants, Ocean Pacific shirt and big hair. While you are digging out that '80s fashion, grab your favorite pictures of yourself during that decade and email them to lauras@okbar.org. Those pictures will be shown Thursday night as we socialize, eat and drink while listening to songs from the '80s.

The Delegates Breakfast, taking place Friday morning before our General Assembly, will feature speaker Ted Streuli and his humorous program "Fake News," how words change meaning without changing truthfulness. The election of OBA officers and anticipated resolutions to come before the House of Delegates will be two items on the agenda Friday morning. We need all county delegates or alternates to attend and participate in these important votes that will shape the future of the OBA and the profession.

More details about these exciting and informative events can be found in this issue and on the website at www.okbar.org/annualmeeting. Please mark your calendars, send in your registration forms or register online. I look forward to seeing you in Tulsa to honor our past, celebrate the present and build the future of the OBA!

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HIGHLIGHTS

Getting Out of the Weeds | 3-Hour CLE

Wednesday Afternoon

On Wednesday afternoon, join a host of experts for "Getting Out of the Weeds: What You Need to Know About the New World of Marijuana Regulation." The program will run from 2-5 p.m. Annual Meeting registrants receive an additional discount on CLE registration.



President's Reception

Wednesday Evening

Join President Kimberly Hays on Wednesday evening to catch up with friends from around the state at the President's Reception. The reception is free with Annual Meeting registration and includes heavy hors d'oeuvres and two beverage tickets per registrant. Then be sure to stick around to hit the hospitality suites and unwind with friends and colleagues.





Digital Evidence and Cybersecurity | 3-Hour CLE

Thursday Morning

Start Thursday morning with luncheon keynote speaker Mark Lanterman, who will present "The Internet of Things and Leveraging Digital Evidence." The internet of things has created an interconnected network of devices marked by an ever-expanding web of data. The average person now has vast amounts of data being created, collected and stored about them by laptops, smartphones and even our appliances and cars. The legal community is faced with the task of processing this information and determining its value. Mr. Lanterman will discuss the importance of digital evidence and electronically stored information and how to best utilize it in court. Calvin Weeks with Eide Bailly, Debbie Anglin with Anglin PR and Tom Vincent with GableGotwals will provide the last hour with a panel presentation "Cybersecurity: All the Cool Kids Are Doing It."



Annual Luncheon

Thursday at Noon

Keynote speaker Mark Lanterman, founder of Computer Forensic Services with over 25 years of experience in digital forensics, will present "Easiest Catch: Don't Be Another Fish in the Dark 'Net" during the Annual Luncheon. The question of digital information being compromised is not "if" but "when," and the legal community is no exception. Mr. Lanterman will cover the latest developments in the digital underground as well as realistic tips for cyber protection. OBA award winners will also be honored at this event. Tickets are available with or without meeting registration; sponsored by the OBA Family Law Section.



Kim & Alan's House Party

Thursday Evening

Crimp that hair and pop those collars, then step back a few decades at Kim & Alan's House Party. This '80s-themed event will include food, drinks and dancing to your favorite throwback songs from the decade that brought you MTV and parachute pants. Rad attire isn't required, but don't be afraid to let your neon side shine! Send a photo of yourself from the '80s to Laura Stone at lauras@ okbar.org and be included in the evening's slide show. Co-hosted by the OBA and OBF; sponsored by OBA sections. Admission is free to all, no Annual Meeting registration required.

Delegates Breakfast

Friday Morning

Kick off the last day of the Annual Meeting with a generous breakfast accompanied by a presentation by longtime editor of the *Journal Record* Ted Streuli. Mr. Streuli will present "Fake News" and discuss how words change meaning without changing truthfulness – or Elvis found living under Los Angeles overpass! The breakfast will be a ticketed event, free for delegates or only \$30 for nondelegates. Sponsored by InReach Continuing Education Solutions.





General Assembly and House of Delegates

Friday Morning

The most important association business of the year takes place Friday morning – OBA award presentations, updates from judicial and OBA leaders, elections and consideration of resolutions. For resolutions to be published in the official General Assembly and House of Delegates publication, proposed resolutions in bill format must be submitted to Executive Director John Morris Williams by Oct. 1; deadline to be published in the Oct. 27 Oklahoma Bar Journal, resolutions in bill format must be received by Oct. 15.



ANNUAL LUNCHEON

Mark Lanterman to Present "Easiest Catch: Don't Be Another Fish in the Dark 'Net"

MARK LANTERMAN, FOUNDER of Computer Forensic Services, will present "Easiest Catch: Don't Be Another Fish in the Dark 'Net" during the Annual Luncheon on Thursday, Nov. 8, at noon as part of the OBA Annual Meeting.

You've read the headlines. Unfortunately, the question now is not if your information is going to be accessed or stolen, but when, Attendees will learn of current developments in the digital underground as well as realistic tips for cyber protection. Mr. Lanterman will discuss recent high-profile cybercrime events, including website breaches impacting courts, law firms and government agencies. He will also discuss particularly dangerous types of threats that might affect individuals involving the dark web, the internet of things, phishing and Wi-Fi attacks.



Mr. Lanterman has over 25 years of experience in digital forensics and has provided education and training to a variety of audiences. He frequently provides training within the legal community including presentations at

Mr. Lanterman will discuss recent high-profile cybercrime events, including website breaches impacting courts, law firms and government agencies. the 11th Circuit Federal Judicial Conference, the 8th Circuit Federal Judicial Conference and more. He has also presented to the entire federal judiciary through the Federal Judicial Center.

Prior to founding Computer Forensic Services, he was a sworn law enforcement investigator with both state and federal law enforcement agencies including the United States Secret Service Electronic Crimes Task Force. Both federal and state court judges have appointed Mr. Lanterman as a neutral computer forensic analyst, and he has provided testimony in over 2,000 matters.

Mr. Lanterman is faculty at the Federal Judicial Center in Washington, D.C., Mitchell Hamline School of Law, the National Judicial College in Reno, Nevada, and is an adjunct instructor in the University of Minnesota's MSci in Security Technologies program. He is also a member of the Minnesota Lawyers Professional Responsibility Board.

The cost to attend the event is \$40 with Annual Meeting registration and \$50 for nonregistrants. This is a presentation you won't want to miss – reserve your spot today!

Sponsored by OBA Family Law Section.

Annual Luncheon Thursday, Nov. 8

Don't Be Another Fish in the Dark 'Net

Speaker: Mark Lanterman, founder, Computer Forensic Services

H

Sponsored by the Family Law Section Part of the 2018 Annual Meeting | www.okbar.org/annualmeeting



HOUSE OF DELEGATES

Dear County Bar Presidents:

Thank you to the county bar presidents of:

Adair, Beaver, Carter, Choctaw, Cimarron, **Cleveland, Cotton, Custer, Ellis, Grant, Hughes, Jackson, Kay, Kingfisher, Latimer, Mayes, McCurtain, Oklahoma, Ottawa, Seminole, **Tulsa, Washita and Woodward counties for submitting your delegate and alternate selections for the upcoming OBA Annual Meeting. (**Reported, awaiting election)

Listed below are the counties that have not sent their delegate and alternate selections to the offices of the Oklahoma Bar Association as of Aug. 17, 2018.

Alfalfa	Garfield	Major	Pontotoc
Atoka	Garvin	Marshall	Pottawatomie
Beckham	Grady	McClain	Pushmataha
Blaine	Greer	McIntosh	Roger Mills
Bryan	Harmon	Murray	Rogers
Caddo	Harper	Muskogee	Sequoyah
Canadian	Haskell	Noble	Stephens
Cherokee	Jefferson	Nowata	Texas
Coal	Johnston	Okfuskee	Tillman
Comanche	Kiowa	Okmulgee	Wagoner
Craig	LeFlore	Osage	Washington
Creek	Lincoln	Pawnee	Woods
Delaware	Logan	Payne	
Dewey	Love	Pittsburg	

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

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

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





President's Reception Wednesday | Nov. 7 Open to all Annual Meeting registrants

www.okbar.org/annualmeeting



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: **Susan B. Shields, Oklahoma City**

Vice President

Current: Richard Stevens, Norman (One-year term: 2019) Nominee: Lane R. Neal, Oklahoma City

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**

NOTICE

This issue went to press before the deadline, and the list of nominees may not be complete. See www.okbar.org/annualmeeting for updates.

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/governance/bog/ vacancies.

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS President-Elect

Susan B. Shields, Oklahoma City

Nominating Petitions have been filed nominating Susan B. Shields for President-Elect of the Oklahoma Bar Association Board of Governors for a oneyear term beginning January 1, 2019. Fifty of the names thereon are set forth below:

Kimberly Hays, Charles W. Chestnut, Andy Coats, Garvin Isaacs Jr., David A. Poarch, Renée DeMoss, James T. Stuart, Cathy M. Christensen, Allen M. Smallwood, Stephen D. Beam, William R. Grimm, Harry A. Woods Jr., Melissa DeLacerda, Gary C. Clark, Charles D. (Buddy) Neal Jr., M. Joe Crosthwait Jr., Bob W. Rabon, David K. Petty, William G. Paul, Mike Mordy, Peggy Stockwell, Richard Stevens, Sonja R. Porter, Molly Aspan, Michael Alan Souter, Lane Neal, Mary Quinn Cooper, Stephen Hetrick, Kathy R. Neal, Steven L. Barghols, Michael F. Lauderdale, Angela Ailles-Bahm, Valerie Couch, Donald J. Chaffin, Kaleb Hennigh, Glenn A. Devoll, Kenneth Delashaw, Donald J. Kyte, James Hicks, Jack L. Brown, Mark W. Curnutte, Charles E. Geister III, Laura McConnell-Corbyn, Michael E. Joseph, Donita Bourns Douglas, Kent W. Gardner, John Kenney, Frank D. Hill, Reid Robison and Stephanie Chapman.

A total of 528 signatures appear on the petitions.

Vice President

Lane R. Neal, Oklahoma City

Nominating Petitions have been filed nominating Lane R. Neal for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2019.

A total of 119 signatures appear on the petitions.







REGISTRATION

Join us for great speakers, great events and good times with great friends at this year's Annual Meeting. See what's included with your Annual Meeting registation below. Plus, choose from optional CLE courses with nationally recognized speakers and add-on luncheons.

What's included in your Annual Meeting registration:

- Conference gift
- Wednesday President's Reception and Thursday Kim & Alan's House Party social events
- OBA hospitality refreshments daily
- 20% discount on registrants' Annual Luncheon tickets



Online Register online at www.okbar.org/ annualmeeting

HOW TO REGISTER



Mail OBA Annual Meeting P.O. Box 53036 Okla. City, OK 73152



Phone Call Mark at 405-416-7026 or 800-522-8065



Fax/Email Fax form to 405-416-7092 or email to marks@okbar.org

Location

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

CLE Materials

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

Hotel

Fees do not include hotel accommodations. For reservations at the Hyatt Regency Tulsa, call 888-591-1234 and reference the Oklahoma Bar Association, or go to www.okbar.org/annualmeeting. A discount rate of \$115 per night is available on reservations made on or before Oct. 14.

DETAILS

Cancellation

Full refunds will be given through Oct. 31. No refunds will be issued after that date.

Special Needs

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

Name							
Email							
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Address							
City	State	Zip	Phone	e			
Name of Nonattorney guest							
Please change my OBA roster info	rmation to the informat	tion above: 🗌 🗅	Yes 🗆 No				
Check all that apply: U Judiciary Delegate Alternate							
✓Check your choice *New members sworn in this year **Early rate applies to registrations		ate Early	y Rate Stand \$0	Member dard Rate \$25 L \$			
made on or before Oct. 14.	С	LE					
Early rate valid on or before Oct. 14. ✓ Check the box next to your choice.							
Wednesday Getting Out of the Weeds: What You Need to Know about the New World of Marijuana Regulation	Early Rate With Meeting Registration S50	Standard Rate With Meeting Registration	Early Rate Without Meeting Registration	Standard Rate Without Meeting Registration \$125			
Thursday The Internet of Things and Leveraging Digital Evidence, Mark Lanterman, and Cybersecurity Panel, Eide Bailly LLP,	□ \$50	□ \$100	□ \$75	□ \$125			
Anglin PR and GableGotwals	SUBTOTAL \$						
LUNCHEONS AND EVENTS Annual Meeting registration not required							
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16 SEPTEMBER 2018			THE OKLAH	IOMA BAR JOURNAL			





All events for the 114th Annual Meeting of the Oklahoma Bar Association will be held at the Hyatt Regency Tulsa unless otherwise specified. Submit meeting room and hospitality suite requests to Craig Combs at craigc@okbar.org by Sept. 28; submit meeting program information to Laura Stone at lauras@okbar.org by Oct. 1.

WEDNESDAY, NOV. 7

Oklahoma Law School Alumni Receptions and Luncheons CLE: Getting Out of the Weeds Committee and Section Meetings President's Reception Hospitality Suites

THURSDAY, NOV. 8

CLE: Digital Evidence and Cybersecurity Committee and Section Meetings Annual Meeting Luncheon Kim & Alan's House Party Past Presidents Dinner Hospitality Suites

FRIDAY, NOV. 9

Delegates Breakfast General Assembly House of Delegates

Bitcoins, Blockchains and Satoshi Nakamoto: A Lawyer's Primer

By Larry D. Lahman

"There are lots of ways to make money: You can earn it, find it, counterfeit it, steal it. Or, if you're Satoshi Nakamoto, a preternaturally talented computer coder, you can invent it. That's what he did on the evening of January 3, 2009, when he pressed a button on his keyboard and created a new currency called bitcoin. It was all bit and no coin. There was no paper, copper, or silver – just thirty-one thousand lines of code and an announcement on the Internet."

—Joshua Davis

WHY SHOULD LAWYERS care about bitcoins² and the lesser-known, but potentially far more important, blockchain in the news recently? There are numerous reasons but many are not yet known like Donald Rumsfeld's unknown unknowns.³ Recall the internet decades ago when few envisioned Amazon, email, OSCN, Netflix, WikiLeaks, PACER, Google and the cloud.

For starters, bitcoins and the more numerous altcoins have value – value that varies wildly but value none the less.⁴ As moths to a flame, lawyers are drawn to value. Like fiat currency – dollars, yen and euros – bitcoins can be transferred, bought, sold, inherited, lost or stolen and consequently intersect with securities,⁵ taxes,⁶ divorce,⁷ estates,⁸ unclaimed property,⁹ bankruptcy¹⁰ and criminal law¹¹ among others.

If for no other reason, lawyers should be familiar with bitcoins and the blockchain to avoid being like the late Sen. Ted Stephens who once said the internet was "just a series of tubes."¹²

EVOLUTION OF BITCOINS

Cryptocurrencies or crypto are digital assets that work as a medium of exchange using cryptography to create units called coins, verify their transfer and secure transactions. Crypto is not issued by any central authority and is theoretically immune from government interference or manipulation. Crypto's decentralized control works via a blockchain or a digital public ledger of all transactions.13 The blockchain ledger grows as the most recent transactions - completed blocks - are recorded and added to the blockchain in chronological order allowing anyone to track digital currency online without central recordkeeping.14

Bitcoins have an interesting backstory. Created in 2009, bitcoins were the first¹⁵ decentralized cryptocurrency¹⁶ that arose out of the 2008 financial crisis when people lost confidence in banks and bankers.¹⁷ Satoshi Nakamoto is the name or pseudonym of the unknown person¹⁸ who initially designed the bitcoin and created the bitcoin blockchain¹⁹ and other key elements in his seminal 2008 paper²⁰ that started the crypto revolution.

Anyone can use his software²¹ and Satoshi, as he is known in the Bitcoin world, now has no more control over bitcoins or the blockchain than anyone else. Satoshi is one of the wealthiest persons in the world having mined nearly a million bitcoins to prove his concept and populate the blockchain that are still there. Satoshi's bitcoins initially had infinitesimally small or peppercorn like value. However, as bitcoins became more widely accepted, their value approached \$20,000 in late 2017 making him worth an estimated \$19 billion and the 44th richest person in the world.²²

And yet [Satoshi] himself was a cipher. Before the début of bitcoin, there was no record of any coder with that name. He used an e-mail address and a Web site that were untraceable. In 2009 and 2010, he wrote hundreds of posts in flawless English, and though he invited other software developers to help him improve



the code, and corresponded with them, he never revealed a personal detail. Then, in April, 2011, he sent a note to a developer saying that he had "moved on to other things." *He has not been heard from since*.²³

BITCOINS AS CURRENCY

Bitcoins are currency but they are not backed by any country's central bank or government. Bitcoins can be traded for goods or services with merchants accepting bitcoins,²⁴ automatically converted into dollars and quickly deposited into their bank accounts. Millions of products,²⁵ thousands of local businesses²⁶ and hundreds of large companies²⁷ worldwide take bitcoins today.

There are no physical bitcoins, only balances kept on the blockchain public ledger in the cloud verified by massive computing power.²⁸ While bitcoins get all the publicity, altcoins make up the majority of crypto market capitalization. Altcoins are any cryptocurrency other than bitcoins that use the same basic building blocks as bitcoin. There are well over a thousand altcoins like Ripple,²⁹ Dentacoin,³⁰ Sexcoin,³¹ Musicoin,³² Potcoin³³ and Russian Farmer Coin³⁴ that grow almost daily.³⁵ Most seek to meet some need other than as cryptocurrency.

Altcoins are generally formed to improve bitcoin in some way by adding distinguishing characteristics and capabilities that bitcoin lacks and consequently may eventually become more important than bitcoins. For example, Bitcoin Cash, a spinoff or hard fork,³⁶ processes more transactions in a single batch, so Bitcoin Cash can be faster and cheaper to use.³⁷

While the bitcoin blockchain supposedly allows users to remain anonymous, it is possible to identify some specifics of transactions, which is how investigators track down those selling drugs for bitcoins on the dark web.38 Websites accepting bitcoins began to proliferate with the first popular black-market site Silk Road, which was taken down in 2013³⁹ leading to the formation of numerous privacy coins⁴⁰ like Zcash and Bitcoin Private. Both further anonymize users through privacy technology similar to bitcoin with payments visible on a public blockchain although the sender, recipient and other transactional data remain unidentifiable.

Bitcoins are traded like stocks and bonds at hundreds⁴¹ of online cryptocurrency exchanges such as Coinbase.⁴² Altcoins are also traded with values available online; however, bitcoins remain the most widely used coin. Late last year global cryptocurrency markets were averaging the same daily trading volumes as the New York Stock Exchange.⁴³

Scams, ineptitude and fraud abound, with the most famous one being in 2014 when Japan's Mt. Gox, then the world's largest crypto exchange, lost \$460 million in bitcoins to hackers.⁴⁴

Coins are managed using wallets that store data with a unique public address, similar to a bank account number, for the wallet and a unique private key, comparable to an ATM PIN, for the coins owned. Both are extremely complex alphanumeric strings (e.g., 1CabzhGs69Ej8G2xYi959jTB-MwuDJfJUot). Wallet types include software, online, hardware, paper and mobile.45 A wallet address and coin key can theoretically be managed in a brain wallet but not in practice since they are so complex. If the key is forgotten or lost,⁴⁶ the bitcoins are irretrievable because, without the key, it's impossible to spend the associated bitcoins.47

Altcoin transaction fees are complicated and very widely but potentially attractive alternatives to credit cards.⁴⁸ Credit card transaction fees are usually about 3 percent, but some altcoin fees are less than 1 percent at an exchange and less for direct transactions between buyers and sellers.

Bitcoin facilitates very small micropayments. With eight decimals of precision, one can spend 1/100,000,000th (0.00000001) of a bitcoin. This smallest fraction of a bitcoin, the bitcoin "penny," is known as a Satoshi after the creator of bitcoin. Micropayments might solve the spam problem,⁴⁹ allow online services to economically sell access to one newspaper article or permit limited use of data for just one Satoshi equal to \$0.00006 at a recent bitcoin value of \$6,000. Good luck doing that with Visa or MasterCard.



THE BLOCKCHAIN

Bitcoin uses Satoshi's blockchain technology, which is also known as distributed ledger technology. The technology is potentially far more important and disruptive than its use for cryptocurrency partly because of disintermediation – cutting out middlemen like stockbrokers, bankers, escrow agents and others. Simplified, the blockchain is an incorruptible digital ledger of transactions that can be programmed to record virtually anything using a continuously growing list of records or blocks linked and secured using cryptography. Each block contains a cryptographic hash⁵⁰ of the previous block, a timestamp and transaction data inherently resistant to modification of the data. Once recorded, the data in any given block cannot be altered retroactively without the alteration of all subsequent blocks requiring collusion of the network majority

– a practical impossibility⁵¹ with very large numbers of networked computers or nodes.⁵²

Every major corporation, including IBM, Walmart, Starbucks and Boeing, is exploring how to profit from the blockchain. Supply chain management tops the list.

Frank Yiannas has spent years looking in vain for a better way to track lettuce, steaks and snack cakes from farm and factory to the shelves of Walmart, where he is the vice president for food safety. When the company dealt with salmonella outbreaks, it often took weeks to trace where the bad ingredients came from.

Then, last year, IBM executives flew to Walmart's headquarters in Arkansas to propose a solution: the blockchain.

As Mr. Yiannas studied their pitch, he said, "I became increasingly convinced that maybe we were onto the holy grail."⁵³ Starbucks wants to use the blockchain to trace the ownership, quality and provenance of coffee beans from growers in Ethiopia to its baristas in Seattle, and Boeing wants to replicate that with airplanes.

Supply chain management is just the beginning. Land registration trials at the Sweden Land Registry are testing the blockchain to expedite land transactions eliminating the need for abstractors, escrow agents and lawyers. Yes, lawyers! Closer to home with eight decimal places of accuracy, an oil company could manage mineral ownership using a permissioned blockchain to track owners and replace division orders.⁵⁴

Nonprofits like the Bill & Melinda Gates Foundation aim to use a blockchain to help the 2 billion people worldwide who lack bank accounts. Sierra Leone experimented with the blockchain to eliminate election fraud. Smart contracts written in computer code rather than on paper are selfexecuting agreements that incorporate multiple blockchain tools to handle things like closings, ownership and crypto payments.

Work is also underway to disintermediate Uber, AirBNB and Spotify using blockchains benefiting both buyers and sellers but *not* the intermediary. The possibilities are limitless.⁵⁵

BITCOIN MINING

Bitcoins and altcoins are created by a process known as mining – a euphemism for using computers to "discover" new coins.56 Miners with computers on the internet solve extraordinarily complex mathematical equations to validate transactions and add the transaction to the blockchain for a reward of coins. Miners use hardware and software algorithms⁵⁷ tailored for the coin being mined to be paid an award of newly created coins as motivation to mine, provide security for the system and supplement the blockchain. Crypto doesn't exist without miners.

Miners range from hobbyists⁵⁸ with laptops to multimillion dollar companies with massive mining farms generating millions of dollars of coins monthly. Because mining requires large amounts of electricity,⁵⁹ big miners locate where electricity is cheap like China and the Pacific Northwest of the United States. Smaller miners commonly join mining pools⁶⁰ that aggregate their efforts to smooth out or average the award of coins. A small solo miner may take years or even decades to receive an award of one bitcoin; however, mining pool participants receive smaller awards much more regularly and often.

For those who want to mine but not the hassle of dealing with hardware and software, cloud mining companies rent customers time on their systems to mine in the cloud and keep the coins.

VALUE OF BITCOINS

The value of crypto, like bitcoins, is whatever the marketplace says its worth⁶¹ because coins are not backed by gold, physical assets, a government or even the promise of someone to pay.⁶² Bitcoin values have almost unparalleled volatility fluctuating nearly \$1,000 in an hour.⁶³

Like most things, coin values partly depend on how many exist. There are now about 17 million bitcoins⁶⁴ that increase every 10 minutes from mining until there will be a maximum of 21 million bitcoins in 2140.65 The protocol or software⁶⁶ undergirding bitcoin mining automatically changes the difficulty of mining to maintain a constant rate of formation of bitcoin. One block is mined roughly every 10 minutes and presently 12.5 bitcoins⁶⁷ are awarded for each block mined. However, that award is periodically reduced so that in 2140 it will disappear.⁶⁸ Unlike governments that can print paper currency at will, the number of bitcoins created is finite and always known.69 Altcoins use a similar methodology to control the number of coins.

Most altcoin values tend to move in near lockstep⁷⁰ with the bitcoin⁷¹ but also very much depend on how they differ from bitcoins. For example, bitcoin transactions are booked or confirmed once they are included in a block in the blockchain. However, cautious merchants and exchanges

A small solo miner may take years or even decades to receive an award of one bitcoin; however, mining pool participants receive smaller awards much more regularly and often. require multiple confirmations, often as many as six taking an hour or longer, before they definitively credit ownership of the bitcoins to the new owner. Contrast this with the Verge altcoin⁷² that claims to confirm transactions in five seconds. This speed of confirmation potentially makes Verge a more suitable replacement for commercial transactions and credit cards increasing its value if the marketplace deems it a viable alternative to bitcoins.

SUMMARY

Bitcoins may cease to exist for any number of reasons like a superior altcoin, governmental regulation⁷³ or outright prohibition;⁷⁴ however, the smart money says that something like bitcoins will long be around. Even the stupid money says the blockchain will likely be with us forever.⁷⁵

ABOUT THE AUTHOR

Larry D. Lahman is the senior partner of Enid's Mitchell DeClerck founded in 1893. His first encounter with high-tech was programming a room-sized IBM 360 computer – one-hundredth as powerful as an iPhone – in graduate school in 1965. He has degrees from OU and Northwestern Oklahoma State University. This is his 10th Oklahoma Bar Journal article.

ENDNOTES

1. Joshua Davis, "The Crypto-Currency: Bitcoin and Its Mysterious Inventor," Oct. 10, 2011, *The New Yorker. See also* www.metzdowd.com/pipermail/ cryptography/2009-January/014994.html. For brevity, dates of the last visit to URLs are omitted, but all were observed within 90 days of publication.

2. This article does not pretend to be scholarly but merely a basic introduction to crypto and blockchains with detail in the footnotes for those interested in more technical background or just exploring further. Luddites may skip the footnotes.

3. "There are known knowns, things we know that we know; and there are known unknowns, things that we know we don't know. But there are also *unknown unknowns*, things we do not know we don't know." [Emphasis added.] Donald Rumsfeld, "Known and Unknown: A Memoir," *Sentinel*, 2011. One known known is that all of this is changing very, very rapidly. 4. Total crypto market capitalization exceeded \$830 billion in January 2018 but fell to \$250 billion three months later. Bitcoins are now about 40 percent of that and their share decreases as altcoins proliferate. See coinmarketcap.com/charts/.

5. Whether crypto is a security or not is in flux, "Blockchain Believer and Former Regulator Sounds a Warning," April 22, 2018, *The New York Times*. Among other things this turns on the crypto creator's influence over the coin's value, "World's Second Most Valuable Cryptocurrency Under Regulatory Scrutiny," May 1, 2018, *The Wall Street Journal*. For an example of how rapidly things change in just a month, see www.wsj. com/articles/ether-shouldnt-be-subject-to-secregulation-official-says-1528993984.

6. IRS regulations about crypto have been atypically sparse. Presently the Federalies say crypto is *property* and mined crypto is *income*, IRS Notice 2014-21. See www.irs.gov/newsroom/irs-virtualcurrency-guidance.

7. See mensdivorce.com/bitcoins-hiding-assets-divorce/.

8. See www.coindesk.com/5-things-bitcoinowners-must-do-when-estate-planning/.

 See bitcoinist.com/coinbase-hit-second-classaction-lawsuit-violating-unclaimed-property-laws/.
 10. "Hack Causes Exchange to File for

Bankruptcy," Dec. 20, 2017, *The Wall Street Journal*. 11. See www.fraud-magazine.com/article. aspx?id=4294993747.

aspx?id=4294993747.

12. "Senator's Slip of the Tongue Keeps on Truckin' Over the Web," July 17, 2006, *The New York Times*.

13. More specifically, "a distributed, append-only ledger of provably signed, sequentially linked, and cryptographically secured transactions replicated across a network of computer nodes, with ongoing updates determined by a software-driven consensus," Michael Casey and Paul Vigna, p. 68, *The Truth Machine: The Blockchain and the Future of Everything*, St. Martin's Press, 2018.

14. It's simple. Think of the blockchain as an electronic version of the large red leather-bound ledger book merchants used early in the last century. Each ledger page is like a block in the blockchain and each line on that ledger page (or block entry) is one transaction – written in indelible ink.

15. Crypto has roots in gaming and the original vehicle by which many people got used to the idea of buying virtual goods with digital money: FarmVille gamers bought virtual cows and many games with an in-game economy function with their own digital currency that players buy with real fiat currency. It's a one-way street; however, while Candy Crush Gold can be purchased with dollars, dollars can't be bought with Candy Crush Gold. "Where Virtual Worlds Collide with Real Money," Aug. 22, 2010, *The Guardian*.

16. Cryptocurrency is just one of several different types of digital currency. See en.wikipedia.org/wiki/ Cryptocurrency. See also en.wikipedia.org/wiki/ Digital_currency. In the absence of bitcoin treatises, Wikipedia must suffice.

17. "[T]rust in the ability of governments and banks to manage the economy and the money supply was at its nadir. The US government was throwing dollars at Wall Street and the Detroit car companies. The Federal Reserve was introducing 'quantitative easing,' essentially printing money in order to stimulate the economy.... [T]he predetermined release of the digital currency kept the bitcoin money supply growing at a predictable rate, immune to printing-press-happy central bankers and Weimar Republic-style hyperinflation." See Benjamin Wallace, "The Rise and Fall of Bitcoin," Nov. 2011, *Wired*.

18. Or persons. It could be he, she or they but let's go with *he* for simplicity.

19. The first blockchain came in 1990, "The Eureka Moment That Made Bitcoin Possible," May 25, 2018, *The Wall Street Journal. See also* Stuart Haber and W. Scott Stornetta, "How to Time-Stamp a Digital Document," *Journal of Cryptology*, Vol. 3, No. 2, pp. 99, 1991.

20. Satoshi's epiphany was to solve the double spend problem. A holder can copy a digital token and send it to a merchant while keeping the original and spending it a second time; however, bitcoin authenticates each transaction preventing double spending. See bitcoin.org/Bitcoin.pdf.

21. See bitcoin.org/en/download.

22. This is a known known because Satoshi's bitcoins can be identified online with virtual certainty in the public bitcoin blockchain. See qz.com/1159188/ Bitcoin-price-approaches-20000-making-satoshinakamoto-worth-19-4-billion/.

23. Emphasis added, Davis. Well maybe not. An untold number of journalists have attempted to unearth the real identity of Satoshi, purportedly even the National Security Agency, medium.com/cryptomuse/ how-the-nsa-caught-satoshi-nakamoto-868affcef595. However, just after this article was initially submitted to OBJ editors, someone claiming to be Satoshi himself surfaced saying that he was writing a book on the bit-coin, www.bloomberg.com/news/articles/2018-06-30/ is-bitcoin-creator-writing-a-book-cryptic-note-indicates-yes. See also nakamotofamilyfoundation.org/ and nakamotofamilyfoundation.org/duality.pdf. Time will tell and perhaps by the time this is read, Satoshi will have been on *60 Minutes*.

24. On May 22, 2010, Laszlo Hanyecz consummated the first real-world bitcoin transaction by buying two pizzas in Jacksonville, Florida, for 10,000 bitcoins – millions for two pizzas at today's prices. See en.wikipedia.org/wiki/History_of_bitcoin.

25. See spendabit.co/.

26. See coinmap.org/welcome/.

27. See 99bitcoins.com/who-accepts-bitcoinspayment-companies-stores-take-bitcoins/.

28. In late 2017, bitcoin network computing power was estimated at 100,000 times the combined power of the world's 500 fastest supercomputers. See www.wired.com/story/bitcoin-mining-guzzlesenergyand-its-carbon-footprint-just-keeps-growing/.

29. Bitcoin uses a totally decentralized *public* blockchain; however, *private* or *permissioned* block-chains require permission to read, transact and write into the chain. See www.coindesk.com/information/ what-is-the-difference-between-open-and-permissioned-blockchains/. Ripple's permissioned blockchain enables secure, rapid, inexpensive global financial transactions, *i.e.*, wires. That it requires permission or "vetting" to use makes it much more palatable to large financial institutions. See also ripple.com/.

30. Dentacoin is a form of a dental health maintenance plan. See dentacoin.com/.

31. Sexcoin unsurprisingly has ties to the adult entertainment industry featuring secrecy. See www. sexcoin.info/.

32. Musicoin enhances artists' control of and compensation for their content. See en.wikipedia.org/ wiki/Musicoin.

33. PotCoin promotes legal marijuana with its own "Pot Wallet" for Android phones and iPhones coming. See www.potcoin.com/.

34. Well not quite but a Russian farmer has developed the Kolion crypto coin to promote his rural Russian farming village illustrating the potential for a very real crypto dot-com-like bubble reminiscent of the collapse of the early 2000s, "Russian Farmer Alters Rural Economy with Virtual Currency, as Moscow Watches Warily," April 22, 2018, *The Wall Street Journal.* But there *is* a Russian Miner Coin (RMC), see coinmarketcap.com/currencies/russian-mining-coin/.

35. Altcoins often start with an Initial Coin Offering or ICO that is a fundraising mechanism somewhat like crowdfunding. The ICO funds projects by exchanging tokens for bitcoins, similar to an Initial Public Offering or IPO where investors purchase shares of a new company. See www.nasdaq.com/article/ what-is-an-ico-cm830484. ICO's and tokens are beyond the scope of this article but are a potential source of fraud, "Hundreds of Cryptocurrencies Show Hallmarks of Fraud," May 18, 2018, *The Wall Street Journal*.

36. See fortune.com/2017/08/07/bitcoincash-bch-hard-fork-blockchain-usd-coinbase/. A blockchain fork is a change to the coin's underlying software protocol resulting in two different methods of maintaining the blockchain – one fork or path follows the new, modified blockchain and the other fork continues along the old path. Simply, a hard fork is a radical change; a soft fork is less so. See cryptocurrency/acts. com/understanding-hard-forks-cryptocurrency/.

37. A hard fork created Bitcoin Cash when the underlying bitcoin software was modified allowing its blockchain to better scale to handle more transactions with new technology. Before only about seven transactions could be processed per second on bitcoin's blockchain compared to 65,000 per second by Visa. Some bitcoin developers, believing that involved the wrong programming choice, hard forked the bitcoin blockchain creating a new version entirely (Bitcoin Cash) with different scaling technology, pp. 72-77, Casey *et al.*

38. The dark web is composed of content – very often involving something illegal – on overlay networks that use the internet but require specific software, configurations or authorization to access. See en. wikipedia.org/wiki/Dark_web.

39. "Zcash, Less Traceable Than Bitcoin, Draws Investors," Oct. 31, 2016, *The New York Times*.

40. This extreme privacy may be the Achilles heel of privacy coins as regulators in some countries have pressured local exchanges to delist privacy coins that cannot be tracked by law enforcement agencies. The inability of coins to be easily traded on exchanges seriously impairs their value. See bravenewcoin.com/ news/japan-pressures-exchanges-to-dropmonero-zcash-and-dash/.

41. See news.bitcoin.com/the-number-ofcryptocurrency-exchanges-has-exploded/.

42. Coinbase is the dominant place for Americans to buy and sell crypto. Coinbase accounts went from 5.5 million in January to 13.3 million at the end of 2017, when Coinbase was sometimes getting 100,000 new customers $a \, day - far$ more than Charles Schwab and eTrade gain in a day, "Start-Up Exchange at Center of a Frenzy Strains to Keep Pace," Dec. 6, 2017, *The New York Times*. 43. Albeit at bitcoins' peak value,

www.businessinsider.com/daily-cryptocurrencyvolumes-vs-stock-market-volumes-2017-12.

44. Robert McMillan, "The Inside Story of Mt. Gox, Bitcoin's \$460 Million Disaster," March 2014, *Wired. See also* www.bloomberg.com/news/articles/ 2018-07-05/crypto-thefts-triple-as-coin-moneylaundering-industry-grows-up?srnd=cryptocurriences. Billionaire Warren Buffet says bitcoins are "probably rat poison squared," "Coming Soon: Bitcoin Trades on Wall Street," May 7, 2018, *The New York Times*.

45. See www.coindesk.com/information/how-tostore-your-Bitcoins/.

46. In 2017, an estimated 3.7 million bitcoins had been lost then worth \$43 billion. See fortune. com/2017/11/25/lost-bitcoins/.

47. Biometrics are an alternative to these complex keys. A United Nations' program known as Building Blocks uses a blockchain to control food rations in camps with tens of thousands of refugees. Refugees get food using scans of the iris of their eyes greatly reducing fraud and administrative costs. The UN has plans for its Building Blocks blockchain that are much more far-reaching than just food, "Inside the Jordan Refugee Camp that Runs on Blockchain," May/June 2018, *MIT Technology Review*.

48. See en.bitcoin.it/wiki/Transaction_fees.

49. If email was "taxed" at say 40 Satoshi's each, spammers sending 100,000 spam a day would pay over \$100,000 a year. Others sending 25 emails a day would pay less than a dime a day. Or if the first 100 a day were free, nothing. 50. A hash is a mathematical function that takes an input value and from that input creates an output value deterministic of the input value. Any X input value will always return the same Y output value whenever the hash function is run. In this way, every input has a determined output. There are many hash functions. See learncryptography.com/hash-functions/ what-are-hash-functions and en.wikipedia.org/wiki/ Cryptographic_hash_function. Secure hash algorithm - 256 bit (SHA-256) is a common robust one.

51. Well not quite. This evokes the possibility of a 51 percent attack hijacking the blockchain that's outside the lane of this article. However, the more miners and hashing power mining a coin, the more difficult it becomes to convince 51 percent of the miners to collude and take control of the blockchain. Conversely, newer altcoins inherently have fewer miners making takeover theoretically more possible, but those altcoins are much less valuable with less incentive for collusion. Another practical reason is that it's been estimated a 51 percent attack on bitcoin would cost over \$2 billion for hardware and electricity to be successful, p. 68, Casey *et al.* Nevertheless, \$18 million in Bitcoin Gold was recently lost from a 51 percent attack necessitating a hard fork, fortune.com/2018/05/29/bitcoin-gold-hack/.

52. A computer connected to the blockchain is a node. Different types of nodes – simple, partial, lightweight, full and master – with increasing levels of complexity maintain the blockchain. See en.wikipedia. org/wiki/Blockchain.

53. Emphasis added. "IBM Bets Big on the Arcane Idea Behind Bitcoin," March 4, 2017, *New York Times*. "[The] IBM Food Trust uses the blockchain to connect participants through a transparent, permanent and shared record of food origin details, processing data, shipping details and more [with] dozens of individual food items, from vegetables, meats, to spices, fruits and more, and [fish]. IBM notes that the use of blockchain technology can reduce the cost of the average product recall by up to 80%." See www.forbes.com/sites/rachelwolfson/2018/07/11/understanding-how-ibm-andothers-use-blockchain-technology-to-track-globalfood-supply-chain/#7206f6f22d1e.

54. While anonymity and secrecy are advantages of the blockchain, a new blockchain, or a fork of an existing one, could allow more public detail like names and addresses or to increase the accuracy of ownership from eight decimals to 10, 12 or 100.

55. Google "blockchain" and blood diamonds, vehicle titles, ride sharing, medical records, copyrights, art, stocks, transcripts, professional licenses, marriages, births, citizenship – anything dealing with ownership or provenance and then some.

56. There are exceptions. Some coins are issued to their creators, some are backed up by fiat currency and some new coins are typically given gratis to owners of the original altcoins to promote the new coin when a hard fork generates the new altcoin.

57. There are two primary types of hardware used for mining: graphics processing units (GPU) used by gamers and smaller miners and application specific integrated circuits (ASIC) designed solely for mining typically used by big mining farms. This provides the impetus for a unique altcoin characteristic: ASIC resistance. Some altcoins tailor mining algorithms to thwart ASIC miners and centralized control of the blockchain by a few exceptionally large ASIC miners and in turn, reduce the possibility of a 51 percent attack. Two others, central processing units (CPU) and field-programmable gate arrays (FPGA), currently mine nominal amounts of coins.

58. For those interested in inexpensively experimenting with bitcoin mining, the Bitcoin Miner app found in the Microsoft Online Store is free and can be up and mining in 10 minutes. Just don't plan on getting rich as it only generates pennies a day.

59. Bitcoin mining globally consumes more energy than many countries including Switzerland. See digiconomist.net/bitcoin-energy-consumption. Ironic because some in Switzerland seek to become "Crypto Valley," "Swiss authorities tread wary path through 'Crypto Valley," March 20, 2918, *The Financial Times*. Some altcoins like ethereum are exploring an alternative to the energy-intensive proof of work method used to sequentially allocate cryptographic mining efforts. This new proof of stake method assigns work based on the number of coins owned greatly reducing the electricity required by eliminating the massive numbers of miners simultaneously mining and competing for coins.

60. Mining pools are full nodes maintaining the complete blockchain that can be quite large. Participating miners are lightweight nodes using only block headers necessary to authenticate transactions, www.investopedia.com/terms//lightweight-node-cryptocurrency.asp. For an example of a mining pool, see miningpoolhub.com/.

61. Or perhaps MV=PQ, see www.bloomberg. com/news/features/2018-04-19/what-bitcoin-is-reallyworth-may-no-longer-be-such-a-mystery?srnd= cryptocurriences. See also www.investopedia.com/ tech/what-determines-value-1-Bitcoin/.

62. There are altcoin exceptions like Tether that claim to be backed up dollar for dollar with fiat currency. See tether.to/.

63. See fortune.com/2018/04/12/bitcoin-pricecryptocurrency-ethereum-ripple/. Or from about \$1,000 to \$19,000 and back down to \$6,000 since the beginning of 2017 and why merchants automatically convert bitcoin into fiat currency deposited with their banks.

64. See blockchain.info/charts/total-Bitcoins?-timespan=all.

65. See coincentral.com/how-many-Bitcoinsare-left/.

66. See github.com/Bitcoin/Bitcoin.

67. An award of roughly \$10,000 a minute as of this writing but that varies by the minute.

68. Miners are compensated with transaction fees in addition to coins, which is how it's blockchain will be supported beyond 2140.

69. Another well not quite: The protocols behind bitcoin and most altcoins can change through a hard fork or a soft fork modifying characteristics of their blockchains that *could* change the ultimate number of coins issued. A detailed discussion explaining why this is very unlikely is beyond the scope of this article. Who controls the software behind a coin's blockchain is complex, unpredictable and market-driven with stakeholders including miners, exchanges, investors, owners of coins and the developers – the "community" in crypto world – having a say that can vary significantly from coin to coin. See bitcoin.org/en/about-us.

70. See www.bloomberg.com/news/articles/ 2018-01-15/these-digital-coins-soar-or-fall-with-bitcoinquicktake-q-a?srnd=cryptocurriences.

71. This website coinmarketcap.com/ lists the values of coins and the charts tracking values of each are quite often congruent.

72. See www.forbes.com/sites/jessedamiani/ 2017/12/19/crypto-watch-verge-xvg-price-climbs-800-in-a-week-what-is-xvg-and-why-is-it-growingso-fast/#53579c62444e.

73. See www.bloomberg.com/news/articles/ 2018-07-11/china-shifts-to-bitcoin-wasteland-fromepicenter-after-clampdown.

74. Saving one of the most complex issues to the end, the legality of bitcoins and altcoins ranges from one extreme to the other. At one end of the spectrum Japan has declared bitcoin "legal tender" while at the other end, Namibia has expressly declared that purchases with bitcoin are "illegal." See www.coindesk. com/information/is-bitcoin-legal/.

75. "Why Blockchain Will Survive, Even If Bitcoin Doesn't," March 12, 2018, *The Wall Street Journal*.

Second Time's a Charm

Oklahoma Citizens Participation Act's Applicability in Federal Court

By Mbilike M. Mwafulirwa

"The question of whether anti-SLAPP¹ statutes conflict with Rule 12(d) and other features of the Federal Rules of Civil Procedure has produced disagreement among federal appellate judges."

-7th Circuit Court of Appeals²



THE TWIN CASES – Anagnost v. Tomecek³ and Steidley v. Singer⁴ – held that the Oklahoma Citizens Participation Act (OCPA) cannot apply retroactively to vested claims because it makes substantive changes to existing Oklahoma law.⁵ The OCPA belongs to a class of laws commonly referred to as anti-SLAPP statutes.6 Those laws provide procedures for dismissal of lawsuits that are intended to chill the exercise of First Amendment rights.⁷ The key features of the OCPA and many other anti-SLAPP statutes are that they provide for 1) the filing of a dispositive motion that tests the merits of the case, 2) an immediate right to a fast-track appeal if the motion is denied and 3) attorneys' fees and costs to the movant if the case is dismissed.8

So far, the application of the OCPA in state court has been straightforward, as courts are required to apply it in appropriate cases.⁹ But in federal courts, the question is much more complex. In diversity cases, courts apply federal procedural rules and state substantive law,¹⁰ but whether the various anti-SLAPP statutes – with their special dispositive motions and other unique features – should apply in federal court has split federal appellate courts. This article explores whether the OCPA applies in federal courts in the 10th Circuit that cover Oklahoma.

BRIEF OVERVIEW

The OCPA is an amendment to Oklahoma's previous anti-SLAPP statute.¹¹ Commentators criticized the prior anti-SLAPP statute because it failed to adequately serve its purpose of protecting First Amendment activities.¹² The previous anti-SLAPP only applied to libel, leaving other civil litigation untouched.¹³ Moreover, it did not provide for judicial review to ensure deterrence or as a cure for violations.¹⁴

The OCPA provides for an expedited dispositive motion.15 Within 60 days of the date of service of the petition (and without the benefit of discovery) a defendant can move to dismiss the case on the merits by showing by a preponderance of the evidence either 1) the case relates to protected speech or 2) an OCPA defense applies.¹⁶ To remain in court, the plaintiff must produce evidence making out a prima facie case by "clear and specific evidence." ¹⁷ In evaluating this motion, the trial court can look to the pleadings, affidavits and other evidence.18 Some commentators have argued that the OCPA essentially provides a trial on the pleadings.¹⁹ If the defendant prevails on the motion,

the trial court is required to award him attorneys' fees and costs. ²⁰ If the motion is denied or the trial court fails to rule on it within 90 days, the defendant has an immediate right to file an expedited interlocutory appeal.²¹

THE GROUND RULES IN FEDERAL COURT – DIVERSITY JURISDICTION CASES

Under *Erie Railway Co. v. Tompkins*,²² federal courts exercising diversity jurisdiction apply state substantive law and federal procedure rules.²³ If there is a conflict between the state law and a federal rule, courts apply a twotiered analysis:

- First, determine whether the federal rule is broad enough to control the issue before the court, leaving no room for the conflicting state law;
- If there is direct conflict between the state law and the federal rule, the court must determine if the federal rule is valid.²⁴

Upon answering those two questions affirmatively and finding the conflicting federal rule valid, the U.S. Supreme Court²⁵ has held there is "no need to wade In cases where there is no majority opinion, the U.S. Supreme Court has held that lower courts should treat the narrowest concurring opinion as the controlling law.

into Erie's murky waters..."26 That is pretty easy with pure state procedural rules, but there has been no clear majority on what to do with state laws that also form the framework of substantive rights or remedies: A Justice Scalia-led plurality held in Shady Grove Orthopedic Ass'n P.A. v. Allstate Ins. Co., where the two conflict, the federal rule prevails.²⁷ But Justice Stevens held in his concurrence that the state law, if it alters substantive rights, should prevail when there is a conflict with the federal rules of procedure.²⁸ Justice Stevens reasoned that the Enabling Act prevents ²⁹ a federal court from exercising diversity jurisdiction in a way that "abridge[s], enlarge[s] or alter[s]" state substantive law.³⁰ As a preeminent federal court treatise has recognized,

When matters of state substantive law are at issue, *principles of federalism* – which command that substantial deference be given to the ways in which the states have seen fit to structure social relationships in areas of state competence – also are implicated.³¹

In cases where there is no majority opinion, the U.S. Supreme Court has held that lower courts should treat the narrowest concurring opinion as the controlling law. ³² The 10th Circuit has, in turn, held that Justice Stevens' concurrence in *Shady Grove* is the controlling law.³³

On the other hand, if there is no conflict between a federal rule of civil procedure and a state law, or if the federal rule is invalid, then the federal court must wade into an *Erie* analysis,³⁴ which is primarily concerned with preventing forum shopping. When state substantive law is at issue in a case, it should be applied the same in state and federal court.35 But as Justice Gorsuch, Judge Kavanaugh and Judge Hartz have observed in their seminal treatise, "a federal court will not apply a state's law or procedure that conflicts with an overriding federal interest, such as the right to trial by jury guaranteed by the Seventh Amendment."36

ANTI-SLAPP STATUTES IN FEDERAL COURT

The 5th Circuit, for example, has taken conflicting positions - holding, for instance, that Louisiana's anti-SLAPP statute applies in federal court, but it has refused to decide whether Texas' anti-SLAPP (which is very similar to Oklahoma's) is applicable.³⁷ The 1st Circuit has held that Maine's anti-SLAPP statute applies in federal court,³⁸ while the 2nd Circuit (applying California law) has followed the 9th Circuit in holding that California's anti-SLAPP provisions apply in federal court.³⁹ The 7th Circuit was spared from weighing

in on the issue. The Supreme Court of Washington declared Washington's anti-SLAPP statute unconstitutional before the 7th Circuit could rule on the issue.⁴⁰ The 11th Circuit has held that Georgia's anti-SLAPP statute is inapplicable in federal court because it features an affidavit of merit rule that conflicts with Rule 11.⁴¹

The D.C. Circuit and the 9th Circuit have taken polar opposite sides in the anti-SLAPP debate. 42 In Abbas v. Foreign Policy Group, the D.C. Circuit was asked to consider whether the District of Columbia's anti-SLAPP statute⁴³ could apply in federal court.44 Under the D.C. statute, once a defendant made a *prima facie* showing that a suit related to "issues of public interest," the burden shifted to plaintiff to demonstrate that "the claim would likely succeed on the merits."45 Like the OCPA, discovery is stayed during the pendency of the motion.⁴⁶ The court may award attorney's fees and costs to a prevailing defendant.⁴⁷ Writing for the appellate court, Judge Kavanaugh found that the statute conflicted with rules 12 and 56 as to when and how a federal court should dismiss a lawsuit before trial.48 The court rejected any comparisons of the anti-SLAPP statute to summary judgment or qualified immunity because the statute did not fit into either scheme's analytical models.49

The 9th Circuit, however, saw things very differently in Newsham v. Lockheed Missiles & Space Co., Inc.⁵⁰ In Newsham, the 9th Circuit was asked to consider whether two provisions of California's anti-SLAPP statutes – a special motion to strike⁵¹ and attorney's fees to the prevailing defendant⁵² – applied in federal diversity jurisdiction cases.⁵³ The court found that rules 12 and 56 did not occupy the full sphere of pretrial dismissal of lawsuits in federal court.54 The court reasoned there was no conflict because a defendant could bring the special motion to strike before bringing a dispositive motion under rule 12 or 56.55

THE 10TH CIRCUIT FINALLY WEIGHS IN – DO ANTI-SLAPP STATUTES APPLY IN FEDERAL COURT?

The 10th Circuit recently confronted the question of whether anti-SLAPP statutes apply in federal diversity cases in *Los Lobos Renewable Power, LLC v. Americulture, Inc.*⁵⁶ New Mexico's anti-SLAPP statute⁵⁷ applies in lawsuits filed against persons exercising their First Amendment rights and allows a defendant to file a special motion to dismiss against such suits.⁵⁸ In addressing the complex issues raised by anti-SLAPP statutes in federal court, the 10th Circuit produced two majority opinions and one dissenting opinion in the *Los Lobos* case.⁵⁹ Two principle questions arose for consideration:

- Whether the court could exercise appellate jurisdiction over the appeal; and
- Whether the anti-SLAPP statute, as written, should apply in a federal court exercising diversity jurisdiction.

Chief Judge Tymkovich and Judge Briscoe formed a majority on the first question, concluding that the court could exercise appellate jurisdiction over the appeal.⁶⁰ The court noted that, although appellants had missed their 10-day period within which to appeal the district court's certified order provided by the anti-SLAPP statute,61 appellate jurisdiction was proper under the collateral order doctrine where the appeal was filed within 30 days of the order.⁶² As the court explained, the appeal was being taken to consider the limited



question of whether the anti-SLAPP statute applied in federal court – *as opposed to* a determination on the merits that turned on the particular facts of the case.⁶³

Once it determined it had jurisdiction, the 10th Circuit unanimously held that the New Mexico anti-SLAPP statute did not apply in federal court.⁶⁴ The court began by assessing whether the anti-SLAPP statute was procedural or substantive for the purposes of the Erie doctrine.⁶⁵ In doing so, the court looked at the statute's title and language and found that it was designated as an expedited procedural mechanism that only applied to baseless suits aimed at frustrating the exercise of First Amendment rights.⁶⁶ Furthermore, the New Mexico Supreme Court had held that the anti-SLAPP law was a procedural mechanism for protecting First Amendment rights.⁶⁷ At best, the 10th Circuit stated, the anti-SLAPP statute was not intended to influence the outcome, but only the timing of the disposition.68

IS THE OCPA APPLICABLE IN FEDERAL COURT?

Unlike New Mexico's anti-SLAPP statute, which had previously been deemed procedural, the Oklahoma Supreme Court has held that the OCPA's key provisions are substantive for the purpose of retroactivity.⁶⁹ But the 10th Circuit has noted that a finding that a state statute is substantive for retroactivity purposes does not control whether that law is also substantive for choice of law or other analyses.⁷⁰ Context matters. ^whether a state law is procedural or substantive for *Erie* purposes is a question of federal law.⁷¹ A state law is procedural, according to the U.S. Supreme Court, if it "concerns merely the manner and the means" in which state substantive rights are enforced, but if it would "significantly affect the

result of the litigation," it is likely substantive.⁷² Other U.S. Supreme Court cases have held that for the purposes of the *Erie* doctrine, "[r] ules that allocate decisionmaking authority... are prototypical procedural rules."⁷³ In *Shady Grove*, the majority found that state rules that govern pleading standards, summary judgment, pretrial discovery and admissibility of evidence are generally "ostensibly addressed to procedure."⁷⁴

Against this background, we turn to the OCPA. The OCPA has four key provisions:

- A special motion to dismiss where a judge is empowered to consider conflicting evidence and determine whether a plaintiff has met her *prima facie* case by clear and specific evidence;
- A blanket discovery ban during the pendency of the special motion to dismiss, unless a judge permits limited discovery;
- An expedited interlocutory appeal if the defendant's motion to dismiss is denied; and
- Mandatory attorney's fees and costs if the defense motion to dismiss is sustained.

The 10th Circuit made clear in Los Lobos that the Federal Rules of Civil Procedure "seem to cover all the bases" of pretrial handling of civil cases.75 As noted, the Erie doctrine requires an analysis of whether the OCPA's key four features are in conflict with the federal rules.⁷⁶ If there is a conflict between state law and the federal rules of procedure, it must then be determined whether the federal law is valid and assuming it is, whether the state law can be applied.⁷⁷ Here, we assume that the federal procedure rules are valid because the U.S. Supreme Court has previously held that "[r]ules regulating matters indisputably procedural are a priori constitutional," while "those regulating matters which, though falling within the uncertain area between substance and procedure... also satisfy this constitutional standard."78 Challengers of the rules have a very high burden.⁷⁹ We now address whether the OCPA is applicable.

The OCPA's Merit-conscious Special Dispositive Motion Federal Rule 12 provides a mechanism by which a complaint is tested for legal sufficiency.⁸⁰ Because the legal sufficiency of the complaint is often tested before discovery is complete, the allegations in the pleading are taken as true and presumed in the light most favorable to the plaintiff.⁸¹ Not so with the OCPA. There is no presumption in favor of the plaintiff and he is required to come forward with evidence to make out a prima facie case by clear and specific evidence.⁸² The fact that the OCPA motion allows consideration

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of materials outside the pleadings takes it out of a traditional Rule 12 motion to dismiss or strike and into the realm of summary judgment.⁸³ As such, the OCPA would appear to conflict with Rule 12.

The OCPA's dispositive motion also differs from a traditional Rule 56 motion for summary judgment. Rule 56 permits a federal court to enter summary judgment when the moving party shows that there are no material factual disputes and the law favors the movant.84 At the summary judgment stage, the nonmoving party is afforded reasonable inferences supported by the facts in the light most favorable to it.⁸⁵ When adjudicating a motion for summary judgment, the district court is not allowed to weigh the evidence or determine disputed factual questions.⁸⁶ The OCPA appears, however, to conflict with this design: as noted, there are no favorable presumptions afforded to plaintiff and he is required to make out a prima facie case by clear and specific evidence.87

Furthermore, the OCPA makes significant reallocations in decision-making authority that strongly suggest that it is a procedural statute for Erie purposes. First, the trial judge, instead of the jury, is required during the pretrial stages to consider conflicting factual evidence, weigh that evidence to make sure it meets the clear and specific threshold and render a decision.88 *Second*, if a trial court fails to rule on the special dispositive motion within 90 days, the motion is deemed automatically denied as a matter of law, and the appellate court usurps the trial court's role and becomes a court of first view, not review.⁸⁹ As has been stated by the U.S. Supreme Court, "[re-] allocat[ions] of decisionmaking authority... are prototypical procedural rules."90

Moreover, if the OCPA's special dispositive motion is applied in

federal court as written, it would probably run afoul of the Seventh Amendment.91 Reduced to its core, "the Seventh Amendment... assigns the decisions of disputed questions of fact to the jury."92 The OCPA's requirement that the trial court determine disputed factual presentations on a dispositive motion,⁹³ would seem to run afoul of the Seventh Amendment.94 As a leading federal treatise has observed, "a federal court will not apply a state's law or procedure that conflicts with an overriding federal interest, such as the right to trial by jury guaranteed by the Seventh Amendment."95 That may put a final nail in the OCPA federal coffin.

The Oklahoma Court of Civil Appeals, noting those same constitutional concerns, has read down the OCPA's disputed factual questions provision – to make it akin to a traditional motion for summary judgment.⁹⁶ If the Oklahoma Supreme Court formally endorses this position, the OCPA would be among a class of pretrial rules designed to test the viability of a case – that are "ostensibly addressed to procedure."97 Under those circumstances, there would be a conflict between state and federal procedural law and, under *Erie*, federal law should prevail.⁹⁸

Blanket Discovery Ban Provisions

Generally, when a plaintiff pleads a plausible case for relief, the federal rules ordinarily afford that party a right to conduct discovery.⁹⁹ In the 10th Circuit, a district court should generally not grant summary judgment until the nonmoving party has had an opportunity to conduct reasonable discovery.¹⁰⁰ In sharp contrast to that rule, the OCPA precludes discovery outright (unless the judge, exercising discretion, permits limited discovery).¹⁰¹ Even the 9th Circuit – which has upheld the application of anti-SLAPP laws in federal courts – has found blanket discovery bans inapplicable.¹⁰² Further, allowing one party (the plaintiff) to undergo a bench trial of potentially disputed fact under the OCPA, where the other party (defendant) conceivably may have most of the evidence would conflict with important federal constitutional interests – removing the specter of trial by ambush and violations of due process.¹⁰³ That conclusion is perhaps inescapable for the OCPA's blanket discovery ban.

The Expedited Interlocutory Appeal When the OCPA Motion Is Denied

Federal appellate courts lack jurisdiction to review denials of motions to dismiss or summary judgment.¹⁰⁴ As noted, the collateral order doctrine is a recognized exception.¹⁰⁵ Qualified immunity orders are a well-known class of such appealable interlocutory orders.¹⁰⁶ Some commentators have analogized anti-SLAPP statutes to traditional qualified immunity determinations made by courts in civil rights cases against government officials individually.¹⁰⁷

The OCPA does not operate like qualified immunity. Unlike the OCPA's fact-sensitive inquiry,¹⁰⁸ qualified immunity involves only abstract questions of law.¹⁰⁹ In fact, if there are material factual questions at the summary judgment stage, the appellate court lacks jurisdiction over the appeal, unless "the defendant does not dis*pute the plaintiff's allegations* [,] [and] the defendant must... be willing to concede the most favorable view of the facts to plaintiff for purposes of the appeal."¹¹⁰ The appeals proceed on plaintiff's version of facts. ¹¹¹ The OCPA, however, empowers the court to consider competing facts and a plaintiff is afforded no presumptions: clear and specific evidence must be produced.¹¹² Thus, it could be said

that an order denying an OCPA dispositive motion fails one of the most elementary requirements of appealable interlocutory orders. The permissible class of appealable interlocutory orders address questions that are collateral to the merits; however, the OCPA, like the New Mexico anti-SLAPP statute in *Los Lobos*, requires that the merits be addressed in a single interlocutory appeal.¹¹³ Thus, like the statute in *Los Lobos*, the OCPA would probably not apply in federal courts.¹¹⁴

The Attorney Fees When an OCPA Dispositive Motion Is Granted

With a key aspect of the OCPA – the dispositive motion - arguably inapplicable in federal court,¹¹⁵ can the attorney fees provision independently apply? Not likely. The D.C. Circuit answered no to this very question.¹¹⁶ Likewise, the 10th Circuit came to the same conclusion in Los *Lobos,* finding that the anti-SLAPP fees provision was a procedural sanction aimed at those who file "unmeritorious lawsuits" to chill First Amendment rights.¹¹⁷ The same reasoning would probably apply to the OCPA.

CONCLUSION

The question of the applicability of anti-SLAPP statutes in federal court is very complex. The fact that every anti-SLAPP statute is different compounds the complexity. No one rule fits all. Based on existing precedent, it is possible the OCPA may not apply in federal court.

ABOUT THE AUTHOR

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ENDNOTES

1. The acronym "SLAPP" stands for "Strategic Lawsuits Against Participation." See Mbilike M. Mwafulirwa, "Suing on Shifting Sands: The Oklahoma Constitution, Retroactive Legislation and the Scramble for Clarity", 88 OBJ. 935 (May 20, 2017) (citations omitted). 2. See Intercon Solutions, Inc. v. Basel Action Network, 791 F.3d 729, 731 (7th Cir. 2015). 3. 2017 OK 7, 390 P.3d 707. 4. 2017 OK 8, 389 P.3d 1117. 5. Anagnost, 2017 OK 7, ¶¶16, 19, 389 P.3d at 712; Steidley, 2017 OK 8, ¶¶7-8, 389 P.3d at 1119. 6. See M. Mwafulirwa, "Suing on Shifting Sands," at 936. 7. See Anagnost, 2017 OK 7, ¶¶8-9, 390 P.3d at 709-710 8. Id. But not all anti-SLAPP statutes are the same. See, e.g., Metabollic Research, Inc. v. Ferrell, 693 F.3d 795, 799 (9th Cir. 2012) (making that point known). 9. See, e.g., Anderson v. Wilken, 2016 OK CIV APP 35, ¶11, 377 P.3d 149, 152. 10. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78-79 (1938). 11. 12 O.S. §1443.1. 12. See Laura Long, "SLAPPing Around the First Amendment: An Analysis of Oklahoma's Anti-SLAPP Statute and Its Implications on the Right to Petition," 60 Okla. L. Rev. 421, 432 (2007). 13. Id. at 432 n. 91. 14. Id. 15. 12 O.S. §1432. 16. Id. §§1432, 1434. 17. Id. §1434(C). The OCPA does not define "clear and specific evidence." 18. See 12 O.S. §1435(A). 19. See M. Mwafulirwa, "Suing on Shifting Sands," at 936. 20. 12 O.S. §1438(A). 21. Id. §1437. 22. 304 U.S. 64 (1938). 23. Byrd v. Blue Ridge Rural Elect. Coop., 356 U.S. 525, 535 (1958); Rules of Decision Act, 28 U.S.C. §1652 (state law should be applied in federal court where applicable). 24. Racher v. Westlake Nursing Home, L.P., 871 F.3d 1152, 1162-63 (10th Cir. 2017). 25. Shady Grove Orthopedic Association P.A. v. Allstate Insurance Co., 559 U.S. 393 (2010). 26. Id. at 398 (Maj. Op.). 27. Id. 28. Id. at 419-423 (Stevens, J., concurring in part and concurring in judgment). 29. Id. 30. Id. at 422-423; 28 U.S.C. §2072(b). 31. 19 Wright & Miller, Federal Practice and Procedure §4509 (3d. ed.) (April 2017 Update). 32. Marks v. United States, 430 U.S. 188, 193 (1977). 33. James River Ins. Co. v. Rapid Funding, LLC, 658 F.3d 1207, 1217 (10th Cir. 2011). 34. Shady Grove, 559 U.S. at 398 (Maj. Op.); accord Racher, 871 F.3d at 1163. 35. Hanna, 380 U.S. at 468. 36. Bryan A. Garner, ... Neil M. Gorsuch, Harris L. Hartz,... Brett M. Kavanaugh, et al., The Law of Judicial Precedent 581 (2016) (citing Gasperini, 518 U.S. at 426; Byrd, 356 U.S. at 537-540).

37. See Henry v. Lake Charles Am., Press, LLC, 566 F.3d 164, 181-182 (5th Cir. 2009) contrast with Culbertson v. Lykos, 790 F.3d 608, 631 (5th Cir. 2015).

38. Godin v. Schencks, 629 F.3d 79, 88-92 (1st Cir. 2010).

39. Lib. Syn. Inc. v. Microflo Ltd., 718 F.3d 138. 152-154 (2d Cir. 2013) (applying California law). 40. Intercon Sol., 791 F.3d at 731-732.

41. Royalty Network, Inc. v. Harris, 756 F.3d 1351, 1357-1360 (11th Cir. 2014). 42. Abbas v. Foreign Policy Group, LLC, 783 F.3d 1328, 1333-37 (D.C. Cir. 2015) (anti-SLAPP statute inapplicable); compare U.S. ex rel. Newsham v. Lockheed Missiles & Space Co., Inc., 190 F.3d 963, 972 (9th Cir. 1999) (anti-SLAPP statute applies in federal court). 43. D.C. Code §16-5502, et seq. 44. Abbas, 783 F.3d at 1333. 45. D.C. Code §§16-5502(a)-(b). 46. Id. §16-5502(c). 47. Id. §16-5504(a). 48. Abbas, 783 F.3d at 1334-1335. 49 Id 50. Id. at 972. 51. Cal. Civ. P. Code §425.16(b). 52. Id. §425. 16(c). 53. Newsham, 190 F.3d at 971-973. 54. Id. at 972-973. 55. Id. 56. 885 F.3d 659 (10th Cir. 2018). 57. N.M. Stat. Ann. §38-2-9-2. 58. Id. §§38-2-9-2 (A-C). 59. Los Lobos, 885 F.3d at 662. 60. Id. at 663-664. 61. See 28 U.S.C. §1292(b); Fed. R. App. P. 5(a)(1). 62. Los Lobos, 885 F.3d at 664-666. Judge Baldock dissented on jurisdiction. Id. at 673-676. 63. Id. at 665. 64. Id. at 668-672. 65. Id. at 668-669. 66. Id. at 669-671. 67. Id. (citing Cordova v. Cline, 396 P.3d 159, 162-167 (N.M. 2017)). 68. Id. at 673. 69. Anagnost, 2017 OK 7, ¶¶16,19, 389 P.3d at 712; Steidley, 2017 OK 8, ¶¶7-8, 389 P.3d at 1119. 70. See Boyd Rosene & Assoc., Inc. v. Kan. Mun. Gas. Ag., 174 F.3d 1115, 1118 (10th Cir. 1999). 71. Shady Grove, 559 U.S. at 404-5; Gasperini v. Ctr. for Hum., 518 415, 427-8 (1996). 72. Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945). 73. Schriro v. Summerlin, 542 U.S. 348, 353 (2004) (citing Gasperini, 518 U.S. at 426). 74. Shady Grove, 559 U.S. at 404. 75. Rules 11 (sanctions), 12 (dispositive motions on the pleadings), 16 (expedited proceedings), and 56 (motions for summary judgment). See Los Lobos, 885 F.3d at 673 n. 8. 76. See Racher, 871 F.3d at 1162-1163. 77. See Shady Grove, 559 U.S. at 419-423 (Stevens, J., concurring in part and concurring in judgment). 78. Burlington N. R.R. Co. v. Woods, 480 U.S. 1.5 (1987). 79. See Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc., 498 U.S. 533, 552 (1991). 80. See Brokers' Choice of Am., Inc. v. NBC Univ., Inc., 861 F.3d 1081, 1103 (10th Cir. 2017). 81. Sause v. Bauer, 859 F.3d 1270, 1273 (10th Cir. 2017). 82. See 12 O.S. §1434(C). 83. See Fed. R. Civ. P. 12(d); Odom v. Penske Truck Leas. Co., 893 F.3d 739, 743 (10th Cir. 2018).

84. Abbas, 783 F.3d at 1334-1335 (citing Fed. R. Civ. P. 56(a)); Fed. R. Civ. P. 12(d).

85. Hawkins v. Schwan's Home Serv., Inc., 778 F.3d 877, 882 (10th Cir. 2015).

86. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). District courts can, however, disregard disputed facts that no reasonable jury could believe. Scott v. Harris, 550 U.S. 372, 380 (2007). But that "standard is a very difficult one to satisfy" and applies in "rare, exceptional case[s]." Cordero v. Froats, 613 F. App'x 768, 769 (10th Cir. 2015) (unpublished); The Scott summary judgment

87. See 12 O.S. §1434(C). 88. Id. §1437(A). 89. See Anderson, 2016 OK CIV APP 35, ¶¶3, 9-10, 377 P.3d at 150-152 (appellate court is court of review, not first view).

standard applies only to videotape or similar

objective evidence. Rhoads v. Miller, 352 F. App'x 289, 291-292 (10th Cir. 2009) (unpublished).

90. Schriro, 542 U.S. at 353 (emphasis added) (citing Gasperini, 518 U.S. at 426)

91. See Anderson, 477 U.S. at 249.

92. Gasperini, 518 U.S. at 432 (citations omitted).

93. See 12 O.S. §1435(A).

94. Gasperini, 518 U.S. at 432 (citations omitted); U.S. Const. amend. VII.

95. Bryan A. Garner, et al., The Law of Judicial Precedent at 581 (citations omitted).

- 96. See Krimbill v. Talarico, 2018 OK CIV APP
- 37, ¶¶29-32, 417 P.3d 1240, 1248-1249. 97. See Shady Grove, 559 U.S. at 404 (Maj. Op.). 98. Id.
 - 99. Anderson, 477 U.S. at 250 n. 5; Bryant v.
- O'Connor, 848 F.2d 1064, 1068 (10th Cir. 1988). 100. Anderson, 477 U.S. at 250 n. 5; see also

Fed. R. Civ. P. 56 (d).

101. 12 O.S. §§1432(C), 1433 (C). 102. Metabolife Int'l, 264 F.3d at 845.

103. See, e.g., Jimenez v. Tuna Vessel

Granada, 652 F.2d 415, 420 (5th Cir.1981) (trial by ambush contrary to due process).

104. Roosevelt-Hennix v. Prickett, 717 F.3d 751, 753 (10th Cir. 2013) (summary judgment);

Yousef v. Reno, 254 F.3d 1214, 1217 (10th Cir.

2001) (order denying motion to dismiss).

105. Cohen, 337 U.S. at 546; 28 U.S.C. §1291.

106. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

107. See Colin Quinlan, "Erie and the First Amendment: State Anti-SLAPP laws in Federal Court After Shady Grove," 114 Colum.L.Rev.367, 367, n.54 (2014).

108. See text accompanying notes 82-87.

109. Henderson v. Glanz, 813 F.3d 938, 947 (10th Cir. 2015).

110. Cox v. Glanz, 800 F.3d 1231, 1242 (10th

Cir. 2015) (emphasis added).

111. Id. at 1243.

112. See 12 O.S. §1434(C).

113. Id. §1437

114. See Los Lobos, 885 F.3d at 671-672.

115. See text accompanying notes 81-98.

116. See Abbas, 783 at 1337 n. 5.

117. See Los Lobos, 885 F.3d at 671.

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TAXATION LAW SECTION NOTE

2018 Oklahoma Tax Legislation

By Sheppard F. Miers Jr.

THE FOLLOWING IS A

summary of some of the changes in Oklahoma law on state taxation enacted by the Oklahoma Legislature in the 2017 special sessions and 2018 session of the Legislature.

INCOME TAX

Limit of Itemized Deductions The Oklahoma Income Tax Act was amended to provide that the net amount of itemized deductions allowable on an Oklahoma individual income tax return shall not exceed \$17,000. Charitable contributions and medical expenses deductible for federal income tax purposes shall be excluded from the amount of the \$17,000 limit.¹

Vehicle Manufacturing Credits

Oklahoma income tax credits were enacted that will be allowed to a qualified employer and qualified employee involved in vehicle manufacturing in Oklahoma. A "qualified employer" is defined as a business entity whose principal business activity involves vehicle manufacturing in Oklahoma. For the credits "vehicle manufacturing" is defined to mean a company placed in operation in Oklahoma after Nov. 1, 2018, engaged in the research, development, design and manufacture of motor vehicles which may be driven on the avenues of public access, with specified exceptions. A qualified employer shall be

allowed a credit for tuition reimbursed to a qualified employee and for compensation paid to a qualified employee. A qualified employee shall also be allowed an individual income tax credit annually. A "qualified employee" for purposes of the credits is defined to mean a person first employed as a full-time engineer in vehicle manufacturing in Oklahoma by or contracting in Oklahoma with a qualified employer on or after Jan. 1, 2018, who has been awarded an undergraduate or graduate degree from a program that has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology.

A qualified employer shall be allowed a tuition credit that shall be 50 percent of the tuition reimbursed to a qualified employee, if the employee has been awarded an undergraduate or graduate degree within one year of commencing employment with the qualified employer. A qualified employer shall be allowed a credit for 10 percent of compensation paid for the first five years of the qualified employee's employment in vehicle manufacturing if the employee graduated from an accredited college or university in Oklahoma, and 5 percent if the employee graduated from an accredited college located outside Oklahoma, subject to a maximum compensation credit of \$12,500 for each qualified employee annually.

A qualified employee shall be allowed an individual income tax credit of up to \$5,000 per year for a period of five years, with a carryover of any credit claimed but not used for the five subsequent taxable years. The total amount of credits allowed to qualified employers shall be adjusted annually to limit the annual amount of credits to \$3 million. The total amount of credits allowed to qualified employees shall be adjusted annually to limit the annual amount of credits to \$2 million. The credits will be allowed for taxable years beginning after Dec. 31, 2018, and ending before Jan. 1, 2026.²

Zero-Emission Electricity Generation Facility Credit Limit

The Oklahoma income tax credit for production of electricity from renewable resources and zero-emission facilities was amended to limit the credit for electricity generated by moving water, sun or geothermal energy to tax years ending not later than 2021, and for tax years beginning on or after Jan. 1, 2019, to limit the total amount of credits to \$500,000 per year.³

Railroad Reconstruction/ Replacement Credit Limit

For tax years beginning on or after Jan. 1, 2018, the total amount of railroad reconstruction/replacement credits shall be adjusted annually to limit the annual amount of credits to \$2 million per year.⁴



Coal Production Credit The income tax credit allowed for every person in the state furnishing water, heat, light or power to the state or its citizens, or for every person in the state burning coal to generate heat, light or power for use in manufacturing operations located in the state was amended to provide that for tax years beginning on or after Jan. 1, 2018, the total amount of credits authorized to be used to offset tax or paid as a refund shall be adjusted annually to limit the annual amount of credits to \$5 million per year.⁵

Oklahoma Tax Installment Payment on Repatriated Foreign Income

For tax years ending after Jan. 1, 2017, if a taxpayer elects to make installment payments of tax due pursuant to the provisions of section 965(h) of the Internal Revenue Code, such election may also apply to the payment of Oklahoma income tax, attributable to the income upon which such installment payments are based.⁶

Pet Overpopulation Fund Refund Contribution

The income tax checkoff refund contribution to the Oklahoma Pet Overpopulation Fund was reauthorized effective Jan. 1, 2019.⁷ *Court Appointed Advocates Refund Contribution* The income tax checkoff refund contribution for programs for Court Appointed Special Advocates was reauthorized effective Jan. 1, 2018.⁸

Public School Classroom Support Revolving Fund Contribution The income tax checkoff refund contribution for programs for the Public School Classroom Support Revolving Fund was reauthorized effective Jan. 1, 2019.9

Oklahoma AIDS Care Revolving Fund Contribution An income tax checkoff refund contribution for an Oklahoma AIDS Care Revolving Fund was enacted.¹⁰

WITHHOLDING TAX

Reporting and Electronic Data The requirements for withholding tax were amended to provide that every employer required under 68 O. S. §2385.2 to deduct and withhold a tax from the wages paid an employee shall furnish to the Oklahoma Tax Commission, on or before Jan. 31 of the succeeding year, an annual reconciliation and such other information as the Tax Commission may require pursuant to the Tax Commission's electronic data interchange program.¹¹

SALES AND USE TAX

New Remote Sellers *Compliance Requirements* Legislation was enacted providing for new requirements for collection and payment of Oklahoma sales and use tax by remote sellers for sales of tangible personal property through the internet. Persons that come within definitions in the law of "remote seller," "marketplace facilitator," or "referrer" will be required on or before July 1, 2018, (and each June 1 thereafter) to file an election with the Oklahoma Tax Commission to either 1) collect and remit sales and use tax on sales and deliveries to purchasers in Oklahoma and obtain a sales tax permit or 2) comply with specified notice and reporting requirements to inform purchasers that sales or use tax may be due, and to file a report with the Oklahoma Tax Commission with respect to sales or deliveries of tangible



personal property to purchasers in Oklahoma. The requirements apply to a remote seller, marketplace facilitator or referrer that during the immediately preceding 12-calendar-month period had aggregate taxable sales of tangible personal property within Oklahoma or delivered tangible personal property to locations within Oklahoma, worth at least \$10,000. The legislation enacted provides for penalties to be imposed for failure to comply with an election to collect and remit tax, or failure to follow the notice and reporting requirements if those are elected.¹²

AD VALOREM TAX

Ad Valorem Tax Definitions The definitions applicable to the Ad Valorem Tax Code were amended to change and clarify the definitions of "assessed valuation," "fair cash value" or "market value" and "taxable value" and to add a definition of "assessment percentage."¹³

Amendment of Procedures on Notification of Increased Valuation and Taxpayer Protests

The statute providing for notification by the county assessor to taxpayers of increased valuation of property, taxpayer protests of such increased valuation, county assessor informal hearings on protests and county assessor decisions on protests and notification thereof to the taxpayer was amended.¹⁴

Amendments to Assessment Mapping and Appraisal Procedures

The requirements for county assessor accreditation were amended to provide for completion of academic units in cadastral mapping. The Oklahoma State University Center for Local Government Technology (OSU/ CLGT) shall provide accreditation support for study and completion of courses. A County Government
Educational-Technical Revolving Fund was created. The OSU/ CLCT, in cooperation with the County Assessors' Association, shall provide the administration, support, training and implementation of the OSU/CLGT-sponsored computer-assisted mass appraisal computer software system to any county using the services provided by the Ad Valorem Division of the Oklahoma Tax Commission and other counties upon request; and all powers, duties, responsibilities, property, assets, liabilities, fund balances, encumbrances and obligations of the Ad Valorem Division of the Oklahoma Tax Commission for this are transferred to the OSU/CLGT. A Computer-Assisted Mass Appraisal Implementation Revolving Fund was created.¹⁵

GROSS PRODUCTION TAX

Rate Increase

The gross production tax was amended to levy gross production tax on the production of oil, gas or oil and gas from wells spudded prior to the effective date of the bill, and on or after such date, at a rate of 5 percent commencing with the month of first production for a period of 36 months; and amending provisions for apportionment of revenue from the tax. Previously enacted gross production tax incentive provisions were removed.¹⁶

Prior Incentive Rate Change Enacted in 2017

For production commenced on or after July 1, 2011, and prior to July 1, 2015, on the production of oil, gas or oil and gas from a horizontally drilled well any reduced rate provided shall not apply to production occurring during or after the first full month following the effective date of HB 1085X. For tax levied on the production of oil, gas or oil and gas from wells spudded between July 1, 2011, and July 1, 2015, that are deep wells drilled to specified depths, the reduced rate that was provided shall not apply to production occurring during or after the first full month following the effective date of HB 1085X. The change was enacted during the first extraordinary session of the Legislature for 2017.¹⁷ within the time provided, the property seized will be forfeited and destroyed.¹⁹

Excise Tax Stamps The Oklahoma Tax Commission shall not sell cigarette excise tax stamps to any wholesaler in excess of the amount of the monthly

A new additional tax of 3 cents per gallon is to be levied on all gasoline used or consumed in the state. A new additional tax of 6 cents per gallon is to be levied on all diesel fuel used or consumed in the state.

TOBACCO TAX

Additional Cigarette/Little Cigar Tax An additional tax is levied on the sale, use, possession or consumption of cigarettes at the rate of 50 mills per cigarette (\$1 per pack of 20 cigarettes). A tax at the same rate as is levied on cigarettes is levied upon little cigars.¹⁸

Seizure of Contraband Cigarettes; Hearing Procedure

The procedures governing Tax Commission seizure of contraband cigarettes and tobacco products were amended to provide that within 60 days of seizure, the person from whom the property was seized may file a request for hearing with the Tax Commission or the attorney general to show why the seized property should not be forfeited and destroyed. If a hearing is requested, the owner of the cigarettes shall be given at least 10 days' notice of the hearing. If no request for hearing is filed average amount of such excise tax stamps sold to such wholesaler during the preceding calendar year. However, a wholesaler may purchase in excess of the monthly average purchased during the preceding calendar year upon documentation, to the Tax Commission's satisfaction, of probable sales greater than the wholesaler's sales in the preceding calendar year.²⁰

MOTOR FUEL TAX

Increase of Gasoline, Diesel Tax A new additional tax of 3 cents per gallon is to be levied on all gasoline used or consumed in the state. A new additional tax of 6 cents per gallon is to be levied on all diesel fuel used or consumed in the state.²¹

Importer Rate Amendment The statutory provision that in consideration of the use of the highways of the state, and in addition to all other taxes levied The requirement that no Tax Commission agreement to compound, settle or compromise any controversy relating to tax liability shall be effective until the settlement has been approved by judgment of one of the judges of the district court of Oklahoma County, after a full hearing thereon, was amended to be applicable if the settlement exceeds \$25,000.

for such purposes, all persons who import gasoline and diesel fuel into the state in the fuel supply tank or tanks of motor vehicles or in any other containers for use in propelling such vehicles on the highways for commercial purposes, shall report and pay to the Corporation Commission a tax for such use of the highways was amended. The provision was amended to provide that the tax shall be levied and imposed for gasoline and diesel fuel and shall be tax equal to the rate otherwise applicable at the time under the Motor Fuel Tax Code upon a gallon of gasoline and diesel fuel used or consumed in the state.²²

Conforming Exemption Amendment

The provision allowing specified exemptions from tax on motor fuel was amended to apply to the additional taxes on motor fuel imposed by changes enacted by HB 1010XX.²³

BANKING PRIVILEGE TAX

Credit for SBA Fee The credit allowed against the 6 percent tax imposed on banks and credit unions for the privilege of doing business within Oklahoma for the amount of the guaranty fee paid to the U. S. Small Business Administration pursuant to the "7(a)" loan guaranty program was extended until Dec. 31, 2021.²⁴

AIRCRAFT EXCISE TAX

Commercial Airlines Exemption The exemption from the Oklahoma aircraft excise tax for aircraft purchased or used by commercial airlines was amended to provide that if the operations of an aircraft are not at least 50 percent commercial operations annually, the Oklahoma aircraft excise tax levied shall be due and payable. An aircraft owner shall provide a report to the Oklahoma Tax Commission on an annual basis detailing the operations of the aircraft and any supporting flight, maintenance or charter log books required by the Tax Commission. For purposes of satisfying this requirement, such operations may not include those chartered by the aircraft owner as an individual or as a business entity in which the aircraft owner owns a majority interest.²⁵

TAX ADMINISTRATION, PRACTICE AND PROCEDURE

Tax Commission Settlements; District Court Approval The requirement that no Tax Commission agreement to compound, settle or compromise any controversy relating to tax liability shall be effective until the settlement has been approved by judgment of one of the judges of the district court of Oklahoma County, after a full hearing thereon, was amended to be applicable if the settlement exceeds \$25,000. This requirement previously required district court approval of any Tax Commission settlement that exceeded \$10,000.²⁶

Tax Commission Abatement; District Court Approval

The Tax Commission authority to abate all or any portion of tax liability and interest and penalties accruing thereto, pursuant to a settlement agreement entered into with a taxpayer, upon finding that collection of the tax liability and interest and penalties accruing thereto would reasonably result in the taxpayer declaring bankruptcy; the tax is uncollectible due to insolvency of the taxpayer resulting from factors beyond the control of the taxpayer or for other similar cause beyond the control of the taxpayer; the tax liability is attributable to actions of a person other than the taxpayer and it would be inequitable to hold the taxpayer liable for the tax liability; or in cases of nonpayment of trust fund taxes, the taxes were not collected by the taxpayer from its customer, subject to approval by the district court of Oklahoma County was amended. Such abatement shall require district court approval if the amount of the tax liability exceeds \$25,000. This requirement previously required district court approval of any abatement of tax liability that exceeded \$10,000.²⁷

Tax Commission Tax Credit Data Access Website

The Oklahoma Tax Commission is authorized and directed to make tax credit data available on its website. Data shall be made available in an open-structured data format that may be downloaded by the public and that allows the user to systematically sort, search and access all data without any fee or charge for access. As used in this section, "tax credit" means a credit pursuant to the Oklahoma Income Tax Act against tax liability which is taken by a taxpayer. The website shall also include, but not be limited to, a brief explanation of the credit, including the year the credit was first allowed to taxpayer; and for 2013 and each year thereafter for each credit, the amount of credits claimed, the amount of credits used to reduce tax liability or refunded to taxpayers, the amount of credits carried over to a future tax year, if available, the number of taxpayers claiming the credit, and the annual growth rate in the number and amount of credits claimed. The Tax Commission is authorized to provide this regardless of the number of taxpayers claiming a credit notwithstanding the confidentiality of taxpayer information limits of 68 O. S. §205. The Tax Commission shall make the data available on its website on or before Jan. 1, 2020.28

ECONOMIC DEVELOPMENT AND TAX INCENTIVES

Transfers to Oklahoma Quick Action Closing Fund

The provisions for incentive payments pursuant to the Oklahoma Quality Jobs Program Act, the 21st Century Quality Jobs Incentive Act, the Small Employer Quality Jobs Act were amended. Transfers of 5 percent of the quarterly incentive payment amount shall be transferred by the Oklahoma Tax Commission to an Oklahoma Quick Action Closing Fund.²⁹

Oklahoma Quality Jobs Program Act

The Oklahoma Quality Jobs Program Act was amended to change the duty of the Incentive Approval Committee under the act.³⁰

Saving Quality Jobs Act The Saving Quality Jobs Act under 68 O. S. 2011, §§3701-3712 was repealed.³¹

Small Employer Quality Jobs Act The provisions of the Small Employer Quality Jobs Act with respect to the maximum number of full-time employees and the requirements for receiving incentive payments related to projected new direct jobs and employment were amended.³²

Oklahoma Quality Events Incentive Act The Oklahoma Quality Events Incentive Act was amended with respect to definitions, the determination of incremental sales tax revenue, state sales tax revenue, vendors making taxable sales and procedures for determinations to be made under the act.³³

ABOUT THE AUTHOR

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

ENDNOTES
1. HB 1011XX, amending 68 O. S. Supp. 2017, §2358; effective Jan. 1, 2018.
2. SB 1585, adding 68 O. S. Supp. 2018, §2357.404; effective Nov. 1, 2018.
3. SB 893, amending 68 O. S. Supp. 2017, §2357.32A, effective Jan. 1, 2019.
4. HB 1036XX, amending 68 O. S. Supp. 2017, §2357.104; effective Jan. 1, 2018.
5. HB 1034XX, amending 68 O. S. Supp. 2017, §2357.11; effective Jan. 1, 2018.
6. HB 3715, amending 68 O. S. Supp. 2017, §2368; effective Aug. 2, 2018.
 7. HB 2716, amending 68 O. S. Supp. 2017, §2368.13; effective Nov. 1, 2018. 8. SB 1166, amending 68 O. S. Supp. 2017,
 §2368.12; effective Nov. 1, 2018. 9. SB 1198, amending 70 O. S. 2011, §1-122,
effective July 1, 2018. 10. SB 943, adding 68 O. S. Supp. 2018,
 §2368.31, effective Nov. 1, 2018. 11. HB 3156, amending 68 O. S. Supp. 2017,
§2385.3; effective July 1, 2018. 12. HB 1019XX, adding 68 O. S. Supp. 2018,
\$\$1391-1397; effective April 10, 2018. 13. SB 1059, amending 68 O. S. 2011, §2802,
effective Nov. 1, 2018. 14. SB 1059, amending 68 O. S. Supp. 2017,
§2876, effective Nov. 1, 2018. 15. HB 3372, amending 68 O. S. 2011, §§2816,
2947, 3201, 3204, and adding 68 O. S. Supp. 2018, §§2947.1, 2947.2 and 2947.3; effective July 1, 2019.
16. HB 1010XX, amending 68 O. S. Supp. 2017, §§1001, 1004; effective June 28, 2018.
17. HB 1085X, amending 68 O. S. Supp. 2017, §1001; effective Nov. 17, 2017.
18. HB 1010XX, adding 68 O. S. Supp. 2018, §302-7; and amending 68 O. S. 2011, §402; effec-
tive June 28, 2018. 19. HB 3156, amending 68 O. S. Supp. 2017, §305,
and 68 O. S. 2011, §§360.7, 417; effective July 1, 2018. 20. HB 1018XX, noncodified; effective April 3, 2018. 21. HB 1010XX, adding 68 O. S. Supp. 2018,
\$500.4B; effective June 28, 2018. 22. HB 3713, amending 68 O. S. 2011, §603,
effective May 7, 2018. 23. HB 1015XX, amending 68 O. S. 2011,
§500.10; effective June 28, 2018. 24. SB 883, amending 68 O. S. Supp. 2017,
§2370.1, effective Nov. 1, 2018. 25. HB 2253, amending 68 O. S. 2011, §6001, and
68 O. S. Supp. 2017, §6003; effective May 10, 2018. 26. HB 3156, amending 68 O. S. 2011, §219;
effective July 1, 2018. 27. HB 3156, amending 68 O. S. 2011, §219.1;
effective July 1, 2018. 28. HB 3225 adding 68 O. S. Supp. 2018, §295;
effective Nov. 1, 2018. 29. HB 3324, amending 62 O. S. Supp. 2017,
§48.2, 68 O. S. Supp. 2017, §§3604, 3904, 3914; effective Aug. 2, 2018.
30. SB 897, amending 68 O. S. Supp. 2017, §3603; effective Nov. 1, 2018.
31. SB 897, repealing 68 O. S. 2011, §§3701- 3712: effective Nov. 1, 2018

- 32. SB 923, amending 68 O. S. Supp. 2017, §3904; effective Nov. 1, 2018.
- 33. SB 1252, amending 68 O. S. Supp. 2017, §§4301, 4303-4305, 4309; effective July 1, 2018.

Right, Legal and Once

By John Morris Williams

R^{IGHT.} LEGAL. ONCE. "R.L.O." That has been the consistent message from the Oklahoma Bar Association regarding State Question 788. For those who have been in a coma or not memorizing state question numbers, it's about medical marijuana.

There has developed what seems to be a "land run" environment in some quarters regarding this new business that has come upon the horizon. In the short time since its passage by a vote of the people, there have been two sets of emergency regulations promulgated by the Oklahoma State Board of Health. The latest set allows smoking marijuana and does not require a pharmacist at each disNext, there is a working group consisting of members from both houses of the Oklahoma Legislature that is looking at potential legislative action for the next session. Proposed legislation could trump the Health Department regulations. The nature and extent of the legislative proposals have not yet been determined.

So, there remains a good deal of uncertainty in the final laws and regulations that will at least set up the primary structure for possession, cultivation and dispensing medical marijuana. Thus, it seems with the amount of flux that may still exist, caution should be exercised by all involved.

President Hays has charged the Rules of Professional Conduct Committee to have a proposed rule change ready for the House of Delegates at the Annual Meeting.

pensary. Since these are emergency regulations, they may very well be modified or disapproved once the legislative session begins the first week in February. It would be an understatement to say the final version of the regulations is uncertain. The OBA has adopted R.L.O. as the underpinning of how it will proceed. Thirty other states and the District of Columbia have been down this path before us. The Rules of Professional Conduct in Oklahoma should at least make one take pause given that marijuana cultivation, possession and distribution is still illegal under federal law.

President Hays has charged the Rules of Professional Conduct Committee to have a proposed rule change ready for the House of Delegates at the Annual Meeting. Given that this has been addressed in many other jurisdictions, there are some good models already in place. Notably, states with Native American lands and governments are good examples.

OBA members are encouraged to be mindful that federal law still lists marijuana as a controlled dangerous substance and any advice given to clients, regardless of any proposed rule changes, should include this reminder. Federal law also can affect bank deposits, contracts with third parties, money put in lawyers' trust accounts, absence of tax deductions for losses and the inability to file for bankruptcy. Thus, there are many issues that go beyond cultivating, dispensing and possessing.

As a disclaimer, *I am not the* general counsel or ethics counsel. At the current time, there are many unanswered questions substantively and ethically. At this year's Annual Meeting there will be three hours of CLE on this emerging area. It is anticipated there will be at least one hour of ethics in the medical marijuana course. Also, as stated above, it is anticipated a rule making a clear statement on the propriety of advising medical marijuana-related clients will be before the House of Delegates.

The OBA wants to make sure what we do is right for the situation at hand, that what we propose is legal and that we carefully study the changing landscape and potential pitfalls so we only need to amend our rules once. I encourage each OBA member to communicate with the Rules of Professional Conduct Committee, Board of Governors and House of Delegate members regarding the proposed rule change. Together we can do this R.L.O.

John When William

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



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The Lawyer's Tools of the Trade

By Jim Calloway

TATHAT ARE A LAWYER'S

tools of the trade? Many years ago, as a consumer bankruptcy lawyer, I had to research the meaning of "tools of the trade" as applied to lawyers under Oklahoma law. Oklahoma has opted out of the federal bankruptcy exemptions and instead uses the exemptions under 31 Okla. Stat. §1. The state statute exemptions reflect Oklahoma's agricultural traditions and include such things as five milk cows and their calves under six months old, 100 chickens, two horses, two bridles and two saddles. They also allow one to exempt tools of the trade. Now the exemptions are a bit broader, but at the time I had to research just to make certain that a lawyer's law books would qualify as tools of the trade.

While there are still many law books on shelves in law firms today, with the advent of digital research, few would dispute that a lawyer's personal computer or phone is a more frequently used tool of the trade than law books. Many of our most important tools today are software products.

In October 2012, I wrote a Law Practice Tips column called "Equipping the Law Office 2012."¹ In that article, I discussed the lawyer's computer (I still prefer laptops or desktops for lawyers), the importance of a scanner at every workstation, the importance of backup tools, PDF manipulation tools, practice management software, smartphones, document management systems and the like.

This month, I thought I'd update that article with tools that were omitted from that column due to the space limitations and lawyer tools that didn't really exist for general use six years ago.

SPEECH TOOLS

I do most of my document drafting using Dragon Professional Individual² (version 15 costs \$300) and still don't understand why most slow-typing lawyers don't use this tool. Most lawyers can talk faster than they can type. This is a tool that allows me to generate more work product much faster than I could without it.

Now we have other speech tools including Google Assistant, Amazon Echo, Dragon Anywhere and Cortana. The idea of verbally entering time and billing records catches the attention of almost every lawyer. Tali is one product that addresses that desire. As we mentioned in our column "Brief Recap of ABA TECHSHOW 2018":

Tali works with Alexa, Cortana and Google Assistant to allow you to record your time. Tali allows you to review your activities in the Tali dashboard and then sync with several time and billing products. Tali originally integrated only with Clio, but it also recently announced integrations with Rocket Matter and PracticePanther.³

There are many great external speakers and similar devices. As I shared with the attendees at the OBA Solo & Small Firm Conference, I recently was in a meeting where everyone was having trouble hearing over the supplied speakerphone. Someone pulled out their Jabra SPEAK510 USB/BT Speakerphone.⁴ The result was a much higher quality experience with all the remote attendees remarking that the sound was much better on their end. This small portable speakerphone is affordable and connects to a computer with a USB connection or a mobile device with Bluetooth.

LEGAL RESEARCH

The Oklahoma Bar Association provides Fastcase as a free member benefit. It still surprises me when I talk to a lawyer who not has tried Fastcase. Fastcase is a mature and fully developed legal research tool that can be accessed at no charge by logging in through MyOKBar. OBA members who have not done so should visit Fastcase.com and click on the Support tab for the many free video tutorials and scheduled online CLE programs offered there.

Legal research may now mean artificial intelligence review of briefs and other legal documents. Casetext's CARA allows lawyers to upload their briefs for review. CARA can find potential missing arguments or case law and supply them to you. Now we are hearing reports of lawyers who upload their opponent's brief into CARA to begin their legal research for a reply brief. This summer Casetext announced "Casetext for Small Law" with lower pricing and new features.⁵ Casetext does offer a 14-day free trial, so bear that in mind the next time you are working on a significant brief or reply to one.

CARA is not the only tool that provides artificial intelligence analysis of briefs and motions. Others include Attorney IO,⁶ Judicata,⁷ CaseIQ⁸ and EVA.⁹ EVA is currently free.

MOBILE LAWYERING

My computer bag is quite heavy when I travel, as it is stuffed with spare cords, many USB flash drives, portable batteries, phone and other device chargers, my portable hot spot for secure online computing on the road, portable microphone for dictation on the road and more. I also carry a small notepad and extra pens.

This is why I always buy a computer bag with wheels. Unless I'm in a location where I cannot get either a cell signal or internet access for my computer, I can do everything on the road that I can do in my office because all the files I might need are stored in the cloud or can be accessed by using the VPN to connect to my office network.

Whether you prefer a backpack or a rolling bag, I suggest most lawyers would be well served to buy a computer bag with more



capacity and features than the one that came with their laptop and to give some thought to what else they need to carry. For example, I keep an extra iPhone charger and cord in my bag just in case.

If you add a portable scanner and printer to your traveling equipment list, you have complete law office capacity on the road. Even if you do not travel with a portable scanner, today's phones can take a pretty good picture of a document, and there are many apps to convert the picture to a PDF file. automation tool Flow, MileIQ to track mileage and more.¹⁰

You may be paying for great tools that you have not yet tried.

PRACTICE MANAGEMENT SOLUTIONS

For a practicing lawyer, the most comprehensive and important software tool today is a practice management solution. Having quick digital access to every document and every note in every client file is an important tool.

CONCLUSION

These are just a few of the useful tools available to today's lawyers. We are just seeing the first emergence of artificial intelligence-based tools. More are coming. The important thing to remember is that if you can think of a tool that you need, it may be available now. Just do a quick internet search to see if you can find it or contact the OBA Management Assistance Program.

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. Jim Calloway, "Equipping the Law Office 2012," 83 Oklahoma Bar Journal 26 (Oct. 6, 2012).

2. Nuance Dragon Professional Individual, shop.nuance.com/store/nuanceus/Custom/ pbpage.dragonProINDV.

3. Jim Calloway and Darla Jackson, "A Brief Recap of ABA TECHSHOW 2018," 89 Oklahoma Bar Journal 13 (May 2018).

4. Jabra Speak 510 portable USB and Bluetooth speakerphone, www.jabra.com/ business/speakerphones/jabra-speak-series/ jabra-speak-510; check pricing on Amazon and similar sites.

5. Bob Ambrogi, "Seeking to Expand Among Smaller Firms, Legal Research Service Casetext Adds Features, Lowers Price," *LawSites*, www. lawsitesblog.com/2018/07/seeking-expandamong-smaller-firms-legal-research-servicecasetext-adds-features-lowers-price.

- 6. Attorney IO, www.attorneyio.com.
- 7. Judicata, www.judicata.com.
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- 9. EVA, eva.rossintelligence.com.

10. Consumer Consultant Professionals, "Comprehensive List of Office 365 Features," www.ccp.com.au/ comprehensive-list-of-office-365-features.

11. Oklahoma Bar Association, "Six Attorney Practice Management Tools Added as OBA Member Benefits," www.okbar.org/six-attorneypractice-management-tools-added-as-obamember-benefits.

Having quick digital access to every document and every note in every client file is an important tool.

There are lots of amazing apps available today for mobile devices. I note that some "road warriors" now brag about not taking any computer on the road because they have full access to what they need with either a phone or tablet, but if I'm going to work on documents, I want a laptop with a real keyboard. You're never sure when you may have to unexpectedly work on a long document when traveling.

OFFICE 365

Most lawyers have either transitioned or will transition to an Office 365 subscription. This is just a reminder that while Word, Outlook and Excel may look the same with your Office 365 subscription, if you log into your Office 365 account, (depending on which version you purchased) you will find online versions of these tools plus many other features like Teams, Groups, Skype for Business, Most Oklahoma lawyers have read or heard me discuss the importance of this class of tool. These are critically important for organizing the digital client file. I want to reiterate that this year the OBA added six practice management tools as member benefits.¹¹ Oklahoma lawyers trying one of these tools for the first time can obtain a discount.

I'd also remind readers that the Oklahoma bar has added TrustBooks as a member benefit. This tool allows you to simplify your trust accounting and to make sure your records are completely accurate. You can contact the OBA Management Assistance Program for the Trustbooks discount code. Of the six tools mentioned previously, CosmoLex and Zola Suite also provide trust accounting. In my view, it simply makes no sense to do trust account management manually. There are too many opportunities for mistakes.

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FEATURED PRESENTER: Mark Lanterman

In today's world, the internet of Things has created an interconnected network of devices marked by an ever-expanding web of data. The average person now has vast amounts of data being created, collected, and stored about them every second. From laptops and appliances to our cars and especially the snitches we carry in our pockets – our smartphones - the legal community is faced with the task of processing this information and determining its value.

Mark will discuss the importance of digital evidence and electronically stored information and how to best utilize it in court.

- 9:00 The Internet of Things and Leveraging Digital Evidence Mark Lanterman, Chief Technology Officer, Computer Forensic Services, Minnetonka, MN
- 11:00 Cybersecurity Awareness and Involvement and Why All the Cool Kids Are Doing It Calvin Weeks, Eide Bailly LLP, Oklahoma City; Tom Vincent, Gable Gotwals, Tulsa; Debbie Anglin, AnglinPR, Oklahoma City

\$50 with Annual Meeting registration or \$75 without Annual Meeting registration if payment received by October 14th. A fee of \$25 will be assessed for CLE registrations received October 15th – November 7th; \$50 will be added for walk-ins.

Knowledge of the Ethics Rules and Succession Planning

By Joe Balkenbush

ARK TWAIN SAID, "IT ain't what you don't know that gets you into trouble. It's what you know for sure that just ain't so."

How many times have we had to be reminded of that aphorism? I just learned the word aphorism, which means "a pithy observation that contains a general truth," such as "if it ain't broke, don't fix it," when I was researching Twain's quote.

While that quote may be true in many areas of life, "it just ain't so" when it comes to your knowledge and familiarity with the Oklahoma Rules of Professional Conduct (ORPC).

WHAT YOU DON'T KNOW CAN GET YOU IN TROUBLE

Prior to becoming ethics counsel, I thought I was pretty familiar with the ORPC and Rules Governing Disciplinary Proceedings (RGDP). It didn't take very long for me to realize how much I didn't know. I didn't know what I didn't know! After more than 7,500 calls/emails from members over the last few years, I am certain many attorneys are as unfamiliar with the rules as I was.

We have all heard the saying "you don't know what you don't know." Unless you are intimately familiar with the ORPC and RGDP, you don't know what you don't know. How can you comply with the rules when you don't know what they are or what they require? The obvious solution is – read the rules! The ORPC and RGDP can be found in Title 5, Appendix 3-A of the Oklahoma Statutes titled "Attorneys and the State Bar."

Necessity may dictate you call me without first researching the applicable ethics rule. If that is the case and a quick response is essential, I'll understand so don't hesitate to call or send an email. Perhaps you would simply like confirmation/affirmation of your research or would like to discuss your understanding of a rule and its application. If so, please call or email! The position of ethics counsel was established so attorneys could be proactive regarding ethical issues that arise and obtain a timely answer to their question. Take advantage of the available resource and contact me with any questions.

Oklahoma law provides that all contact with the ethics counsel is confidential per ORPC Rule 8.3(d). A record of each call is maintained along with the name of the inquiring attorney, their bar number, telephone number, a brief synopsis of the facts stated and advice given. Any advice given by ethics counsel is just that – advice and is not binding on the Office of the General Counsel, Professional Responsibility Tribunal (PRT) or the Supreme Court. However, calls to the ethics counsel can be a mitigating factor when the general counsel, PRT or Supreme Court is determining what consequences, if any, should be imposed.

Ethics counsel is a resource for OBA members concerning their conduct, not the conduct of another attorney. If an attorney calls and requests advice regarding the conduct of another attorney, I will discuss the matter and refer the caller to the applicable ORPC but will not give any advice or opinion regarding whether the conduct violates the rules.

Ethics counsel is a resource for OBA members concerning their conduct, not the conduct of another attorney.



The Office of Ethics Counsel is not a resource for nonmember attorneys or the general public.

Knowledge of the ORPC and RGDP is essential to the practice of law. These rules are just as important as an attorney's knowledge of the substantive law of the areas in which they practice. Lack of knowledge of rules could result in an attorney's license being suspended or worse. Few, if any, lawyers set out to violate the rules, but again, "you don't know what you don't know." So, read the rules!

SUCCESSION PLANNING

During my tenure as ethics counsel, more than one attorney each month has become incapacitated, passed away or otherwise not able to continue the practice of law. Every month, I have received a call from a mother, father, spouse, child or friend of an attorney asking for help in closing an attorney's practice. None of us want to leave our loved ones with that task. The easy solution is to prepare your succession plan.

All necessary forms have been prepared and are available to you, free of charge. In 2014, the OBA created *The Planning Ahead Guide: Attorney Transition Planning in the Event of Death or Incapacity.* You'll find it online on the front page of your MyOKBar account. Please take the time to review the materials prepared for you in the planning guide. Simply appointing a successor attorney to deal with your clients, their files and cases will be a positive first step in planning ahead!

Your familiarity with the ORPC and RGDP is important.

Preparation of your succession plan is equally important. I urge you to follow the advice you would give any client regarding the necessity of estate planning, which is "do it." Likewise, it is a *necessity* for each and every attorney to have a succession plan. It's not a matter of if an attorney will need to plan for such eventualities, it's when. An attorney's practice is part of their estate. Please don't burden your loved ones with the difficult task of closing a law practice.

Benjamin Franklin said, "No one plans to fail, they fail to plan!"

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

BAR FOUNDATION NEWS

Impact Update – The Spero Project, The Common

By Candice Pace

They provide brightness to my dark future. They brought hope to my hopeless days. They are my happiness, my family and my home, The Spero Project

ORIGINAL STATES OF CONTRACTION OR CONTRACTOR OF CONTRACTOR

The Spero Project is one of only two nonprofits working with refugees in Oklahoma City. The need is great and the timing critical. Every year, Oklahoma receives displaced people from all over the world with little to no access to resources. Helping newly placed refugees with legal services is a huge part of what The Spero Project staff does in their day-to-day programming. The Common is led by three staff members and interns throughout the year.

Long-term resources and support are also a big part of The Spero Project's mission, including helping with daily homework, summer education programs, weekly English classes, one-on-one tutoring, language learning support, community support, assisting

Poem by Naiemah, translated by Moe Moe New neighbors from Burma/Myanmar

in major life events and securing employment and long-term housing.

Make an impact by joining our Fellows program for just \$10 per month or \$100 per year. Give online at www.okbarfoundation.org/donate.

Pictured above are two beneficiaries of The Spero Project's The Common, a grantee of the Oklahoma Bar Foundation.

Ms. Pace is the 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



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



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

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"Thank you" is not enough.

The Oklahoma Lawyers for America's Heroes Program provides legal advice and assistance to those who have honorably served this country and are unable to afford to hire an attorney.

To volunteer, visit WWW.OKbarheroes.org



Election for 2019 Leadership

Voting Opens Oct. 1, Closes Oct. 26

By Lane R. Neal

TOHN QUINCY ADAMS SAID,

"If your actions inspire others to dream more, learn more, do more and become more, you are a leader." Shawnee attorney Brandi Nowakowski will become the Young Lawyers Division chair next year, and many YLD members have stepped forward to run for office to become part of her leadership team.

If you have been in practice 10 years or less, you are a YLD member and can vote. The offices up for election are:

- Executive Offices: chairelect, treasurer and secretary
- District 1: One seat; Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers and Washington counties
- District 3: Two seats;
 Oklahoma County
- District 5: One seat; Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties
- District 6: Two seats; Tulsa County
- District 7: One seat; Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee and Wagoner counties
- District 9: One seat; Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman counties

- At-Large: Two seats; all counties
- At-Large Rural: One seat; all counties except Oklahoma and Tulsa counties

Please take time to read the background information about the candidates and be prepared to vote. It's easy. No polling place to drive to – the electronic ballot with candidates in contested races will be emailed to you on Oct. 1. Be sure the OBA roster contains your current email address; log into MyOKBar if you are not sure. *Ballots must be cast no later than 5 p.m. Friday, Oct. 26.* If you don't receive a ballot, notify me so we can send you one.

Uncontested offices will be deemed elected by acclamation. Election results will be announced at the YLD November meeting to be held in conjunction with the OBA Annual Meeting in Tulsa Nov. 7-9.

2019 LEADERSHIP

2019 Chair



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

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

Ms. Nowakowski has actively served on the YLD Board of Directors since January 2012, having served as the District 8 director, secretary, treasurer and chair-elect. In addition, she has served as YLD Community Service Committee chairperson since 2013. She enjoys working with the many attorneys who make our bar association great!

She has also previously served on the OBA Law Day Committee and has been selected to serve on the Credentials Committee for the OBA Annual House of Delegates Meeting each year since 2012. Additionally, she served on the Clients' Security Fund Task Force and the OBA Budget Committee.

Immediate Past Chair



Nathan Richter Nathan D. Richter was born in Oklahoma City. He is a graduate of Mustang High School (1996), OU (B.S. 2000)

and the OCU School of Law (J.D. 2007). Before beginning his legal career, he served in the Oklahoma Army National Guard for 10 years. He was deployed to Afghanistan in support of Operation Enduring Freedom in 2003 where he received the Joint Forces Commendation Medal and other awards.

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

In his spare time, he enjoys golfing, cycling and spending time with his family. Nathan is married to Kristin Richter and they have two children: Harrison (9) and Kailyn (8).

CONTESTED ELECTIONS

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

District Three



Melanie Christians Melanie Christians graduated from the OCU School of Law in 2009 and is a partner at

DeWitt Paruolo &

Meek in Edmond. She has served on the OBA YLD Board of Directors since 2017. During her tenure on the board, she has co-chaired the New Attorney Orientation Committee which organizes and distributes Bar Exam Survival Kits to all Oklahoma Bar Exam takers, as well as sponsors refreshments following the swearing-in ceremony for the newly admitted young lawyers and their families. She received the 2017 **Outstanding Board Member Award** for her commitment to the board.



Raised in Heritage Hills in Oklahoma City,

Virginia Hefner

Virginia Hefner attended Casady High School and then continued to the University of Denver where

she completed her BSBA in international business, with a minor in ethics and legal studies. She then returned to Oklahoma City to complete her MBA at OCU and proceeded to work as a landman until returning to OCU to complete her J.D.

Ms. Hefner completed an externship with the Oklahoma Corporation Commission for the Office of Administrative Proceedings,

working with the deputy administrative law judges and the appellate referee. She also received a CALI award for agency and unincorporated business associations and the 2014 OBA Energy and Natural Resource Law Section scholarship.

She continued her legal education at OU completing her LL.M. in energy and natural resource law. While working on her LL.M., she completed another externship with the Oklahoma Corporation Commission for the Office of General Counsel. She is now practicing as an independent contractor and working with various groups as a title attorney, including Robertson & Williams Inc.

April Moaning



April J. Moaning is a native of Oklahoma and the owner of the Law Office of April J. Moaning PLLC. She holds a

B.A. in economics from OSU and received an academic scholarship from the TU College of Law, where she later earned her J.D. While in law school, she served as vice president of the TU College of Law chapter of the National Black Law Students Association and maintained active involvement in community service organizations. She also received numerous accolades, including the CALI Excellence for the Future Award in Torts and the Rocky Mountain Black Law Students Association Best Oral Advocate Award.

After her admission to the Oklahoma bar, Ms. Moaning began her legal career practicing family and criminal law. She then served as staff counsel at Liberty Mutual Insurance where she gained experience in commercial civil litigation matters involving

personal injury and property damage. Currently, she represents a wide range of clients in family, civil and criminal matters.

Ms. Moaning is active in the OBA and has served as an at-large director for the OBA YLD since 2014. In addition, she serves as the current OBA YLD secretary, vice chairperson of the OBA Diversity Committee and chair of the OBA YLD Diversity Committee. She is passionate about involvement in the community and promoting diversity in the legal profession. She participates in a host of volunteer activities and helps coordinate the Law School Admissions Boot Camp, which is an event designed to help prospective law students navigate the law school admission process.



Bevan Graybill Stockdell Bevan Graybill Stockdell has been a staff attorney for the Oklahoma Court of Civil

Appeals in Oklahoma City since 2011. She currently performs legal research and drafts opinions for Judge Bay Mitchell. She previously served as a staff attorney to Judge Kenneth Buettner for seven years.

While attending the OU College of Law, she was published in the Oklahoma Law Review. Ms. Bevan graduated with honors and is a member of Order of the Coif. She is an active member of the OBA Women in Law Committee, having served as the Service Opportunities Subcommittee chair. She was an associate in the Luther Bohanon American Inn of Court from 2011-2013. She is also an Oklahoma Bar Foundation Fellow. Ms. Bevan's professional and academic interests include civil procedure, appellate practice, judicial ethics, nonprofit

and tax-exempt organizations and board governance.

She currently serves on the board of directors and as secretary for ReMerge of Oklahoma County, an alternative to incarceration for pregnant women and mothers. She is also on the board of the Oklahoma City Metro Literacy Coalition. She was a founding member of the Young Nonprofit Professionals Network of Oklahoma City (YNPN of OKC) and the leader of the Oklahoma City chapter of the Kansas University Alumni Association from 2013-2016. Additionally, Ms. Bevan received a graduate certificate in nonprofit leadership from OCU in 2013.

She grew up in Muskogee. She graduated *summa cum laude* from the University of Kansas and is a member of Phi Beta Kappa. She and her husband, Marshall, have one son, Jack, who was born earlier this year. The Stockdells enjoy watching sports, traveling and spending time in northern New Mexico and at Lake Tenkiller.

District Five



Brittany Byers

Brittany J. Byers is an attorney in the south Oklahoma City law firm Voorhees Voorhees & Byers. Her

primary practice areas are: general civil litigation, probate, guardianship, wills, trusts, estate planning, real estate, creditor collections and business and commercial. She graduated from Oklahoma City Community College with an A.S. in business in 2006 and graduated *summa cum laude* from the University of Central Oklahoma with a Bachelor of Business Administration focused on legal studies with a minor in political science in 2008. She received her J.D. from the OU College of Law in 2011. Ms. Byers was admitted to the Oklahoma bar in April 2012 and is admitted to practice before all Oklahoma courts and the United States District Court for the Western District of Oklahoma.

She is a member of the OBA Women in Law Committee, OBA Work/Life Balance Committee, **OBA** Estate Planning, Probate and Trust Section Legislative Committee, Oklahoma County Bar Association, Oklahoma City Real Property Lawyers Association, South Oklahoma City Lawyers Association and the Midwest City Rotary Club. She has served as secretary, vice president and president of the South Oklahoma City Lawyers Association. She is also currently serving as co-chair for the OBA Women in Law Committee.

Ms. Byers also serves as a board member for Leah's Hope Inc. and is on the Advisory Council for Rose State College's EmPower program. She was a part of the leadership and community awareness programs Team South VIII class and Leadership Midwest City 2017. She is active in both the South Oklahoma City and Midwest City chambers of commerce. She is married to Dallas Byers, and they live in Midwest City with their two dogs, Bones and Bear. She spends most of her free time going to all types of events from plays to musicals to concerts and enjoys spending time with her family.

She has served as the District 5 director for the OBA YLD since July 2016. Beginning January 2017, Ms. Byers was appointed the co-chair of the New Attorney Orientation Committee. With that committee, she helps to prepare the bar exam survival kits and helps to plan the new attorney orientation for each bar exam. She also serves as the YLD representative for the OBA Work/Life Balance Committee. In 2017, she received the Outstanding Board Member Award.



Alyssa King

Alyssa King is an only child who grew up in a small town in Oklahoma with a population of 1,000. Growing up, her favor-

ite thing to do was read, which consistently proved useful in achieving success in school. She graduated from OSU with a B.A. in liberal studies, with a concentration in psychology and art history. Some of her best memories at OSU involve her time as a member of the Omega Phi Alpha sorority. Ms. King began her journey to becoming an attorney at the OCU School of Law, where she graduated summa cum laude May 2017. She was a distinguished member of the OCU School of Law Review, a dean's scholar and a recipient of 11 CALI Excellence for the Future awards.

When Ms. King was sworn in as a member of the OBA, she became the first attorney in her family. She has been with Calvert Law Firm since Halloween of 2015 (which happens to be her favorite holiday). She currently practices in the areas of business law and estate planning. In Ms. King's spare time, she enjoys visiting the archery range and attending concerts.



Morgen D. Potts Morgen D. Potts practices criminal defense, estate planning and property law. She serves clients in Cleveland and McClain coun-

ties. She began her legal career as a paralegal serving a criminal defense lawyer in Texas. This experience motivated her to attend law school and later open her own law firm. While she attended law school, Mrs. Potts gained even more experience in the field of criminal defense by representing low-income families at OU's legal clinic. Later, she continued to expand her legal knowledge by assisting with research to update a real property treatise, by assisting with title work for a land acquisition company and by assisting on cases as an associate attorney at a law firm located in Oklahoma.

District Six



Rhiannon Baker Rhiannon Baker is a civil litigation attorney with Holden & Montejano. Her practice includes construction litiga-

tion, professional liability defense, property damage, personal injury and other business litigation matters. She is a 2009 graduate of the TU College of Law with highest honor and earned several awards and distinctions, including a certificate in health law and Order of the Curule chair. While in law school, Ms. Baker served as the executive editor to the *Tulsa Law Review* and her comment was selected for publication.

An Iowa native, she received her undergraduate degree from TU and a master's degree from OU. She worked for several years in the social services field prior to entering law school. Ms. Baker and her husband, Mike, and their two children, call Tulsa home.

Prior to returning to private practice, she served as a judicial law clerk for four years in the Northern District of Oklahoma. She is a member of Leadership Tulsa and the Council Oak/Johnson-Sontag Chapter of American Inn of Court. She has served on the TU Alumni Board and as a volunteer for Tulsa Lawyers for Children and Domestic Violence Intervention Services Inc.



Bradley J. Brown Bradley J. Brown joined the Tulsa law firm of Jones, Gotcher & Bogan as a law clerk in May 2011 and later as an associate

attorney after being admitted to the Oklahoma bar in 2012. His areas of practice included business litigation, contracts, real estate law, family law, trademarks, employment law and disputed estates and trusts. In August 2018, he began working as an attorney for Helmerich and Payne Inc. in Tulsa.

He received a Bachelor of Arts in letters with distinction from OU before obtaining his J.D. from the TU College of Law.

Currently, Mr. Brown is serving on the Board of Directors for the **OBA YLD representing Judicial** District No. 6. He also serves as general counsel for the National Fiddler Hall of Fame and as president of the Cascia Hall Alumni Association. He is a member of the American Bar Association, Tulsa County Bar Association, Muscogee (Creek) Nation Bar Association and he is admitted to practice before the United States District Court for the Northern, Eastern and Western Districts of Oklahoma as well as the United States Court of Appeals for the 10th Circuit.

Mr. Brown is married to Andrea Brown, an assistant district attorney for Tulsa County. Together they have two daughters, ages 5 and 3.



Patrick Colvin

Patrick G. Colvin joined the law firm of Jones, Gotcher & Bogan as a law clerk in May 2012 and as an associate attorney

in September 2013. His practice focuses on civil litigation.

He received a B.A. in biology *summa cum laude* from the University of St. Thomas and a J.D. with highest honors from the OU College of Law. During his tenure at OU, he attended the University of Oxford, Brasenose College and was named a member of the Order of the Coif.

Mr. Colvin is admitted to the Federal District Courts for the Northern, Eastern and Western Districts of Oklahoma. He is also a member of the Tulsa County Bar Association.



Tessa Hager Tessa Hager is an attorney

with the Tulsa office of the national law firm, Dunlap Bennett and Ludwig. Ms. Hager practices

entertainment law and represents individuals and companies in a wide variety of corporate and intellectual property litigation matters. In addition to her experience in private practice, Ms. Hager served as an assistant attorney general to the Oklahoma attorney general and litigated civil matters on behalf of the state of Oklahoma.

Ms. Hager grew up in Perry and graduated with honors from OU with a business degree in economics in 2008. Thereafter, she obtained her J.D. from the OU College of Law in 2011. While in law school, Ms. Hager consecutively qualified for the Dean's Honor Roll, was a member of the legal honors fraternity Phi Delta Phi and served as an officer for multiple student organizations, including the Organization for the Advancement of Women in Law.

In 2015, Ms. Hager became a member of the fifth class of the OBA Leadership Academy and received a 30 Under 30 NextGen Award. In her career, she has held an associate membership term with both the Luther Bohannon Inn of Court and Ruth Bader Ginsburg Inn of Court.

She actively participates in the Federal Bar Association and sections of the Tulsa County Bar Association. In her spare time, Ms. Hager is a supporter and volunteer for various art organizations in Tulsa and Oklahoma City.

District Seven



Margaret Cook Margaret Cook attended the TU College of Law after working for several years with Help-In-Crisis, a domestic and

sexual violence service agency. After graduating with her J.D. in 2012, she returned to Help-In-Crisis to serve as the executive director. During her years as executive director, she established a legal program to assist survivors of domestic violence and sexual assault. Ms. Cook received recognition for her service in 2016 with the Dianne Barker Harold Award.

In 2017, she opened her own practice in Tahlequah and considers herself not just an attorney, but a legal advocate. She has a passion for assisting victims of violence and strives to help them get back on their feet.



T. Chase McBride

Chase McBride is a partner at Ritchie, Rock & McBride Law Firm in Pryor. Originally from Pryor, he

is from a family full of Oklahoma attorneys. He attended TU where he received his bachelor's degree in finance and economics.

Before attending graduate school, Mr. McBride worked in various business areas including marketing, finance and manufacturing. He attended graduate school at OU where he received both his J.D. and Master of Business Administration. He also received a certificate in law and entrepreneurship from the OU College of Law.

Mr. McBride has successfully argued in front of the state's highest court, defended federal business litigation actions, written million-dollar business contracts and sales, represented high asset divorce estates and successfully defended a first-degree murder charge and other felonies. He has also been published in the Oklahoma Bar Journal regarding court-ordered grandparent visitation under Oklahoma law. He is a member of the OBA Criminal Law, Family Law, Business and Corporate Law, and Litigation sections. He is currently serving as president of the Mayes County Bar Association.

Mr. McBride is married and has a 3-year-old daughter and another daughter on the way (that will probably be here by the time this is published). He also has two chocolate labs. At Large **Rhiannon Baker** See bio above.

Brittany Byers

See bio above.

Melanie Christians

See bio above.

Patrick Colvin

See bio above.

Margaret Cook

See bio above.

Tessa Hager

See bio above.

Virginia Hefner

See bio above.

Alyssa King

See bio above.

T. Chase McBride See bio above.

See bio above.

April Moaning

See bio above.

Bevan Graybill Stockdell

See bio above.

UNCONTESTED ELECTIONS

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

Chair-Elect



Jordan Haygood Jordan Haygood has been a member of the OBA YLD board for four years and is the current OBA YLD

treasurer and District 3 representative. He is currently the co-chair for the OBA YLD Membership Committee, the OBA YLD liaison to the OBA Disaster Relief Committee and OBA Law School Committee and a member of the OBA Health Law Section. In 2016, he was awarded "Director of the Year" by the OBA YLD chair for his service to the OBA YLD.

He is currently serving young lawyers on a national scale as the American Bar Association YLD as a District 24 delegate for Oklahoma and Arkansas. As part of his duties for the ABA, he is a voting member for the ABA YLD House of Delegates.

Mr. Haygood is currently a staff attorney for SSM Health -Oklahoma, where he is responsible for assisting the regional general counsel in overseeing and managing legal affairs for SSM Health St. Anthony Hospital -Oklahoma City, Shawnee and its operating entities. He is also an active member of the American Health Lawyers Association and American Corporate Counsel Association. He has been admitted to practice in the United States District Court for the Western District of Oklahoma and certified to practice in the United States Bankruptcy Court for the Western District of Oklahoma.

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

Treasurer April Moaning See bio above. Secretary



Dylan Erwin

Dylan D. Erwin is a civil litigator practicing with the Oklahoma City law firm Holladay & Chilton. Prior to entering pri-

vate practice, he was an assistant district attorney for Comanche and Cotton counties in his hometown of Lawton.

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

Mr. Erwin has served on the OBA YLD Board of Directors since 2015. During his time on the board, he has served as both District 9 director and at-large director. He currently serves as a District 3 director and the co-chair for the Community Service Committee. This past June, Mr. Erwin helped to coordinate the Wills for Heroes Program that provided free legal services to Broken Arrow's police and fire departments. Aside from his volunteer work with the YLD, he also serves as a member of the OU College of Law Young Alumni Board and is an active congregation member and worship team musician at The Parish Church.

In his spare time, Mr. Erwin enjoys binge watching British TV shows with his wife, enjoying all that Oklahoma City's vibrant arts community has to offer and seeing how close he can get to qualifying under Daubert as a Star Wars expert.

District One



Aaron Pembleton Aaron Pembleton is solo practitioner at Pembleton Law Firm PLLC in Bartlesville, where he is

primarily engaged in criminal defense and family law matters for the residents of Osage, Washington and Nowata counties. He received his undergraduate degree in agricultural and applied economics from Texas Tech University and his J.D. from the OU College of Law.

He began his legal career as a licensed legal intern at the Cleveland County District Attorney's Office. After being admitted to the bar, Mr. Pembleton became prosecutor for the 10th Judicial District in Pawhuska. He seized an opportunity to move to the 11th Judicial District in Bartlesville and then Nowata. During his time as a prosecutor, he had the privilege to

handle various types of cases from deprived child cases to traffic tickets to murders. In October 2015, he left the public sector to open his solo practice. Mr. Pembleton has served on the OBA YLD Board of Directors for District 1 since 2011.

District Nine



Grant Kincannon Grant Kincannon was born and raised in Altus, where he now makes his home with

his wife and two sons. He is with the firm of Latham, Nelson & Associates and practices in many areas of the law including civil litigation, personal injury, business/commercial, real estate and wills/probate. Mr. Kincannon was admitted to the Oklahoma bar in 2014 and is also admitted to practice in the U.S. District Court for the Western District of Oklahoma. He is a member of the Jackson County Bar Association and the Oklahoma Association for Justice.

Mr. Kincannon received his B.S. and M.S. degrees from OU and his J.D. from the OCU School of Law. While in law school, he received the CALI Award for Excellence in Oklahoma Land Titles. He is the immediate past president of the Jackson County Bar Association, serves on the board of the Altus Chamber of Commerce and is the treasurer of the Jackson County chapter of the OSU Alumni Association. He has served as the District 9 representative to the OBA YLD Board of Directors since 2016.

At-Large Rural **Brittany Byers** See bio above.

Margaret Cook

See bio above.

T. Chase McBride See bio above.

Alyssa King

See bio above.

FRIDAY

8:30AM-3:30PM

Pontotoc Technology Center 601 W. 33rd St. | Ada, OK 74820

Mr. Neal practices in Oklahoma City and serves as YLD immediate past president. He may be contacted at LNeal@dlb.net. Keep up with the YLD at www.facebook.com/yld.



Call 580-436-8322 or email Teresa Wyatt to reserve your spot by October 19th!

For a detailed agenda & the speakers' presentations visit visionbank bank/trust seminar after October 1st



BENCH AND BAR BRIEFS

ON THE MOVE

John J. Foley was promoted to trial mentor supervisor for the Office of the Public Advocate for Maricopa County in Arizona.

Lauren A. Campbell joined the Oklahoma City office of Phillips Murrah as an associate. Ms. Campbell works in the firm's oil and gas title examination practice group.

KUDOS

Courtney L. Kelley has been accepted into the inaugural class of the Heart of America Fellows Institute of the American College of Trust and Estate Counsel. She practices trust and estate litigation.

John J. Foley was appointed to the Executive Council for the Juvenile Law Section for the Arizona Bar Association.

Lance Leffel joined the Oklahoma City office of GableGotwals as a shareholder. Mr. Leffel focuses his practice on insurance defense, professional liability defense and litigation.

John David Weaver was promoted to partner at Evans & Davis. Mr. Weaver's practice focuses on estate planning, small business planning and trust administration.

Matthew D. Stump of Oklahoma City was awarded with a President's Commendation by the American Immigration Lawyers Association (AILA) at the 2018 Annual Conference on Immigration Law in San Francisco. The award honors his exemplary service to the AILA president and the organization's members. Jon Starr, Eric Begin and Kris King opened Starr, Begin & King PLLC, a boutique litigation firm in Tulsa. The firm can be reached at 1515 South Boulder Avenue, Tulsa, 74119; 918-872-0371.

AT THE PODIUM

T. Douglas Stump of Oklahoma City was a featured speaker at the American Immigration Lawyers Association's 2018 Annual Conference on Immigration Law in San Francisco. Mr. Stump presented "Navigating the Challenges of I-601A from Intake to Visa Interview."

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 November issue must be received by Oct 1.



The Oklahoma Legal Directory is the official OBA directory of member addresses and phone numbers, plus it includes a guide to government offices and a complete digest of courts, professional associations including OBA committees and sections. Available in print or the new FREE digital version. To order a print copy, call 800-447-5375 ext. 2 or visit www.legaldirectories.com. To see the digital version, visit tinyurl.com/OKLegalDirectory.

ngela Barker-Jones of Tahlequah died July 31. She was born July 29, 1969. She received her J.D. from the TU College of Law in 1995. Ms. Barker-Jones was sworn in as a Cherokee Nation Supreme Court justice in January 2013. Prior to her swearing in, she had served on the tribe's Employee Appeals board. She had also served as an assistant district attorney in Cherokee and Muskogee counties, as a public defender and ran a private practice in Tahlequah. Donations in her honor may be made to the Innocence Project at www.innocenceproject.org.

ary Lee Bloom of Oklahoma **G**City died Oct. 22, 2017. He was born Sept. 2, 1937, in Alva. He received his J.D. from the OCU School of Law in 1980 and spent 28 years as an IRS chief counsel attorney before his retirement in 2007. Mr. Bloom loved baseball. He started playing at age 8 and played through American Legion ball. He went on to play at Phillips University in Enid where he was named the 1961 National Association of Intercollegiate Athletics Second Base All American. He proudly served in the U.S. Army and was assigned to play baseball while serving in Germany. In addition to baseball, he enjoyed woodworking in his home shop.

James Erman Briscoe of Luther died July 17. He was born May 5, 1942, in Luther. **In 1960, he joined the U.S. Marine Corps.** Following service to his country, he earned an undergraduate degree at the University of Central Oklahoma and a J.D. at the OCU School of Law. Mr. Briscoe began a law practice on Luther's Main Street, later serving as Luther's city attorney for many years. He was elected to the Legislature as a Democrat representing House District 96. He was an avid outdoorsman and the founder of the legendary Deer Camp.

John Kenton Francy of Broken Arrow died July 17. He was born Feb. 7, 1950, in Tulsa. He was a 1968 graduate of Edison High School and in 1976 obtained his J.D. from the TU College of Law. Mr. Francy was a member of Sigma Alpha Epsilon Fraternity, Tulsa County Bar Association, Tulsa Lawyers for Children and was an adjunct professor at TU. He loved to spend time with his grandkids and his dog Boz. He also enjoyed sailing and running.

ohn Sidney Kerr of Edmond died June 26, 2015. He was born May 7, 1934, in Hollis. He graduated from Altus High School in 1952 and then received a degree in geology from OU in 1956. While attending OU, he was president of the Alpha Tau Omega Fraternity, a member of the baseball team and ROTC. After graduating from college, Mr. Kerr joined the U.S. Air Force. He returned to Oklahoma to obtain his J.D. from the OU College of Law in 1961. After practicing with his father in Altus for eight years, he moved to Oklahoma City to work for Apco Oil and later Woods Petroleum. He left the oil business in 1985. In 2008, Mr. Kerr retired from the Oklahoma Employees Group Insurance Co. He was a talented golfer and an exceptional storyteller.

ary Mullen Phillips Mof Dallas died July 21. She was born Aug. 6, 1940, in Dougherty, Iowa. After graduating from the University of San Diego she went on to teach grade school for five years in the San Diego Unified School District, as well as one year in Caripito, Venezuela. Shortly thereafter, she moved to Oklahoma City where she attended the OCU School of Law, receiving her J.D. in 1977. Ms. Phillips worked as an attorney for multiple publicly traded companies in Oklahoma City before working with the Federal Depository Insurance Corp. (FDIC). Over the next 30 years she worked in various FDIC offices including Oklahoma City, Hartford, Connecticut, and Dallas. She retired in 2017.

ora Roberts of Oklahoma City died July 4. She was born Nov. 30, 1939, in Holdenville. She graduated from OCU with her bachelor's degree. In 1969, Ms. Roberts received her J.D. from the OU College of Law. She practiced law for nearly four decades both in private practice and in the public sector. Throughout her career, she worked in various law firms in Tulsa and Oklahoma City. She also clerked for the Oklahoma Court of Criminal Appeals and served as assistant public defender for Oklahoma County. Ms. Roberts retired from the legal profession as a division chief with the Oklahoma Indigent Defense System.

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2018 ISSUES

OCTOBER

Sports Law Editor: Shannon Prescott shanlpres@yahoo.com

NOVEMBER

Torts Editor: Erin Means DeWalt erin.l.means@gmail.com

DECEMBER

Ethics & Professional Responsibility Editor: Leslie Taylor leslietaylorjd@gmail.com

2019 ISSUES

IANUARY

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 Dav 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 Del acerda melissde@aol.com Deadline: Aug. 1, 2019

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



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What to Do When Everything Feels Bad

It's all around us – the pressures of life can be seen on the news, in our clients and even in our own lives. Whether from the stress of the job or the world at large, it is important for us to recognize the sources of our stress, so we can lighten that weight.

Goo.gl/DSycj9



The 25 Greatest Legal Movies

The *ABA Journal* recently released a list of the top 25 legal-themed films. The list was made by a panel of law practitioners, which included lawyers, law professors and a judge. Grab your popcorn and enjoy a night of films that examine how the legal system intersects with our lives in different ways.

Goo.gl/BPcqib



Choosing Your Courtroom Persona

We all have an image that comes to mind when we think of lawyers. Lawyers working in courtrooms must be aware of the perceptions that juries and even judges have about them. Luckily, there is no "one style fits all" when it comes to being a lawyer. Here are some things to keep in mind when choosing a style to facilitate your courtroom goals.

Goo.gl/fXHrpT



32 Easy Tailgating Recipes

Fall is in the air and with that comes the start of the football season and tailgating. Chili, wings, little smokies or chips and dip, check out *County Living*'s 32 on-the-go tailgate recipes to get you fueled up for the big game.

Goo.gl/QgtnM3



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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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SPACE FOR TWO ATTORNEYS AND SUPPORT STAFF. Use of common areas to include conference rooms, reception services, copy room, kitchen and security. Price depends on needs. For more information, send inquiry to djwegerlawfirm@gmail.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.

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.

ESTABLISHED, DOWNTOWN TULSA, AV-RATED LAW FIRM SEEKS ASSOCIATE ATTORNEY with 3 - 6 years' commercial litigation experience, as well as transactional experience. Solid deposition and trial experience a must. Our firm offers a competitive salary and benefits, with bonus opportunity. Send replies to "Box J," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

SMALL TULSA LAW FIRM IS IN NEED OF AN ASSOCIATE ATTORNEY with 1-3 years of experience to support the firm's commercial litigation and family law practice. If interested, please send your resumé to 624 S. Boston, Suite 900, Tulsa, OK 74119. Your application will be maintained in confidence.

MEDIUM-SIZE LAW FIRM IN OKC THAT HAS A DIVERSE PRACTICE of personal injury, workers' comp, family law, criminal defense, social security, among other areas of practice looking for a lawyer skilled in social security practice that is also willing to assist in other areas of practice. Experience preferred, but not required. Office space, support staff, computer, phone/ internet etc. provided. A modest monthly stipend will be advanced. Ultimately, pay will be contingent on case resolution. If interested, please submit resume to "Box S," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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SEEKING A FAMILY AND/OR CRIMINAL DEFENSE LAWYER with three or more years of experience for an expanding Tulsa-based law practice. Send replies to "Box P," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152

ASSOCIATE ATTORNEY – PARMELE LAW FIRM. Parmele Law Firm is seeking a licensed attorney for administrative law in our Joplin office. No experience required. Excellent compensation and benefits package. Some day travel required. If you are interested in this exciting opportunity, please email cover letter and resume to hr@danielparmelelaw.com. EOE.

OIL & GAS LITIGATION ASSOCIATE. McAfee & Taft's large and sophisticated oil and gas practice is looking for an associate attorney with one to three years of hands-on oil and gas litigation experience. Top academic performance, strong writing and analytical skills, interpersonal skills and the ability to work in a team environment are required. Candidates with prior industry experience (land department, engineering and/or operations) are specifically encouraged to apply for this position. Excellent salary and benefits. Please submit resume, law school transcript and a short writing sample to Brandon Long at brandon.long@mcafeetaft.com and Todd Woolery at todd.woolery@mcafeetaft.com. All inquiries will be treated confidentially.

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BACK PAGE

A Day in a Texas Court

By Michael C. Trewitt

AM EXECUTOR OF THE estate of my late sister who resided in Richmond, Texas, and died Nov. 1, 2016. At that time one of her daughters and the daughter's son, who was in high school, were residing with her. My sister's desire was that the daughter be allowed to remain in the house until the end of school. Out of respect for my sister's desire, I told the daughter she could stay until June 1 but then had to move so I could sell the house. However,



excuse after excuse came and the daughter never moved.

I decided to file an eviction proceeding, but under Texas procedure it is not that easy. I first had to file for a declaratory judgment from the probate court that I had the right to take possession of the house. The court granted me the order but that did not oust the daughter. Instead, I had to then file a forcible entry and detainer action with a justice of the peace.

> When the day of the hearing came, I was allowed to bypass security and sit at the counsel table with my attorney because he told the judge I was a lawyer. Most of the litigants had eviction or debt collection cases.

The judge came out, told everyone to rise and then had everyone say the Pledge of Allegiance to the U.S. flag and then the pledge to the Texas flag. I didn't recite the Texas pledge because I am not a Texas citizen, and I didn't know the pledge anyway. The judge then swore everyone in en masse. He then asked the attorneys,

"Who went to the University of Houston law school?" Several attorneys raised their hands and the judge said, "You go first." Then the judge asked, "Who went to the University of Texas?" Several attorneys raised their hands and the judge said, "You go last."

He then asked, "Who went to South Texas College of Law [a private law school in Houston]?" A couple of attorneys raised their hands, and the judge said, "You go in the middle." Since I hadn't raised my hand, the judge asked me, "And where, sir, did you to go to law school?" I answered, "the University of Oklahoma." The judge blurted, "You definitely go last!"

As I sat through the hearings, I found the judge to be very cordial and fair to all parties. He even partially apologized to an eviction defendant and told him, "This is the hardest part of my job, but I am sworn to dispense justice according to the facts and the law."

At the end of my hearing the daughter said she wanted to buy the house. He told her she had to move but said, "Make this a winwin situation and move within seven days; and if you want the house, you can bid on it."

All in all, it was an interesting experience seeing the court operate from a different perspective.

Mr. Trewitt practices in Ponca City.

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FEATURED PRESENTER: Michael Johnson, CEO, Clear Law Institute

Lawyers often try to detect deception when interviewing witnesses and negotiating with opposing counsel. To do so, they often rely on their "gut instinct" and popular stereotypes about how liars behave. However, in recent years, scientists have shown that many popular beliefs about how liars behave are inaccurate.

In this thought-provoking and practical program from former U.S. Department of Justice attorney Michael Johnson, you will learn scientifically validated methods for detecting lies and deception. This engaging presentation will show you how to:

 Spot deception by viewing videos from actual interviews

Avoid common errors in lie detection

 Identify deception cues related to verbal content, verbal style, and other linguistic cues

 Utilize questioning techniques to more easily differentiate between liars and truth-tellers

 Ask questions designed to increase "cognitive load," making it more difficult for liars to maintain their stories

 Analyze the content of a witness' statement for signs not only of deception but also of truthfulness

Early registration by October 11, 2018, is \$225.00. Registrations received after October 11, 2018 will increase to \$250.00 and \$275.00 for walk-ins. Registration includes continental breakfast and a networking lunch. To receive a \$10 discount on in-person programs register online at www.okbar.org/members/CLE. Registration for the live webcast for all members is \$250. All programs may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org to register.

DETECTING DECEPTION: WHAT LAWYERS CAN LEARN FROM SCIENTISTS

THURSDAY, OCTOBER 18

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

Oklahoma Bar Center LIVE Webcast Available

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