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# THE OKLAHOMA BAR **Journal**

Volume 89 — No. 26 — October 2018



**SPORTS  
LAW**





## A DIFFERENT APPROACH. BIG CASES, WITHOUT BIG EGOS



### ACCIDENTS

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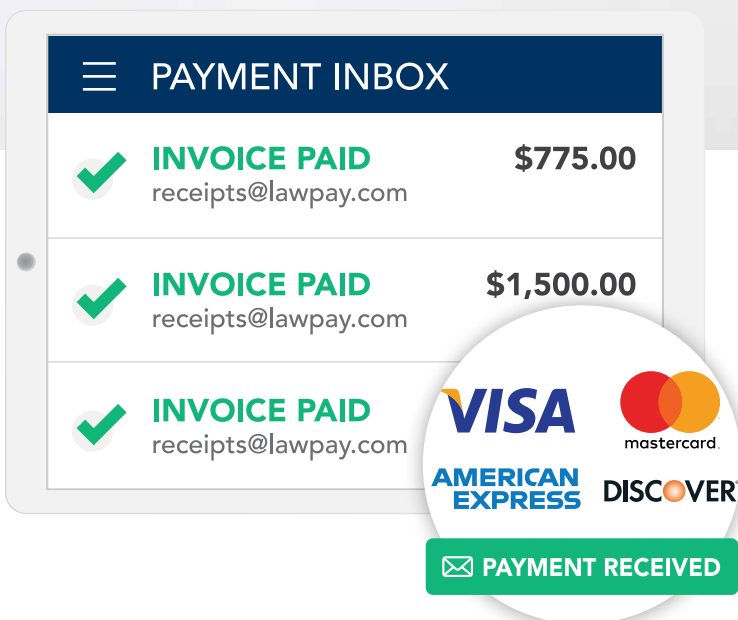
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- 4:30 p.m. Registration**
- 5:00 p.m. Program Begins**
- 6:00 p.m. Hors D'oeuvres, Dinner**  
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- 7:00 p.m. Race Time**  
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# THE OKLAHOMA BAR Journal

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Editor: Shannon Prescott

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# Team Pride

### THE MONTH OF OCTOBER IS A BUSY TIME

for sports fans. Football games with a chill in the air; basketball on the horizon (Go Thunder!) and the MLB race for the pennant is coming down to the wire. Some of you might enjoy the camaraderie of the tailgate as much as the sport itself. The pregame festivities offer the opportunity to talk about recent events or catch up with friends. We proudly wear the team colors, pack up and head to the stadium or host a watch party for the game. We take pride in our team, which can lead to spirited debates between friends – Go Pokes!

Why do we like to feel we are a part of a team? Is it the excitement of the competition or the comfort of belonging to a group united by the same goal? As a team member or a fan, we become invested in the team's mission while developing a passion for the pursuit of the "win." However, the pursuit of the win cannot be allowed to disrupt the entire game. Whether on the field or in the court room, our actions reflect upon the sport/profession as a whole.

The OBA Standards of Professionalism state, "Professionalism for lawyers and judges requires honesty, integrity, competence, civility and public service." And also, "The very nature of our adversary system of justice requires respect for the law, the public, the courts, administrative agencies, our clients and each other." Clients and jurors take note of the way in which we interact with the public and fellow attorneys. While we are on opposing teams when representing a client, remember that we all belong to the same team – the legal profession. When we take pride in being a member of the legal profession, we are encouraging others to respect us and our profession.



*Kimberly Hays*

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### OBA ANNUAL MEETING NOV. 7-9 IN TULSA

I hope that you have already made plans to register and attend our OBA Annual Meeting! Be part of the team and join us to socialize with friends, engage

in the discussions about the future of our practice of law and be part of the camaraderie that happens when attorneys gather together. Just like a good tailgate party or bedlam rivalry, you do not want to be left out of the excitement to be found in Tulsa.

The highlights include CLE that examines our changing legal landscape with the topics of medical marijuana regulations, digital evidence, the digital underground and cyber protection. Join us for the Wednesday evening President's

Reception and don't miss the Thursday night '80s-themed event – Kim & Alan's House Party!

Send photos of yourself from the '80s to Laura Stone at [lauras@okbar.org](mailto:lauras@okbar.org) and be included in the evening's slideshow. Attend the Friday morning Delegates Breakfast, featuring Ted Streuli. Important issues to come before the House of Delegates include resolutions and elections. I look forward to seeing you in Tulsa.



*Chloe, member of the OBA first family, proudly wears her team colors.*



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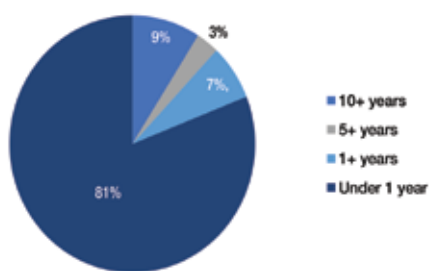
# Safe Sport: Protecting Athletes From Sexual Abuse

By Laurie Koller

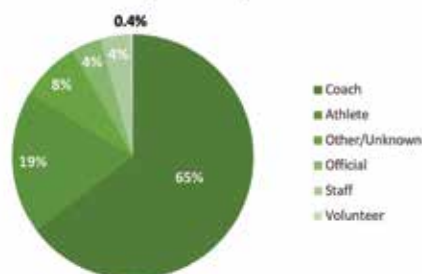
**THE AMOUNT OF ABUSE COMING TO LIGHT IN YOUTH-SERVING organizations** is alarming. The 156 victims who spoke during the Nasser hearings regarding abuse in gymnastics are the tip of the iceberg. The U.S. Center for SafeSport opened in March 2017. This entity is authorized to investigate complaints in many organized sports organizations.

Within 15 months of opening, the center had fielded 1,000 complaints. The vast majority (81 percent) of these were current complaints, not historical complaints. A majority (65 percent) were complaints against coaches. The figures below show SafeSport Center statistics one year after opening. Three months later, the number of complaints had nearly doubled.<sup>1</sup>

Incident Dates (n = 540)



Classification of Responding Party (n = 540)



When we know that one in five girls and one in 20 boys are abused before they reach adulthood, foreseeability of childhood sexual abuse is clear. Abuse specifically within a sport is lower but is still suggested as between 2 percent and 8 percent of all athletes.<sup>2</sup> Where there is predictable risk, then there is a duty to take action.

## FORESEEABILITY OF CHILD SEXUAL ABUSE

The prevalence of these complaints has a direct effect on the legal standard imposed on youth-serving organizations. In 2017, a California court concluded that “it was reasonably foreseeable to defendants that a child participating in [U.S. Youth Soccer Association] would be sexually abused by a coach.”<sup>3</sup>

Oklahoma courts have frequently recognized the special place that children hold in our society and adults’ heightened duty to protect them. In *Schovanec v. Archdiocese of Oklahoma City*,<sup>4</sup> the Oklahoma Supreme Court considered the special duties owed to children by adults. It determined that notice of

a priest’s use of alcohol with children was sufficient, for summary judgment purposes, to constitute notice of later sexual abuse.

Because almost all national sports organizations have either adopted or are required to adopt policies and procedures for child protection, it is likely that the failure to have such rules will be considered a violation of the common law duty to protect children within a youth-serving organization.

## THE SAFE SPORT ACT

In an effort to address sexual abuse of athletes, including children, in organized sport, Congress passed the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act (Safe Sport Act),<sup>5</sup> effective Feb. 14, 2018. There is no doubt the act is needed.

The U.S. Center for SafeSport and the Safe Sport Act is part of the solution. The act now requires mandatory child abuse reporting for those affiliated with amateur sports and U.S. Olympic sports, including college athletics. Anyone affiliated with these organizations must report sexual abuse to law

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Oklahoma has been a mandatory reporting state for many years. By law, all adults who are aware or have a suspicion of child abuse or sexual abuse of a child under the age of 18 must report to the DHS Child Abuse Hotline, 800-522-3511.

enforcement within 24 hours or they can be charged with a federal crime. In some ways, Oklahoma has been ahead of the curve. Oklahoma has been a mandatory reporting state for many years. By law, all adults who are aware or have a suspicion of child abuse or sexual abuse of a child under the age of 18 must report to the DHS Child Abuse Hotline, 800-522-3511.<sup>6</sup> By way of caveat, be aware that the attorney-client privilege does not exempt anyone from these reporting requirements.

The Safe Sport Act also addressed much-needed investigation and enforcement mechanisms. It requires the Center for SafeSport to establish policies for handling allegations. The center has an investigation process. The center will also hold hearings after their investigation. Following the hearing, individuals may be placed on a banned list. Unfortunately, the sheer number of complaints along with lagging funding is threatening to swamp the process. As Nancy Hogshead-Makar, 1984 Olympic swimmer, civil rights lawyer and founder of Champion Women, an advocacy group for girls and women in sport, reports, "Think about it, what police station, what HR

department could handle the flood of complaints? Each one has to be investigated, and they must hold a hearing in order to remove a coach from the Olympic movement... the Center desperately needs more money to be able to scale up."

The Safe Sport Act also provides guidelines for civil actions. The act acknowledges that for many people the recognition that what happened to them as children was actually sexual or criminal in nature often does not occur until years after the event. Thus, the Safe Sport Act provides an extended statute of limitations for civil cases of 10 years after the date of discovery of the act or injury. The act does not define what constitutes discovery. Oklahoma's civil statute of limitations governing childhood sexual abuse was extended in 2017 until the victim's 45th birthday.<sup>7</sup> This extended period, however, only applies to perpetrators and not to youth-serving organizations.

Youth sports programs, like all youth-serving organizations, give adults access to youth. In many sports, there are also "high-risk" factors including overnight trips, changing in locker rooms and travel to practices and games where an athlete may be driven by a coach or volunteer.

In addition to the fact that all sports are body-oriented, there is also a power imbalance between coaches and athletes. Coaches are given a lot of authority over athletes, even children. Coaches may set up a culture where their authority is not to be questioned, at risk of playing time or other disincentives. Additionally, while abuse may occur in all sports, individual athletic sports such as gymnastics and swimming may be even riskier because the one-on-one is inherent in the sport.

Given all these risky circumstances, the Safe Sport Act requires that the Center for SafeSport establish policies for preventing abuse. Many national youth-serving organizations already have explicit prevention policies in place. The center offers a variety of online training courses aimed at creating safe and respectful sport environments for all athletes. Their website<sup>8</sup> also provides guides for parents of children involved in sport. For those who may need information for implementing safety procedures for local organizations, the center's own code can be found online.<sup>9</sup> Many other national organizations also offer resources. Over five years ago, the National



Center for Missing and Exploited Children hosted more than 50 of the nation's largest youth-serving and youth sports organizations to discuss strategies for protecting children from sexual abuse.<sup>10</sup> The principles that were developed at this summit mirror those that SafeSport has adopted.

For all of these reasons, local youth-serving sports organizations should make sure that they have taken the steps necessary to reduce the chances of child sexual abuse within their organization.

## MAKING LOCAL SPORT SAFE

### *Screen Employees and Volunteers*

Organizations need to review state liability for negligent hiring, protection of privacy rights of employees and volunteers and laws preventing employment discrimination to come up with a reasonable background investigation. Because of the known risks of child sexual abuse, a background investigation for an employee or volunteer who works with children ought to be done. The Boy Scouts have required adult volunteer criminal background checks since 2003.<sup>11</sup> An adequate background check typically includes a criminal history check at the state and national level and searching sex offender and child abuse registries. There are organizations that will conduct these searches for a fee.

### *Train Adults and Youth Athletes*

Screening employees and volunteers is a first step. Having clear boundaries and rules in place during sporting events is also necessary. The basis of much of this training is preventing one-on-one situations between adults and youth. This is especially an issue for youth competitive sports where there is frequent travel and overnight stays in hotel rooms. The Centers for Disease Control offers policies that can be adopted by local organizations.<sup>12</sup>

Many youth-serving organizations also offer training for both children and adults in recognizing and reporting child abuse. The Amateur Athletic Union began such training in June 2012 including different training for staff, coaches, volunteers, parents and caregivers and children and youth athletes.<sup>13</sup> Training should include a definition of what is abusive conduct. It should teach employees and volunteers to identify child abuse and recognize disclosures. Training should also educate adults on their duties as mandatory reporters and encourage children to report to a trusted adult. As stated above, Oklahoma is a mandatory reporting state for all adults. Under SafeSport, all organizations under the Olympic umbrella also require participants, coaches and volunteers to be mandatory reporters. Training the adults within a sports organization on the law regarding mandatory reporting so they know what to do when the subject comes up helps protect, not just kids, but the adults involved in the sport also.

### *Reporting and Responding*

An organization should have a process in place for how they will respond to an allegation of abuse. The response should include the mandatory reporting, but also address who needs to know about the allegations and what steps will be followed and by whom to deal with the allegations. The process needs to protect both the potential victim and the individual alleged to have abused. At this stage, everyone has legal rights to be protected.

### *Community Involvement*

Historically, widespread child sexual abuse occurred because of silence and inaction in the face of suspicious activity. Even now, an unwillingness to believe a beloved coach or everyone's favorite

volunteer may be engaged in misconduct allows abuse to occur. Many of the signs of abuse are subtle. With education and training, the hope is that more adults will raise an alarm when behavior seems concerning. Insistence on the existence of child protection rules and compliance with those rules by parents and other involved adults will help create an environment for safe sports.

## CONCLUSION

As our country becomes aware of the extent of sexual abuse within athletics and the lifelong harm that sexual abuse causes to the victim, it is imperative that those involved in sports take action. Education and training are tools for prevention. The Safe Sport Act recognizes the need to take action and lays out a roadmap for local organizations to follow. Sports, whether amateur or competitive, should be safe for athletes.

## ABOUT THE AUTHOR

Laurie Koller is a solo practitioner representing victims of sexual harassment, abuse and assault in civil cases. She is a 1991 graduate of Duke University School of Law. She is currently vice president of the Oklahoma Association for Justice.

## ENDNOTES

1. U.S. Center for SafeSport.
2. Norman D. Bates and Christine Army, "Preventing Child Sexual Abuse in Youth-Serving Organizations," 2014, at p 7, citing Parent, S. (2011), "Disclosure of sexual abuse in sport organizations: A case study," *Journal of Child Sexual Abuse*, 20, 322-337.
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4. 2008 OK 70, 188 P.3d 158, as corrected (July 2, 2008).
5. [www.congress.gov/bill/115th-congress/senate-bill/534](http://www.congress.gov/bill/115th-congress/senate-bill/534).
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8. [www.safesport.org](http://www.safesport.org).
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11. Bates, at 37.
12. [www.cdc.gov/violenceprevention/pdf/CAN-Prevention-Technical-Package.pdf](http://www.cdc.gov/violenceprevention/pdf/CAN-Prevention-Technical-Package.pdf).
13. Bates, at 38-39.

# Legalized Sports Betting in Oklahoma

By John T. Holden

**W**IDESPREAD SPORTSBOOK-STYLE SPORTS BETTING in the United States has been largely confined to the state of Nevada since at least 1992. In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA).<sup>1</sup> PASPA served as an ice age of sorts, freezing sports gambling schemes as they were in 1992, until the end of time or until the statute is repealed.<sup>2</sup> While the statute was largely unchallenged for more than 15 years, in 2009, Gov. Jack Markell of Delaware was sued by the Office of the Commissioner of Major League Baseball and a quartet of other major sports organizations after the Delaware lottery sought to expand their sports gambling offerings beyond parlay-style bets on National Football League (NFL) games.<sup>3</sup>

Markell's efforts to generate revenue for the diamond state would fail after the 3rd Circuit Court of Appeals ruled in favor of the sports leagues and the Supreme Court denied *certiorari*, leaving in place the interpretation that PASPA not only prohibits states who did not offer sports gambling from introducing new schemes, but prohibiting states from changing the style of offerings from what existed in 1992.<sup>4</sup> Less than five years later, the state of New Jersey sought a way to revive the casino industry in Atlantic City and turned to legalized sports betting.<sup>5</sup> Shortly thereafter, the same sports league quintet sued the then governor of New Jersey, Chris Christie.<sup>6</sup> After various twists and turns and more than five years after early discussions of bringing sports betting to the garden state, the Supreme Court ruled that PASPA's commandeering of the state legislative process was in violation of the 10th Amendment.<sup>7</sup>

Justice Alito delivered a striking blow to PASPA taking down

the statute in its entirety.<sup>8</sup> The court held that the separation of authority between the states and the federal government is one of the most fundamental constitutional principles and that "[w]hen Congress itself regulates, the responsibility for the benefits and burdens of the regulation is apparent... By contrast, if a State imposes regulations only because it has been commanded to do so by Congress, responsibility is blurred."<sup>9</sup> The issue being, that by prohibiting New Jersey from authorizing sports betting, the federal government issued a direct command to the state; which because there was no federal enforcement mechanism, shifted regulatory costs to the state in violation of the anticommandeering principle.<sup>10</sup> Justice Thomas, in concurrence with Alito's majority opinion, potentially foreshadowed a future regulatory battle when he suggested that Congress may not be able to prohibit sports gambling that does not cross state lines, a matter that may play out as states

seek to launch online wagering to go with their brick and mortar sports betting offerings.

The *Murphy* (nee *Christie*) case has served as a conduit for other states to begin voicing support for legalized sports betting.<sup>11</sup> After the Supreme Court granted *certiorari*, West Virginia and 17 other states, including Oklahoma and the governors of three additional states articulated support for New Jersey's stance on federal power through the filing of an *amicus* brief.<sup>12</sup> Briefs in support of legalized gambling have been accompanied by a significant growth in public support for legalized sports betting across the country. Even before the Supreme Court's ruling, various state lawmakers and stakeholders began to make post-PASPA plans, which anticipated a favorable Supreme Court ruling, or for congressional repeal in the alternative.<sup>13</sup> States like West Virginia and Pennsylvania passed laws authorizing sports betting in the event that PASPA was struck down or repealed.<sup>14</sup>





Over the last several years the growing enthusiasm for sports gambling expansion coincides with the launch and growth of daily fantasy sports.<sup>15</sup> Daily fantasy sports emerged as an alternative to traditional fantasy sports that typically took place across the span of an entire sports season and condensed the time frame down to a single day or even a few hours.<sup>16</sup> The contests also changed a key aspect of many fantasy sports games, in that they were typically played against friends. With daily fantasy games, players no longer needed friends to compete with; they could compete against strangers around the world. Despite some apparent similarities to various forms of illegal gambling, the two daily fantasy sports industry leaders, FanDuel and DraftKings engaged in a prolific advertising campaign that made escaping them nearly impossible during the 2015 NFL season.<sup>17</sup>

Various lawmakers articulated concern over the games and their similarities to illegal gambling. The New York attorney general brought suit against the two major companies, but eventually reached a settlement that allowed the games to continue to exist in the state.<sup>18</sup> Despite the rise of daily fantasy sports as a popular form of gambling and the demise of PASPA, additional obstacles to wide spread legalized

sports gambling also remain. Even without PASPA, other federal statutes may be implicated, including the Wire Act,<sup>19</sup> the Illegal Gambling Businesses Act,<sup>20</sup> the Unlawful Internet Gambling Enforcement Act,<sup>21</sup> the Indian Gaming Regulatory Act,<sup>22</sup> coupled with various state laws, challenges remain for states seeking legalized sports wagering.

### THE DESIRABILITY OF SPORTS BETTING FOR OKLAHOMA

Sports betting has been viewed by a number of lawmakers, including some in New Jersey, as a potential panacea to budget woes, however, this is unlikely to be the case, although legalization would likely supplement state coffers.<sup>23</sup> In 2018, the Oklahoma Legislature made several attempts to be ready for a Supreme Court ruling rendering PASPA unconstitutional. On Feb. 5, 2018, bills were introduced in both the state House and the Senate that would have legalized sports betting pools. The Senate bill would have operated through a supplement to existing gaming compacts provided the tribe agrees “it shall not offer such additional covered game unless and until doing so would be legal under federal law.”<sup>24</sup> House Bill 3375 contained language

that would have legalized sports betting pools, also through an addendum to the existing tribal compacts.<sup>25</sup> Kevin Wallace, author of the House bill, noted that the introduction of the bill was not based on morality, but on the hope of generating an additional source of revenue for the Legislature.<sup>26</sup> Despite hopes for quick passage to position the state for the collapse of the federal prohibition, both the Senate and House bill had the language legalizing sports betting pools removed via amendments before the bills reached their final votes.<sup>27</sup>

The 2018 bills marked the second year in a row that Oklahoma had introduced bills designed to be prepared for the end of restricted sports betting and the second year that lawmakers failed to keep the provision in bills that reached Gov. Fallin’s desk.<sup>28</sup> The House bill would have taxed sports betting revenue at a rate of 10 percent,<sup>29</sup> the federal government also imposes an excise tax of .25 percent on the gross amount wagered (the handle).<sup>30</sup> Absent from the 2018 Oklahoma House bill, that progressed much further than the 2017 effort, was reference to how sports betting would be conducted at casinos and racinos throughout the state, as well as whether growing industry segments like mobile betting would be allowed.<sup>31</sup> More

than 19 states have introduced sports wagering bills in 2018, many containing language drafted by professional sports leagues awarding a royalty to the leagues based on the handle of league-specific games; this language was not included in Oklahoma’s bills.<sup>32</sup> Who gets a share of sports betting revenues is but one of a series of questions Oklahoma and every other state seeking to legalize sports gambling will need to answer.

### WHO GETS TO RUN SPORTS GAMBLING?

In Oklahoma, the majority of talk seems focused on supplementing existing tribal compacts. Among the unanswered questions is what share of revenue will be passed to the state; 10 percent was the number proposed in 2018. Future negotiations will likely center on the novelty of sports betting, which makes determining of apportionments somewhat of an uncertainty. The National Indian Gaming Association (NIGA) has articulated support for legalized sports betting in furtherance of existing agreements and compacts.<sup>33</sup> Amongst the challenges possibly facing tribal gaming is that of sports betting being outside the current compacts and some have speculated that states may seek to enter the sphere outside of their existing gaming commitments.<sup>34</sup> Obviously, each state will face unique circumstances in a choice to adopt sports betting, but the NIGA has articulated that they support a sports betting expansion, only if it satisfies a nine-point framework.<sup>35</sup>

- Tribes must be acknowledged as governments with authority to regulate gaming
- Tribal government sports betting revenues will not be subject to taxation
- Customers may access tribal government sports betting sites as long as sports betting is legal where the customer is located

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More than 19 states have introduced sports wagering bills in 2018, many containing language drafted by professional sports leagues awarding a royalty to the leagues based on the handle of league-specific games; this language was not included in Oklahoma’s bills.



- Tribal rights under the IGRA and existing tribal-state gaming compacts must be protected
- IGRA should not be opened up for amendments
- Tribal governments must receive a positive economic benefit in any federal sports betting legalization proposals
- Indian tribes possess the inherent right to opt in to a federal regulatory scheme to ensure broad-based access to markets
- Tribal governments acknowledge the integrity and protection of the game and patron protections for responsible gaming are of the utmost importance
- Any consideration of the use of mobile, online or internet gaming must adhere to these principles

The fifth point, “the IGRA should not be opened up for amendments,” remains an open question, somewhat outside of the scope of state-level politics, though efforts to re-open the IGRA would likely meet opposition from various groups inside and outside of Washington. The last point of the NIGA framework, regarding the extent to which mobile gaming becomes a reality, will possibly be a battle that begins the day after PASPA comes down.

### WHERE IS SPORTS BETTING GOING TO HAPPEN?

While the talk in Oklahoma during the 2018 legislative session focused on expanding betting to the state’s nearly 60 casinos and racinos, many states are expressing an interest in going mobile.<sup>36</sup> Mobile betting has been growing in popularity in Nevada for several years<sup>37</sup> and has been a popular means by which daily fantasy players engage with the various platforms. One obstacle



that remains at the federal level is the Wire Act,<sup>38</sup> but at the state level, Oklahoma also bans the “dissemination of gambling information... by means of any communications facilities, information to be used in making or settling bets.”<sup>39</sup> While the federal Wire Act may not be implicated, if like Nevada, wagering information stays within legal jurisdictions only, the Oklahoma statute is likely a formidable obstacle to the licensure of mobile gaming in the state.<sup>40</sup>

### WHO GETS A PIECE OF THE ACTION?

The question of where sports betting revenue goes is potentially more complex than a simple addendum to tribal compacts. As noted, the federal government will likely receive .25 percent of every wager, the federal tax rate was reduced from an initial rate of 10 percent in 1984, but this tax is in addition to state taxes on gross gaming revenue, leaving bookmakers with a limited pot to generate a profit while offering competitive odds.<sup>41</sup> In addition to the tribal, state, and federal tax obligations, the professional sports leagues have made efforts to position themselves as owners

of the games and entities entitled to a share of sportsbook profits.<sup>42</sup> What the sports leagues are attempting to do is legislatively overrule decisions in the Federal 2nd,<sup>43</sup> and 8th<sup>44</sup> Circuits that have found that sports scores and information that exists in the public domain is not subject to copyright (unlike the broadcast of the game, which is subject to copyright protection) and protected by the First Amendment.<sup>45</sup> The sports leagues have lobbied heavily to be included in the distribution of sports betting revenues, with limited success in early draft legislation.<sup>46</sup> While hopes of sports betting generating tens of billions of dollars annually, for state legislatures to redistribute, is highly unlikely; legal sports betting offers the potential opportunity to supplement existing gaming revenues for various stakeholders and to tax and monitor a practice that is already occurring widely in the shadows.<sup>47</sup>

### CONCLUSION

In 1992, few states articulated a desire to offer sports betting and many were in favor of legal sports betting being frozen. Since 1992, vast accessibility to the internet has fueled an illegal online sports betting industry that has grown

to levels likely unimaginable by lawmakers at the time of PASPA's passage. This knowledge, as well as the never-ending quest for new sources of revenue, has left lawmakers looking at legalizing sports betting in the post-PASPA world. The Oxford Economics Group has estimated that a limited availability with a high tax rate model of sports wagering in Oklahoma would generate more than \$240 million in annual gaming revenue and create more than 3,100 direct and indirect jobs.<sup>48</sup> The promise of new tax revenue and jobs is attractive, but there is a danger that the exuberance for quantitative factors, may lead some to overlook the qualitative factors that are needed to ensure a safe, healthy and profitable gaming experience in the rush of state legislatures to get sports betting bills on the table.

## ABOUT THE AUTHOR

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## ENDNOTES

1. 28 U.S.C. §§3701-3704 (1992).
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6. *Complaint for Declaratory and Injunctive Relief, Nat'l Collegiate Athletic Ass'n v. Christie*, 926 F. Supp. 2d 551 (D.N.J. 2013) (No. 12-4947).

7. *Murphy v. Nat'l Collegiate Athletic Ass'n*, No. 16-476, 584 U.S. \_\_\_\_ (May 14, 2018).
8. *Id.*
9. *Id.* at \_\_\_\_ (slip op. 17).
10. *Id.* at \_\_\_\_ (slip op. 17-18).
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18. *Id.*
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20. 18 U.S.C. §1955 (1970).
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# The Use of Liquidated Damages Clauses in Coaching Contracts – The University Perspective

*By Steve Stephens and Brandee R. Hancock*

**N**O DOUBT ABOUT IT, COLLEGIATE ATHLETICS has become big business. With huge revenues generated from ticket sales, television contracts and post-season play, college sports are a booming industry. Many college coaches are extraordinarily highly compensated and command guaranteed multiyear contracts. Most of those contracts contain “buyout clauses,” lay terminology for “liquidated damages” clauses that set forth the negotiated, prebreach presumption of the amount of damages the nonbreaching party will incur, or agree to receive, if the contract is terminated.<sup>1</sup> Although most modern coaching contracts contain reciprocal clauses – one establishing damages should the university terminate the contract and one establishing damages should the coach terminate the contract – this article will only focus on the latter situation.

Every year at the end of the competition season, numerous highly successful coaches – despite having long-term contracts – consider offers from other universities. When the price is right, or a perceived better opportunity arises, successful established coaches or coaches perceived to be rising stars often break their current contract and jump ship, continuing what is often referred to as the “college coaching carousel.”<sup>2</sup> In such situations, damages to a university caused by the breaching coach are extremely difficult to calculate. A good coach establishes valuable recruiting relationships (at the university’s expense) that are lost when the coach leaves. The departure of a coach can adversely impact the development of players he or she previously recruited. A departed coach also takes with him or her a vast knowledge of the team’s offensive and defensive

schemes and tendencies – information that can now be used against his or her former team. Further, the university now must incur expenses to recruit and hire a new coach and must deal with possible public relations issues stemming from the loss of a successful coach. The coach’s ability to market the program or assist in fundraising is lost. How do you appropriately place a price tag on such losses? Even more problematic is how to financially gauge the impact of the loss of a coach in terms of wins and losses.

For example, in the Football Bowl Subdivision of NCAA football, the loss of a single additional game can cause a university to lose bowl eligibility or to play in a less prestigious and less financially lucrative bowl game. That single additional loss alone could easily translate into millions of dollars. Accordingly, it has become the norm for coaching

contracts to include liquidated damages clauses to compensate universities for such anticipated losses.<sup>3</sup> The damages owed when a coach breaches contract are also often paid by the acquiring institution, which is increasingly viewed as a cost of doing business.<sup>4</sup>

Oklahoma appellate courts have not yet examined the validity of a liquidated damages clause in a collegiate coaching contract. However, the District Court of Payne County, based upon the analysis set forth in this article, recently found that such a clause was enforceable.<sup>5</sup> In that case, the trial court found that:

- 1) The contract between the parties contains language providing for liquidated damages to be paid by a breaching party to a nonbreaching party, which is appropriate pursuant to 15 O.S. §215;



- 2) The language in the contract meets the legal test to be a liquidated damages clause and is not a penalty;
- 3) The liquidated damages clause is not an unlawful restraint of trade and does not violate public policy; and
- 4) The method for calculating liquidated damages, as set forth in the contract, was a reasonable prebreach estimate of the damages OSU would suffer if defendant breached the contract.

That case was subsequently settled, so the issues have still not been decided at the appellate level in Oklahoma. To date, only appellate courts in Tennessee and Ohio have done so, and both concluded that liquidated damages clauses were valid and enforceable.<sup>6</sup>

In *Vanderbilt*, Gerry DiNardo entered into an employment contract with Vanderbilt University. DiNardo's contract was for football coaching duties, recognized the importance of stability and longevity in the university's football program and contained a liquidated damages clause.<sup>7</sup> The liquidated damages clause provided that Vanderbilt would pay DiNardo his remaining salary if he was terminated and DiNardo would pay Vanderbilt his remaining salary if he left before the contract expired.<sup>8</sup> DiNardo breached the contract.<sup>9</sup> The district court granted summary judgment in favor of Vanderbilt, awarding Vanderbilt liquidated damages as provided by the contract.<sup>10</sup> On appeal to the 6th Circuit, DiNardo argued, among other contentions, that the liquidated damages clause was an overly broad

covenant not to compete and was an unlawful penalty.<sup>11</sup>

Like Oklahoma, Tennessee law prohibits contractual penalties but will enforce liquidated damages when the amount is reasonable, prospectively measured when the contract is entered and not "grossly disproportionate" to damages actually suffered.<sup>12</sup> The court analyzed the clause under the liquidated damages rubric and found the stipulated damages to be reasonable because "Vanderbilt hired DiNardo for a unique and specialized position, and the parties understood that the amount of damages could not be easily ascertained should a breach occur."<sup>13</sup> It further noted that the clause was reciprocal and the result of contract negotiations between the parties.<sup>14</sup> Accordingly, the 6th Circuit affirmed the grant of summary



judgment as to the enforcement of the liquidated damages clause.<sup>15</sup>

Similarly, Gene “Geno” Ford entered into an employment contract containing a liquidated damages clause with Kent State University (Kent State).<sup>16</sup> When Ford breached the contract and left for Bradley University (Bradley), he owed Kent State \$1.2 million under the liquidated damages clause.<sup>17</sup> Kent State sued Ford for breach of contract and Bradley for tortious interference with a contractual relationship.<sup>18</sup> The Ohio Court of Common Pleas granted summary judgment in favor of Kent State on the issue of liquidated damages.<sup>19</sup> In reaching its decision, the court analyzed the difficulty of proof of actual damages suffered by Kent State, whether the contract was unconscionable or unreasonable and the intention of the parties.<sup>20</sup>

The 11th Appellate District of Ohio Court of Appeals reviewed the trial court’s findings under a three-part test previously established by the Supreme Court of Ohio in the case of *Samson Sales, Inc. v. Honeywell, Inc.*:

Where the parties have agreed on the amount of damages, ascertained by estimation

and adjustment, and have expressed this agreement in clear and unambiguous terms, the amount so fixed should be treated as liquidated damages and not as a penalty, if the damages would be (1) uncertain as to amount and difficult of proof, and if (2) the contract as a whole is not so manifestly unconscionable, unreasonable, and disproportionate in amount as to justify the conclusion that it does not express the true intention of the parties, and if (3) the contract is consistent with the conclusion that it was the intention of the parties that damage in the amount stated should follow the breach thereof.<sup>21</sup>

Applying that test, the appellate court affirmed the trial court ruling and determined the liquidated damage clause was enforceable.<sup>22</sup>

#### LIQUIDATED DAMAGES PROVISIONS ARE VALID UNDER OKLAHOMA LAW

Oklahoma law, like Tennessee, Ohio and most other jurisdictions, prohibits penalty clauses in contracts. Specifically, 12 O.S. §213 provides, “*Except as expressly provided in Section 215 at this title,*

*penalties imposed by contract for any performances therefore are void...*” (emphasis added). However, the Oklahoma Legislature specifically recognized and approved the use of liquidated damages clauses when it enacted Section 215. Subsection (A) of Section 215 specifically addresses the validity of liquidated damages clauses for situations where actual damages would be extremely difficult or impractical to determine.

To square the concepts behind Sections 213 and 215, the Oklahoma Supreme Court established a three-part test to determine whether a liquidated damages clause is valid or is an unlawful penalty.<sup>23</sup> A liquidated damages clause is valid if: 1) the resulting injuries from a breach are difficult or impossible to estimate; 2) the parties intend to provide for damages and not for a penalty; and 3) the amount of stipulated damages is a reasonable prebreach estimate of the probable loss.<sup>24</sup> A properly drafted contract can easily meet all three of these requirements.

First, the parties should expressly acknowledge in the contract that damages would be difficult, if not impossible, to calculate in the event of a breach. A sample provision might state:

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that university will incur administrative, recruiting, resettlement, competitive losses and other costs in obtaining a replacement for coach, in addition to the loss of coach for fundraising and marketing purposes and potentially increased compensation costs if coach terminates this agreement prior to its expiration, which damages are extremely difficult or impracticable to determine with certainty.



Second, a properly drafted contract should state that the liquidated damages clause “shall not be, nor be construed to be, a penalty.” Such a clause shows the intent of the parties to specifically provide for damages, not a penalty. Third, the contract should recite that the amount of damages is acknowledged by the parties as a reasonable prebreach estimate of the possible loss.

his or her contract, the university has to suffer the difficult to calculate damages that accompany the loss of a successful coach to a potential competitor. There is simply no way to gauge a university’s ability to mitigate its losses. However, the departing coach has the opportunity to lessen the damages he or she agreed to pay as liquidated damages. That is

A covenant not to compete is a form of a restraint of trade, but a liquidated damages provision is not a covenant not to compete. It does not prevent a coach from leaving. Liquidated damages clauses in employment contracts are enforceable and are not unreasonable restraints on trade. 15 O.S. §217 “prohibits only *unreasonable* restraints on the exercise of a lawful profession, trade or business.”<sup>25</sup> A provision restraining trade is reasonable if it is no more extensive than necessary to protect the employer from unfair competition, does not impose undue hardship on the employee and does not injure the public.<sup>26</sup> The court in *Loewen* opined that employment contracts can impose reasonable limitations on post-employment competition by an employee “which is made possible by the expertise, contacts, good will and opportunity...gained directly from the employment with employer.”<sup>27</sup>

A properly drafted contract can satisfy all three of these elements. First, a liquidated damages provision is no greater than is required for the university’s protection because, in lieu of restricting the coach from competitive employment, it allows for damages to be paid to the university when the coach leaves earlier than allowed by the contract. Second, no undue hardship is imposed on the coach. He or she was highly compensated during his or her tenure at the previous university and will likely be highly compensated at his or her new job. Accordingly, the damages sought are not excessive and do not create a hardship. Further, as discussed before, it is common for damages under these types of clauses to be paid by the acquiring institution. A departing coach can negotiate with his or her new employer to include payment of the damages to his or her prior employer as part of a new contract.

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When a coach breaches his or her contract, the university has to suffer the difficult to calculate damages that accompany the loss of a successful coach to a potential competitor. There is simply no way to gauge a university’s ability to mitigate its losses.

Moreover, the terms of the liquidated damages clause will be more easily supportable and therefore not found unreasonable if there are reciprocal liquidated damages clauses in the contract (one in favor of the coach for termination without cause and one in favor of the university upon the coach’s breach of the contract), which as stated earlier appear to be standard in the industry.

An argument was made by the defendant in the *Wickline* case that a liquidated damages clause in favor of a university is not truly reciprocal if the coach has a duty to mitigate damages by seeking other employment. The university took the position that argument was unavailing because the university could not itself mitigate its damages. When a coach breaches

because it has become customary in the industry for departing coaches to bargain with their new employer for that employer to pay, or indemnify their newly acquired coach against, that coach’s liquidated damages obligation to his or her former employer. Accordingly, reciprocity should be limited to the concept that the parties have agreed prebreach to a methodology to calculate liquidated damages to a coach who is terminated or to a university where the coach leaves for a better deal.

#### **LIQUIDATED DAMAGES PROVISIONS ARE NOT UNLAWFUL RESTRAINTS OF TRADE**

Oklahoma, like most jurisdictions, disfavors contractual provisions restraining trade.

Any burden upon the coach is the result of his or her own actions, not those of the university he or she departed.

Third, the clause is not injurious to the public. In fact, with respect to public universities, a liquidated damages clause actually protects the public interest by allowing a state university to recoup damages from a breaching employee rather than from the public. As to private universities, the analysis is similar as there is no cogent or logical harm caused to the public at large by the enforcement of such clause. Additionally, a liquidated damages clause meets the standard set forth in *Loewen* – it seeks reasonable damages for post-employment competition that was made possible by the expertise, contacts, good will, marketing ability, fundraising skill and opportunity gained directly from the coach's prior employment.

Because Oklahoma allows reasonable limitations on post-employment competition, it necessarily follows that liquidated damages clauses that accomplish that purpose are not impermissible. This is in accord with the analysis by other courts that have directly addressed such an attack. The Wisconsin Court of Appeals distinguished liquidated damages provisions from restraint of trade provisions.<sup>28</sup> A restraint of trade occurs when a party is restricted from "the exercise of a gainful occupation," while a liquidated damages clause is not an occupational restriction but addresses the consequences of engaging in prohibited competition.<sup>29</sup> North Carolina has similarly determined that a provision providing for the loss of rights and privileges if an employee participates in competitive activity, rather than prohibiting competitive activity altogether, is not a restraint of trade.<sup>30</sup>

## CONCLUSION

A university can suffer a huge financial loss when it loses a successful coach. However, it is virtually impossible to gauge the precise amount of those damages. The only way to protect against such a loss is by inclusion of a liquidated damages clause in the coach's contract, setting forth prebreach the amount of damages the parties agree will compensate the university if the coach terminates a long-term contract without cause. Such clauses are now standard in collegiate athletics, and although litigation over those clauses is rare, such clauses if properly drafted should be upheld under Oklahoma law.

## ABOUT THE AUTHORS

Steve Stephens is the general counsel for the OSU/A&M Board of Regents. Prior to that he practiced as a trial attorney with Fellers Snider for 30 years. He is a 1980 graduate of OSU and a 1983 graduate of the OU College of Law.

Brandee R. Hancock graduated with honors from the OU College of Law in 2012. She is associate general counsel for the OSU/A&M Board of Regents. Ms. Hancock received the Impact Award from the Oklahoma College Student Personnel Association in May 2017.

## ENDNOTES

1. *Reid v. Auxier*, 1984 OK CIV APP 33, 690 P.2d 1057.
2. See Richard Karcher, "The Coaching Carousel in Big-Time Intercollegiate Athletics: Economic Implications and Legal Considerations," 20 *Fordham Intell. Prop. Media & Ent. L.J.* 1, 2 (2009).
3. See, generally, Richard Karcher, "Redress for a No-Win Situation: Using Liquidated Damages in Comparable Coaches' Contracts to Assess a School's Economic Damage from the Loss of a Successful Coach," 64 *S.C. L. Rev.* 429 (2012).
4. Richard Karcher, *supra* note 2 at 48.
5. See, Order on Summary Judgment, Sept. 17, 2015, *Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, v. Gregory Joe Wickline*, District Court Payne County, State of Oklahoma, Case No. CJ-2014-430.
6. *Vanderbilt Univ. v. DiNardo*, 174 F.3d 751 (6th Cir. 1999); *Kent State Univ. v. Ford*, 2015-Ohio-41, 26 N.E.3d 868. See also, *O'Brien v. Ohio*

- State Univ.*, 139 Ohio Misc.2d 36 (Ct. Cl. 2006) (holding liquidated damages clause in favor of coach enforceable against Ohio State University).
7. *Vanderbilt Univ.* at 753-54.
  8. *Id.*
  9. *Id.*
  10. *Id.*
  11. *Id.* at 753-55.
  12. *Id.* at 755.
  13. *Id.* at 757.
  14. *Id.*
  15. *Id.* at 760. The 6th Circuit affirmed in part and reversed in part. The reversal related merely to the validity and enforcement of an addendum to the contract and is not applicable here.
  16. *Kent State Univ. v. Ford*, 2015-Ohio-41, 26 N.E.3d 868, at ¶¶5, 6.
  17. *Id.* at ¶20.
  18. Once Kent State obtained summary judgment against Ford, it dismissed its claim for tortious interference against Bradley. Regardless, the trial court had overruled Bradley's motion for summary judgment in which it sought dismissal of the tortious interference claim that had been asserted by Kent State. Research found no other case involving a tortious interference claim in the context of "poaching" another university's coach. Time will tell whether that was a novel claim or whether it is a precursor of things to come.
  19. *Id.* at ¶¶19, 20.
  20. *Id.* at ¶¶28, 36-37, 40.
  21. 12 Ohio St. 3d 27, 29, 465 N.E.2d 392, 294 (Ohio 1984).
  22. However, one judge dissented on the basis that viewing the facts in the light most favorable to the nonmoving party, as is required when ruling on a motion for summary judgment, triable issues of fact remained as to reasonableness of the amount of liquidated damages. *Id.* at ¶¶48-57.
  23. *Sun Ridge Investors, Ltd. v. Parker*, 1998 OK 22, ¶8, 956 P.2d 876, 878.
  24. *Id.*
  25. *Bayly, Martin & Fay, Inc. v. Pickard*, 1989 OK 122, ¶11, 780 P.2d 1168, 1171 (emphasis added).
  26. *Loewen Grp. Acquisition Corp. v. Matthews*, 2000 OK CIV APP 109, ¶15, 12 P.3d 977, 980, citing *Tatum v. Colonial Life and Accident Ins. Co. of Am.*, 1970 OK 27, 563 P.2d 448.
  27. *Id.* at ¶21, 982 (emphasis in original).
  28. *Fields Found, Ltd. v. Christensen*, 103 Wis.2d 465 (Wis. Ct. App. 1981).
  29. *Id.* at 477.
  30. *E. Carolina Internal Med., P.A. v. Faidas*, 564 S.E.2d 53 (N.C. Ct. App. 2002) (aff'd per curiam), citing *Newman v. Raleigh Internal Med. Assocs.*, 362 S.E.2d 523 (N.C. Ct. App. 1987).





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# The Lasting Impact of *NCAA v. Bd. of Regents of The University of Oklahoma:* The Football Fan Wins

*By Mary H. Tolbert and D. Kent Meyers*



**I**N *NCAA V. BD. OF REGENTS OF THE UNIV. OF OKLA.*,<sup>1</sup> the United States Supreme Court struck down the “television plan” of the National Collegiate Athletic Association (NCAA), which was designed to limit the total television broadcasts of college football games and the number of appearances of individual schools, as well as to fix the compensation to be received by individual schools. A 1995 article in the *Oklahoma Law Review* documented the increase in television broadcasts and television revenues – as well as the increase in live attendance – that followed the Supreme Court’s opinion.<sup>2</sup> Now, nearly 35 years after the Supreme Court’s opinion (and over 20 years after the original article), we take a brief look at the continuing impact of the NCAA opinion.

## HISTORY OF TELEVISION AND COLLEGE FOOTBALL

In 1938, the University of Pennsylvania televised one of its home games. From 1940 through the 1950 season, all of Pennsylvania’s home games were televised.<sup>3</sup> As the Supreme Court noted, “[t]hat was the beginning of the relationship between television and college football.”<sup>4</sup>

From the outset, the NCAA felt a need to try to control the relationship between individual schools and television. In 1951, a television committee appointed by the NCAA delivered a report concluding, based on preliminary surveys, that television broadcasts had an adverse effect on live attendance and that, “unless brought under some control threatens to seriously harm the nation’s overall athletic and physical system.”<sup>5</sup> The report emphasized that collective

action was necessary to control the television problem.<sup>6</sup> As a result, a committee was appointed to develop an NCAA television plan.<sup>7</sup>

Beginning in 1951, the NCAA adopted a series of plans which restricted the number of television broadcasts of college football games.<sup>8</sup> The plan at issue in the NCAA litigation was adopted in 1981 for the 1982-1985 seasons (the plan).<sup>9</sup> Under the plan, the Television Committee awarded rights to negotiate and contract for the telecasting of college football games of members of the NCAA to two carrying networks without ever consulting the NCAA members.<sup>10</sup> In separate agreements with each of the carrying networks – ABC and CBS – the NCAA granted each the right to telecast the 14 live exposures in exchange for payment of a specified “minimum aggregate compensation to the participating

NCAA member institutions” during the four-year period in an amount that totaled \$131,750,000.<sup>11</sup> The plan also contained appearance requirements and appearance limitations that pertain to each of the two-year periods in which the plan was in effect.<sup>12</sup> In essence, the networks were required to schedule appearances for at least 82 different member institutions during each two-year period.<sup>13</sup> No member institution was eligible to appear on television more than a total of six times and more than four times nationally, with the appearances to be divided equally between the two carrying networks.<sup>14</sup>

## THE ANTITRUST LITIGATION

In 1981, the regents of OU and the University of Georgia brought a private antitrust action against the NCAA seeking an injunction to prevent the NCAA from enforcing



its television plan, which was designed to limit the total television broadcasts of college football games, as well as the number of appearances of individual schools.<sup>15</sup> The district court found the NCAA's television plan to be *per se* unlawful under Section 1 of the Sherman Act and granted the relief sought by the universities. After the 10th Circuit affirmed, the case reached the United States Supreme Court.

Although the Supreme Court held that the plan must be evaluated under the rule of reason, rather than the *per se* rule,<sup>16</sup> the court found the NCAA television plan on its face constituted a restraint upon the operation of a free market.<sup>17</sup> The court further found the universities to have shown the television plan had raised prices and reduced output, both of which were unresponsive to consumer preference.<sup>18</sup> In response to this showing, the NCAA failed to establish any procompetitive efficiencies that might justify the television plan.<sup>19</sup> Accordingly, the Supreme Court affirmed the judgment of the lower courts, holding the NCAA's television plan violated Section 1 of the Sherman Act.<sup>20</sup>

## AFTERMATH OF THE NCAA LITIGATION

In its opinion, the Supreme Court made the same prediction that each court before it had made: without the plan, output (*i.e.*, broadcasts of college football

games) would go up. History has shown this prediction to be accurate. Rather than two networks broadcasting a total of 14 exposures, numerous networks now broadcast virtually every college football game. Current networks for college football games include ABC, ESPN, ESPN2, ESPN3, ESPNU, ESPN+, CBS Sports Network, Fox, Fox Sports 1, Big Ten Network, PAC-12 Network, ACC Network, SEC Network, Longhorn Network, Spectrum and Regional Sports Network. Additionally, games may be streamed on Facebook. Broadcast listings indicate that for the 2018 season more than 50 college football games will be broadcast each week.

As one would expect, in light of the competition among networks to air college football games, the revenues to colleges and universities from television contracts have increased dramatically. In 1982, the plan called for member institutions to receive approximately \$130,000 in revenue from television appearances. The most recent athletic department budget for the University of Michigan indicates that that school will receive approximately \$51 million in 2018 in television revenue, although this figure includes both football and basketball.

One of the primary justifications offered by the NCAA throughout the litigation in support of the plan was research "which tended to indicate that television had an adverse effect

on attendance at college football games."<sup>21</sup> The plan was thus intended "to reduce, insofar as possible, the adverse effects of live television ... upon football game attendance..."<sup>22</sup> If this research had been correct, the surge in television broadcasts previously described would have been expected to nearly eliminate live attendance. It has not been so.

Even by 1994, it was clear that the NCAA had been wrong about the impact of television broadcasting of games on live attendance.<sup>23</sup> As Berry Tramel, sports writer for *The Oklahoman*, recently observed, the NCAA failed to appreciate the general rule that when television access increases more people become interested in a sport, leading to increased live attendance rather than the opposite. Thus, while 100,000 seat stadiums were the exception prior to the NCAA litigation, they are now much more common.

Tramel emphasized that one of the significant problems of the plan had been that, due to the limitations on "exposures" for any individual school, the networks were frequently precluded from broadcasting football games between power schools with national interest. For example, in the fall of 1973, No. 8-ranked OU traveled to the Los Angeles Coliseum to play against the No. 1-ranked University of Southern California. OU and USC had been the top two teams in the 1972 football polls

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As one would expect, in light of the competition among networks to air college football games, the revenues to colleges and universities from television contracts have increased dramatically.

and national interest in the game was high. Despite the rankings of these two football titans – and despite team rosters featuring Joe Washington and Lynn Swann – the game was not televised anywhere. Clearly, fans of college football are benefited when they are not shut out from viewing highly desirable football contests.

Tramel noted that schools offering less desirable contests have also found ways to increase the appeal of their broadcasts. For example, teams in the Mid-America Conference increasingly play college football games on weekday evenings. Although these games might not attract many viewers on a Saturday afternoon when there are many college football games to choose from, they are able to attract a national audience when there are fewer options.

Tramel did recognize, however, that the market for college football may now be reaching the saturation point. After years of increases in live attendance, college football attendance has declined slightly in the last several years. Students today do not necessarily consider attendance at football games to be an essential part of the college culture. They are more wedded to their phones and favor comfortable seating and protection from the elements. Some fans have also been alienated by conference realignment – driven by television revenues – that has eliminated traditional rivalries (e.g., Oklahoma/Nebraska or Texas/Texas A&M) and added unfamiliar ones (e.g., Maryland's addition to the Big Ten Conference). Further, the drive for television revenue has meant that, while athletic department revenue has increased dramatically over the past 35 years, athletic department budgets have, in certain cases, increased even more dramatically.

## CONCLUSION

It is difficult to deny that the NCAA litigation has resulted in more improvement for consumer welfare than any other privately brought antitrust case. The NCAA's television plan had severely restricted the number of broadcasts of college football games. Further, the plan had frequently prevented networks from airing the most desirable games and essentially forced them to air less desirable games. Freed from the plan, the market responded to consumer demand with a massive increase in the number of broadcasts of college football games. Rather than reducing live attendance, these broadcasts have increased national interest in college football, leading to increased live attendance.

In its opinion, the Supreme Court recognized that "Congress designed the Sherman Act as a 'consumer welfare prescription.'"<sup>24</sup> A restraint that has the effect of reducing the importance of consumer preference in setting price and output is not consistent with this fundamental goal of antitrust law.<sup>25</sup> By this measure, as District Court Judge Burciaga stated:

The Court considers the result achieved by plaintiffs as an historic one: that by their prevailing in the lawsuit, plaintiffs have conferred a benefit upon a significant industry and a large segment of the public.<sup>26</sup>

Put otherwise, the Supreme Court's decision has been a prescription for the welfare of the consumer, fans of college football.

## ABOUT THE AUTHORS

Mary H. (Molly) Tolbert is an advisory director at Crowe & Dunlevy. She is a graduate of the University of Michigan and Yale Law School. She is a regular consumer of college football broadcasts and roots for OU whenever they are not playing Michigan.

Kent Meyers is a director at Crowe & Dunlevy. He has a B.B.A. in finance and a J.D. from OU and a LL.M. from Harvard University. He is primarily engaged in antitrust litigation and teaches antitrust at OU. He co-hosts the TV show *The Verdict on Cox*.

## ENDNOTES

1. See *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984).
2. D. Kent Meyers & Ira Horowitz, "NCAA & Private Enforcement of Antitrust", 48 *Okla. L. Rev.* 669 (1995).
3. *NCAA*, 468 U.S. at 89.
4. *Id.*
5. *Id.* at 89-90.
6. *Id.* at 90.
7. *Id.*
8. *Id.* at 90-91.
9. *Id.* at 91.
10. *Id.* at 92.
11. *Id.* at 92-93.
12. *Id.* at 94.
13. *Id.*
14. *Id.*
15. See *Bd. of Regents of the Univ. of Okla. v. NCAA*, 546 F. Supp. 1276 (W.D. Okla. 1982).
16. *NCAA*, 468 U.S. at 103.
17. *Id.* at 106-08, 113.
18. *Id.*
19. *Id.* at 114-15.
20. *Id.* at 120.
21. *NCAA*, 468 U.S. at 90.
22. *Id.* at 124.
23. See *NCAA & Private Enforcement* at 687-697.
24. *NCAA*, 468 U.S. at 107 (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979)).
25. *Id.*
26. *Bd. of Regents of the Univ. of Okla. v. NCAA*, Case No. CIV-81-1209-BU (W.D. Okla. Jan. 9, 1985) (order awarding fees).

# So You Want to Be a Sports Agent?

*By Kelli Masters*

**I**T WAS 1996. THE MOVIE *JERRY MAGUIRE* hit the big screen.<sup>1</sup> And a generation of aspiring sports agents was born.

While attorneys may represent athletes in legal matters, being licensed to practice law does not automatically confer the right to represent professional athletes in contract negotiations. First, each organized sport has a set of rules and regulations governing agents in that sport, promulgated by the governing body or the union organized to represent professional athletes in that sport. Attorneys wanting to represent athletes in negotiations with professional teams cannot simply declare their interest in representing such athletes. They must be recognized, or “certified,” by the appropriate governing body. For example, an attorney wanting to negotiate a contract with an NFL team on behalf of a player must be certified by the NFL Players Association (NFLPA).<sup>2</sup>

In order to become certified by the NFLPA, an individual must have obtained a juris doctorate or other post-graduate degree.<sup>3</sup> The prospective agent must submit an application during the requisite time period (typically early January through early February each year) along with a filing fee of \$2,500. The prospective agent must also submit to a thorough background check. If approved based upon the application and background check, the prospective agent must attend a two-day seminar in Washington, D.C., in July and pass a written, timed exam administered by the NFLPA.<sup>4</sup>

The new agent exam includes multiple-choice questions covering the NFL Collective Bargaining Agreement, NFLPA regulations governing contract advisors and other pertinent information. Historically, passage rates were roughly 70 percent; however, the testing criteria became more rigorous in 2015, when the number of applicants with

passing scores dipped below 40 percent.<sup>5</sup> On several occasions, I have been asked to be part of the small group of certified contract advisors who draft questions for the exam, and I can attest – one must not take preparation for this test lightly. Just being an experienced lawyer and the winner of your office fantasy football league last year does not mean you are prepared to answer complex questions about salary cap allocations and NFL retirement benefits.

If you happen to be one of the unlucky and/or unprepared applicants who fail the new agent exam the first time, you may re-take the exam the following year without paying the application fee. If you fail a second time, you are prohibited from re-applying for certification for five years.

Passing the new agent exam is only the beginning. As a newly certified contract advisor, an agent is required to pay dues to the NFLPA as well as to obtain professional liability insurance approved by the NFLPA. This

policy is required in addition to professional liability insurance carried as an attorney. The agent must also register in each state in which the agent plans to do business. While the Uniform Athlete Agent Act (UAAA) has been adopted in most states, the registration processes in each state are anything but uniform. Some states, such as Oklahoma and Texas, require filing fees as well as surety bonds of \$50,000. Filing fees range from a \$30 one-time fee in California to \$1,000 in Oklahoma every two years. Many states do allow for reciprocity but apply strict guidelines to such filings. Applications are typically submitted to the state’s secretary of state, and no two states’ applications are identical.

Under Oklahoma’s version of the UAAA,<sup>6</sup> an agent may not sign a student-athlete or even recruit a student-athlete unless that agent is issued a certificate of registration in the state of Oklahoma. An agent who violates the UAAA can



be subject to civil and criminal actions, as stated in 70 O.S. §821.94:

- A. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:
  - 1. Give any materially false or misleading information or make a materially false promise or representation;
  - 2. Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
  - 3. Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- B. An athlete agent shall not:
  - 1. Initiate contact with a student-athlete unless the athlete agent is currently registered pursuant to the Uniform Athlete Agents Act;
  - 2. Refuse or fail to retain or permit inspection of the records required to be retained by Section 821.93 of this title;
  - 3. Fail to register when required by Section 821.84 of this title;
  - 4. Provide materially false or misleading information in an application for registration or renewal of registration;
- 5. Predate or postdate an agency contract; or
- 6. Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.
- C. An athlete agent is prohibited from any contact with a student-athlete who is not eligible to enter into a professional-sports-services contract. For the purposes of this subsection, "contact" shall not include general promotional brochures.
- D. The Attorney General or a district attorney may bring an action to prosecute any civil or criminal actions as provided by this act. The Attorney General or a district attorney may also bring an action to recover actual damages, expenses, restitution, disgorgement of all compensation, consideration, gifts or profits, and penalties attributed to or flowing from a violation of this act.



The secretary of state can also assess an administrative penalty of up to \$25,000 against an athlete agent for violating the UAAA. As noted in 70 O.S. §821.82, a family member is not considered an athlete agent subject to the UAAA unless that family member receives compensation, a gift or reward or the promise thereof in order to act on behalf of an athlete agent.

In addition to NFLPA regulations, state laws and federal legislation,<sup>7</sup> sports agents are further subject to rules and policies implemented by colleges in order to maintain compliance with NCAA bylaws.<sup>8</sup> By state law, agents must provide written notice to the athletic director of the school attended by the student-athlete within 72 hours of signing the student-athlete to an agency contract.<sup>9</sup> Moreover, each school has its own registration process for agents who wish to recruit the school's athletes. Many schools implement policies regarding time and place of all communications between agents and student-athletes.<sup>10</sup> Often these policies change along with the coaching staff. Therefore, agents must stay in communication with the compliance officers of each school in order to confirm the appropriateness of all interactions.

Unfortunately, enforcement of these laws and regulations at every level is lacking. Less-than-scrupulous agents consistently disregard the rules in an effort to sign new clients. More than just cutthroat, the agent business can be downright dirty. Thus, the law-abiding agents are essentially at a disadvantage in the recruiting process. In order to "clean up" the agent business and its impact on schools and student-athletes, better enforcement is an absolute must.

The actual business of being an agent – and being a good one – requires dedication and sacrifice. Yes, being a skilled negotiator

with an excellent working knowledge of the Collective Bargaining Agreement is vital, but so, too, is an understanding of the professional football industry: recruiting, the draft process, the relationship between the league and union, the dynamics within each club (the owners, the front office, scouting/personnel and coaching staff) and so much more. A football agent does not simply represent a client through the draft and the negotiation of a playing contract. An agent, or "certified contract advisor," must also handle grievances, fines, injury/medical issues, crisis communication and a myriad of legal issues for both the athlete and his family. It is an extraordinarily time-consuming and expensive business, where regular travel is a given and player demands have increased.<sup>11</sup> When viewed in light of the limited fees that can be charged by NFL agents (3 percent being the maximum fee, with the default fee being 1.5 percent), the business of being a football agent becomes a much less attractive option for most lawyers.

That said, if you are still intrigued by the possibility of working with athletes or in some capacity in the sports world, opportunities abound outside of being an agent. Sports law encompasses a wide variety of fields including intellectual property, antitrust, gaming, international law and more. Attorneys hold positions with teams (including general manager, salary cap director, operations director, player development director and, of course, general counsel), leagues and unions.

Some attorneys choose to work with athletes on the brand and marketing side; others chose to work for the brands themselves (Nike, Adidas and Under Armour to name a few). Still others find opportunities within athletic departments in schools. Even here

in Oklahoma, opportunities exist for attorneys who are passionate about sports. And that is true whether you ever aspired to be Jerry Maguire – or not.

## ABOUT THE AUTHOR

Kelli Masters is of counsel with the Fellers Snider Law Firm, where she has practiced since 2000. She founded KMM Sports, an Oklahoma City-based sports agency in 2005. She earned her Bachelor of Arts in journalism from OU and her J.D. with honors from the OU College of Law.

## ENDNOTES

1. Crowe, C. (producer) & Crowe, C. (director), (1996), *Jerry Maguire*, United States.: TriStar Pictures.
2. See 2011 Nat'l Football League *Collective Bargaining Agreement* art. 69.1 (Aug. 4, 2011), [nflpaweb.blob.core.windows.net/media/Default/PDFs/Active%20Players/2011%20CBA%20Updated%20with%20Side%20Letters%20thru%201-5-15.pdf](http://nflpaweb.blob.core.windows.net/media/Default/PDFs/Active%20Players/2011%20CBA%20Updated%20with%20Side%20Letters%20thru%201-5-15.pdf).
3. Exceptions to this requirement are only granted if an applicant can prove, with documentation, seven years of negotiating experience. See [www.nflpa.com/agents/faq](http://www.nflpa.com/agents/faq).
4. See [www.nflpa.com/agents/how-to-become-an-agent](http://www.nflpa.com/agents/how-to-become-an-agent).
5. Liz Mullen, "Pass Rate Plummets for Agent Certification Exam," *Sports Business Journal* (Oct. 19, 2015), [www.sportsbusinessdaily.com/Journal/Issues/2015/10/19/Labor-and-Agents/Agent-exam.aspx](http://www.sportsbusinessdaily.com/Journal/Issues/2015/10/19/Labor-and-Agents/Agent-exam.aspx).
6. 70 O.S. §821.81, *et. seq.* (OSCN 2018), Uniform Athlete Agents Act.
7. The Sports Agent Responsibility Trust Act (SPARTA) (15 U.S.C. §7801-7807) is modeled after UAAA. Violations of SPARTA constitute unfair and deceptive acts under the Federal Trade Commission Act and are punishable under 15 USC Sec. 41 *et seq.* by fines up to \$10,000 per incident.
8. The NCAA has no authority to regulate agents, but, of course, member schools are punished for benefits provided by agents or agreements entered into with agents.
9. 70 O.S. §821.82.
10. In the state of Texas, agents may not contact student-athletes directly; rather the schools themselves set "Agent Days" in the summer, during which time agents are allowed to meet with senior athletes by invitation only. Section 2051.251 of the Texas Athlete Agents Act.
11. Agents typically spend tens of thousands of dollars to provide training, housing, rental cars, meals and more for draft-eligible clients preparing for the draft evaluation process. These expenses are not passed on to the client unless the client terminates the agent prior to signing his player contract with a team, so long as an enforceable written contract is executed and submitted to the NFLPA along with the standard representation agreement.



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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.” This program will feature a presentation by Lisa L. Pittman, special counsel at Feldmann Nagel Margulis LLC, examining the evolution of state and federal laws and how lawyers can navigate ethical challenges of medical marijuana.

A panel also moderated by Ms. Pittman will discuss issues pertaining to enforcement and policy and will address state laws and local policy governing medicinal marijuana. The marijuana industry can have implications for all practice areas, and attorneys dealing with business formation, operation, litigation, insurance coverage and other areas will examine how the overlay of conflicting federal and local marijuana laws impact their practice and the handling of cases. Panelists include Tom Bates, Oklahoma State Department of Health interim commissioner; Roger Beverage, Oklahoma Bankers Association president and CEO; Virginia Henson, PHM Law Group PC; Paul Middleton, Law Offices of Paul B. Middleton; and Kirk Turner, McAfee & Taft.

The program will run from 2-5 p.m. and includes three hours of CLE with one hour of ethics. Annual Meeting registrants receive an additional discount on CLE registration.



## Annual Luncheon

Thursday at Noon

Digital forensics expert Mark Lanterman will speak on “Easiest Catch: Don’t Be Another Fish in the Dark ‘Net” during the Annual Luncheon. He’ll cover the latest developments in the digital underground as well as realistic tips for cyber protection. President Kim Hays gives him rave reviews saying, “he kept his audience at the ABA Midyear Meeting engaged, listening and *not* working on phones or laptops.” Some OBA award winners will 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! The YLD is sponsoring four prizes, one each for the best-dressed dude and dudette and the guy and gal with the most righteous hair.

About the entertainment, from the Oklahoma Bar Foundation:

The OBF is totally stoked to take Kim & Alan's House Party to the max by hiring the unique DJ performance group Hybrid to play the best of the '80s with the accompanying music videos. You don't want to miss this totally rad party! Hybrid has found a way to merge the best qualities of both a band and a DJ while also incorporating professional video and lighting into the production.

We'll also have a background slideshow of our members looking tubular in the '80s. Send your photo to Laura Stone at [lauras@okbar.org](mailto:lauras@okbar.org) to be included.

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 humorous presentation by Ted Streuli, "Fake News." Mr. Streuli will look at real fake news – the completely made-up stuff – and the partially true stories with a nugget of truth wrapped in spin. Although perception of "fake news" is sometimes driven by the reader's own bias, it can also be driven by subtle word choices in the story, and Mr. Streuli will present examples of how writing and editing decisions can change the story without any alteration of the facts – like how Elvis was found living under a Los Angeles overpass!



Mr. Streuli spent 30 years as a newspaper reporter, editor and publisher, including 14 years at *The Journal Record*. He has won numerous writing and editing awards, serves on numerous nonprofit boards and is a past president of the Oklahoma Press Association. He has also worked as a square dance caller, an ice hockey referee and as Zipper the Clown.

The breakfast will be a ticketed event, free for delegates or only \$30 for nondelegates.



# 2018 RESOLUTION

*The following resolution will be submitted to the House of Delegates at the 114th Oklahoma Bar Association Annual Meeting at 10 a.m. Friday, Nov. 9, at the Hyatt Regency Hotel in Tulsa.*

## **RESOLUTION NO. ONE: AMENDMENT TO OKLAHOMA RULES OF PROFESSIONAL CONDUCT ADDING A LIMITED EXCEPTION FOR LAWYERS PROVIDING COUNSEL TO CLIENTS REGARDING MARIJUANA-RELATED LAWS OF THE STATE OF OKLAHOMA**

**BE IT RESOLVED** by the House of Delegates of the Oklahoma Bar Association that the Association amend Rule 1.2 of the Rules of Professional Conduct (5 O.S. ch. 1, app. 3A), as published in *The Oklahoma Bar Journal* and posted on the OBA website at [www.okbar.org](http://www.okbar.org) to add a new paragraph (e) providing a limited exception for lawyers who counsel clients regarding marijuana state laws. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Rules of Professional Conduct Committee. Adoption not recommended by the OBA Board of Governors.)*

### **RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) The substance of (b) is in modified Comment [5].

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) This paragraph is a limited exception to the requirements of paragraph (d) of this rule. A lawyer may counsel and assist a client regarding marijuana related laws of the State of Oklahoma. In the event Oklahoma law conflicts with federal or tribal law, the lawyer shall also advise the client regarding federal and tribal law and policy.

## **RESOLUTION SUBMISSION DEADLINE**

Pursuant to OBA Bylaws, proposed resolutions for House of Delegates consideration must meet publication guidelines before the Annual Meeting. Proposed resolutions in bill format must be submitted to Executive Director John Morris Williams by Oct. 15 to be published in the Oct. 27 *Oklahoma Bar Journal*. The deadline for publication in the official General Assembly and House of Delegates publication has passed.





# EVENTS

A detailed program of events is available at [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting). All events will be held at the Hyatt Regency Tulsa unless otherwise specified.

## 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

## NOTICE OF MEETINGS

### CREDENTIALS COMMITTEE

The Oklahoma Bar Association Credentials Committee will meet Thursday, Nov. 8, 2018, from 9-9:30 a.m. in Room 1 of Director's Row on the second floor of the Hyatt Regency Hotel, 100 E. Second Street, Tulsa, Oklahoma, in conjunction with the 114th Annual Meeting. The committee members are: Chairperson Luke Gaither, Henryetta; Kimberly K. Moore, Tulsa; Jennifer Castillo, Oklahoma City; and Jeffery D. Trevillion, Oklahoma City.

### RULES & BYLAWS COMMITTEE

The Rules & Bylaws Committee of the Oklahoma Bar Association will meet Thursday, Nov. 8, 2018, from 10-10:30 a.m. in Room 1 of Director's Row on the second floor of the Hyatt Regency Hotel, 100 E. Second Street, Tulsa, Oklahoma, in conjunction with the 114th Annual Meeting. The committee members are: Chairperson Judge Richard A. Woolery, Sapulpa; Roy D. Tucker, Muskogee; Billy Coyle IV, Oklahoma City; Nathan Richter, Mustang; and Ron Gore, Tulsa.

### RESOLUTIONS COMMITTEE

The Oklahoma Bar Association Resolutions Committee will meet Thursday, Nov. 8, 2018, from 10:45 - 11:45 a.m. in Room 1 of Director's Row on the second floor of the Hyatt Regency Hotel, 100 E. Second Street, Tulsa, Oklahoma, in conjunction with the 114th Annual Meeting. The committee members are: Chairperson Molly A. Aspan, Tulsa; Kendall A. Sykes, Oklahoma City; Cory B. Hicks, Guymon; Clayton Baker, Vinita; Courtney Briggs, Oklahoma City; and Mark E. Fields, McAlester.



# 2018 HOUSE OF DELEGATES

*Delegate certification should be sent to OBA Executive Director John Morris Williams. The list below was up-to-date as of time of press.*

COUNTY	DELEGATE	ALTERNATE
Adair Co. . . . .	Ralph F. Keen II	
Alfalfa Co.		
Atoka Co.		
Beaver Co. . . . .	Todd Trippet . . . . .	Abby Cash
Beckham Co.		
Blaine Co. . . . .	Daniel G. Webber . . . . .	Vicki Williams
Bryan Co. . . . .	Chris D. Jones . . . . .	Pat L. Phelps
Caddo Co.		
Canadian Co. . . . .	Harold Drain . . . . .	Nathan Richter
	Ashton Handley . . . . .	Mark Osby
	Tommy Humphries . . . . .	John Alberts
	Khristan Strubhar . . . . .	Sandy Steffen
Carter Co. . . . .	Michael Mordy . . . . .	Charles A. Milor II
	Michael D. Tipps . . . . .	Bebe L. Bridges
Cherokee Co.		
Choctaw Co. . . . .	J. Frank Wolf III . . . . .	Thomas J. Hadley
Cimarron Co. . . . .	Judge Ronald L. Kincannon . . . . .	Stanley Ed Manske
Cleveland Co. . . . .	Kristina Bell . . . . .	Amy Pepper
	Holly Lantagne . . . . .	Rickey J. Knighton
	Julia Mills Mettry . . . . .	Donna Compton
	Peggy Stockwell . . . . .	Jeanne Snider
	Rod Ring . . . . .	Jan Meadows
	Gary Rife . . . . .	Morgen Potts
	Benjamin Odom . . . . .	Chris Lind
	Alissa Hutter . . . . .	Judge Lori Walkley
	Holly Iker . . . . .	Don Pope
	Rebekah Taylor . . . . .	Weldon Nesbitt
	Micheal Salem . . . . .	Jama Pecore
	Richard Stevens . . . . .	Greg Dixon
	Judge Steve Bonner . . . . .	David Swank
	Richard Vreeland . . . . .	Scott Brockman
	Judge Thad Balkman . . . . .	Cindy Allen
	Judge Jeff Virgin . . . . .	Dave Batton
	Rick Sitzman . . . . .	Beth Stanley
	Blake Virgin . . . . .	John Sparks
	Rep. Emily Virgin . . . . .	Betsy Brown
	Dave Stockwell . . . . .	Kristi Gundy

COUNTY	DELEGATE	ALTERNATE
Coal Co.		
Comanche Co. . . . .	Tyler C. Johnson	
Cotton Co. . . . .	Judge Michael C. Flanagan . . . . .	Kathleen Flanagan
Craig Co.		
Creek Co.		
Custer Co. . . . .	Anthony S. Moore . . . . .	Dennis A. Smith
Delaware Co.		
Dewey Co. . . . .	Judge Rick Bozarth	
Ellis Co. . . . .	Judge Laurie E. Hays . . . . .	Joe L. Jackson
Garfield Co. . . . .	Julia C. Rieman . . . . .	Patrick R. Anderson
	Clint A. Claypole . . . . .	Taylor C. Venus
	Benjamin J. Barker . . . . .	J. Brandon Harvey
Garvin Co.		
Grady Co.		
Grant Co. . . . .	Judge Jack D. Hammontree . . . . .	Steven A. Young
Greer Co.		
Harmon Co.		
Harper Co.		
Haskell Co.		
Hughes Co. . . . .	Jeff Whitesell . . . . .	John Baca
Jackson Co. . . . .	Grant Kincannon . . . . .	Cole McMahan
Jefferson Co.		
Johnston Co.		
Kay Co. . . . .	Michael R. Vanderburg . . . . .	John R. Andrew
	Austin L. Stephenson	
Kingfisher Co. . . . .	Matthew R. Oppel . . . . .	Andrew E. Karim
Kiowa Co.		
Latimer Co. . . . .	F. Nils Raunika . . . . .	Janice Skimbo
LeFlore Co. . . . .	Amanda Grant . . . . .	Nicholas E. Grant
Lincoln Co.		
Logan Co.		
Love Co.		
Major Co.		
Marshall Co.		
Mayes Co. . . . .	Judge Shawn Taylor . . . . .	Chase McBride
McClain Co.		
McCurtain Co. . . . .	Judge Kenneth Farley . . . . .	Judge Michael DeBerry



COUNTY	DELEGATE	ALTERNATE
McIntosh Co.		
Murray Co.		
Muskogee Co.		
Noble Co.		
Nowata Co.		
Okfuskee Co.		
Oklahoma Co. . . . .	Judge Sheila Stinson . . . . .	Justin Meek
	Judge Don Andrews . . . . .	Miguel Garcia
	Michael W. Brewer . . . . .	Lorenzo Banks
	Stanley L. Evans . . . . .	Kenyatta Bethea
	Judge Barbara Swinton . . . . .	Edward White
	Judge Richard Ogden . . . . .	Sarah Jernigan McGovern
	Lauren Barghols Hanna . . . . .	Jeff Trevillion
	Timothy Bomhoff . . . . .	Celeste England
	Chris Deason. . . . .	Robert D. Gifford
	Judge Cassandra Williams . . . . .	Richard Parr
	M. Courtney Briggs . . . . .	Stephen Cortes
	Susan Carns Curtiss . . . . .	Sabre Weathers
	Judge Trevor Pemberton . . . . .	Jeff Wise
	Johy Coyle III. . . . .	John Heatly
	David Cheek . . . . .	Mack Martin
	T. Luke Abel . . . . .	Raymond E. Zschiesche
	Judge Ken Stoner . . . . .	Katherine Mazaheri-Franz
	Angela Ailles Bahm . . . . .	Bob Jackson
	Jeff Curran . . . . .	Curtis Thomas
	Will Hoch . . . . .	W. Brett Willis
	Monica Ybarra . . . . .	Coree Stevenson
	Kelli Stump . . . . .	Cynthia Goble
	Judge Philippa James . . . . .	Zane Anderson
	Daniel G. Couch . . . . .	Bradley Davenport
	David Dobson . . . . .	C. Scott Jones
	Kristie Scivally . . . . .	Veronica Laizure
	Thomas E. Mullen . . . . .	Shanda McKenney
	Cody J. Cooper. . . . .	Benjamin Grubb
	Mariano Acuna . . . . .	Amber Martin
	Richard Rose. . . . .	Kristin Meloni
Okmulgee Co.		
Osage Co.		
Ottawa Co. . . . .	Chuck Chesnut . . . . .	John Weedn
Pawnee Co.		
Payne Co. . . . .	Jimmy Oliver	
	Brenda Nipp	
Pittsburg Co.		
Pontotoc Co.		
Pottawatomie Co.		
Pushmataha Co.		
Roger Mills Co.		
Rogers Co. . . . .	Kassie McCoy . . . . .	Tim Wantland
	Justin Greer . . . . .	Melinda Wantland
	Noah Sears . . . . .	Kathy Lahmeyer
Seminole Co. . . . .	William D. Huser . . . . .	Judge Timothy Olsen
Sequoyah Co.		

COUNTY	DELEGATE	ALTERNATE
Stephens Co.		
Texas Co. . . . .	Corey Hicks . . . . .	Taos Smith
Tillman Co.		
Tulsa Co. . . . .	Molly Aspan . . . . .	Ruth Addison Martin
	James C. Milton . . . . .	Tim Rogers
	James Hicks . . . . .	Georgina Van Tuyl
	Gerald L. Hilsher . . . . .	Justin Munn
	Julie A. Evans	
	D. Kenyon Williams . . . . .	Phil Feist
	Linda Van Arkel-Greubel . . . . .	Chris Davis
	Kenneth L. Brune . . . . .	Brenna Wiebe
	Amber Peckio Garrett . . . . .	Jill Walker-Abdoveis
	Kara Pratt . . . . .	Jeffrey Wolfe
	Natalie S. Sears. . . . .	Clark Crapster
	Stefanie S. Sinclair . . . . .	David "Mike" Thornton
	Jack L. Brown . . . . .	Stefan Mecke
	Kara M. Robinson Greuel . . . . .	Kim Schutz
	Eric L. Clark . . . . .	Cassia Carr
	Judge Millie Otey . . . . .	Clint T. Swanton
	Judge Martha Rupp Carter . . . . .	Michael Esmond
	Jim Gotwals . . . . .	Scott V. Morgan
	Faith Orlowski . . . . .	C. Austin Birnie
	Zach Smith . . . . .	Taylor A. Burke
	Robert Sartin. . . . .	Jim Proszek
	Leonard Pataki . . . . .	Deborah A. Reed
	Tamera Childers . . . . .	Philip D. Hixon
	Rachel Mathis . . . . .	Richard White
	Ron Main . . . . .	David A. Tracy
	Sabah Khalaf	
	Kimberly Moore	
	Trisha L. Archer	
	Bruce McKenna	
	Melissa Taylor	
Wagoner Co.		
Washington Co.		
Washita Co. . . . .	Judge Christopher S. Kelly . . . . .	S. Brooke Gatlin
Woods Co. . . . .	Drew Cunningham. . . . .	Jesse Kline
Woodward Co. . . . .	Bryce Hodgden . . . . .	Nicholas Ohmann

	DELEGATE	ALTERNATE
Oklahoma Judicial Conference.	Dist. Judge Doug Kirkley . . . . .	Dist. Judge Justin Eilers
	Assoc. Dist. Judge Thomas Baldwin . . . . .	Assoc. Dist. Judge David Bandy
	Special Judge Matt Orendorff . . . . .	Special Judge Sheila Stinson



# 2019 OBA BOARD OF GOVERNORS VACANCIES

The nominating petition deadline was 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: **David T. McKenzie, Oklahoma City**

### 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: **Timothy E. DeClerck, Enid**

### 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: **Andrew E. Hutter, Norman**

### Member At Large

Current: Alissa Hutter, Norman  
Statewide  
(Three-year term: 2019-2021)  
Nominee: **Josh D. Lee, Vinita**  
Nominee: **Miles T. Pringle, Oklahoma City**

## NOTICE

Pursuant to Rule 3 Section 3 of the OBA Bylaws, the nominees for uncontested positions have been deemed elected due to no other person filing for the position. The election for the contested position 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.



# 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 one-year term beginning January 1, 2019.

**A total of 573 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 126 signatures appear on the petitions.**

## BOARD OF GOVERNORS

### Supreme Court Judicial District No. 3

**David T. McKenzie,  
Oklahoma City**

Nominating Petitions have been filed nominating David T. McKenzie for election of Supreme Court Judicial District No. 3 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2019.

**A total of 57 signatures appear on the petitions.**

### Supreme Court Judicial District No. 4

**Timothy E. DeClerck, Enid**

Nominating Petitions have been filed nominating Timothy E. DeClerck for election of Supreme Court Judicial District No. 4 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2019.

**A total of 46 signatures appear on the petitions.**

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

### Supreme Court Judicial District No. 5

**Andrew E. Hutter, Norman**

Nominating Petitions have been filed nominating Andrew E. Hutter for election of Supreme Court Judicial District No. 5 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2019.

**A total of 31 signatures appear on the petitions.**

### Member at Large

**Josh D. Lee, Vinita**

Nominating Petitions have been filed nominating Josh D. Lee, Vinita for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2019.

**A total of 66 signatures appear on the petitions.**

**Miles T. Pringle, Oklahoma City**

Nominating Petitions have been filed nominating Miles T. Pringle, Oklahoma City for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2019.

**A total of 105 signatures appear on the petitions.**

# 2019 TRANSITIONS



## 2018 President

*Kimberly K. Hays, Tulsa*

Kimberly Hays is a solo practitioner in Tulsa. She has practiced exclusively in the area of family law since 1993. She received her B.A. in 1990 from OSU. She graduated from the University of Kansas School of Law with her J.D. in 1993 and is a member of the Tulsa County

and Creek County bar associations and American Bar Association.

Ms. Hays served on the OBA Board of Governors, District 6 Tulsa, in 2012-2014 and as the OBA Section Leaders Council chair. She is the past chair of the OBA Family Law Section and has also served as the section's chair-elect, secretary, CLE chair and budget chair. Ms. Hays is on the faculty of the OBA FLS Trial Advocacy Institute. She has co-chaired the OBA Solo & Small Firm Conference and served as the Women in Law Committee co-chair and chair. She has served on numerous OBA committees including the Budget Committee, Strategic Planning Task Force, Communications Committee, Law Day Committee, Professionalism Committee and Bench and Bar Committee.

Ms. Hays is also active in the Tulsa County Bar Association, having served as a director at large, chair of the TCBA Family Law Section, a member of the Professionalism Committee and the Professional Responsibility Committee. She is a volunteer attorney for Legal Aid Services, DVIS and Oklahoma Lawyers for America's Heroes. Ms. Hays is the recipient of the OBA FLS Family Law Attorney of the Year, Mona Salyer Lambird Spotlight Award and OBA FLS Chair Award.



## 2019 President

*Charles W. Chesnut, Miami*

Charles W. "Chuck"

Chesnut is a sole practitioner in Miami. He is a third-generation Oklahoma lawyer. He was born and raised in Miami and upon graduation from high school, he attended OU where he received his bachelor's degree in business administration in 1974. He graduated

from the OU College of Law in 1977. His main areas of practice are real estate, probate and estate planning.

He is a member and past president of the Ottawa County Bar Association. He served as U.S. magistrate judge (part-time) for the U.S. District Court, Northern District of Oklahoma from 1983-1987 and was a temporary panel judge for the Oklahoma Court of Appeals in 1991-1992. He is a past member of the OBA YLD Board of Directors, a Benefactor Fellow of the Oklahoma Bar Foundation, was a trustee of the OBF from 1993-2000 and served as OBF president in 1999. He also served on the OBA Board of Governors from 2009-2011. He is a member of the Real Property Law, Estate Planning and Probate and Law Office Management and Technology sections and has been a member of a number of OBA committees, currently chairing the Board of Governors Budget Committee.

He is active in his community having served as a member of the Miami Board of Education for 17 years and as its president for a number of those years. He is a member of and past president of the Miami Chamber of Commerce. He also volunteers as a mentor to a fifth-grade elementary school class one afternoon per week during the school year.

He is married to Shirley Murphy Chesnut and has four children and one grandson.

## 2019 NEWLY ELECTED BOARD OF GOVERNORS

Pursuant to Rule 3, Section 3 of the OBA Bylaws, the following nominees have been deemed elected due to no other person filing for the position.



### **President-Elect**

*Susan B. Shields,  
Oklahoma City*

Susan Shields is a shareholder with McAfee & Taft and practices in the areas of estate and family wealth planning, estate and trust administration, business planning and charitable organizations.

Ms. Shields was born in Bartlesville and earned her

B.A. with honors from Stanford University in 1986 and her J.D. from UCLA School of Law in 1989. After law school, she practiced with a large San Francisco law firm for several years and then returned to Oklahoma in 1991.

She is a member of the Oklahoma, Oklahoma County, California and American bar associations. From 2009-2012, Ms. Shields served on the OBA Board of Governors. In 2014, she served as vice president of the OBA. She served as president of the Oklahoma Bar Foundation in 2013 and as an Oklahoma Bar Foundation Trustee from 2007-2014. She is a former OBA Estate Planning, Probate and Trust Section chair, a current member of the OBA Budget Committee and a former member of numerous OBA committees, including the Legal Ethics Committee, Women in Law Committee, Strategic Planning Committee, Communications Committee, Diversity Committee and the Audit Committee.

In 2005, 2010 and 2015, Ms. Shields was a finalist for *The Journal Record's* Woman of the Year Award. In 1993, she received the Outstanding Pro Bono Lawyer Award from Legal Aid of Western Oklahoma,

in 2005 she received the OBA Earl Sneed Award, in 2011 she received the Mona Salyer Lambird Spotlight Award and *The Journal Record's* Leadership in Law Award, and in 2016 she received the Law Day Award from *The Journal Record* and Oklahoma County Bar Association. She was also honored with the OBA President's Award in 2014 and the OBF's Roger Scott Memorial Award in 2014.

She served as director of the Oklahoma County Bar Association from 2014-2016 and has been a frequent speaker on a variety of estate planning, probate and nonprofit topics for OBA CLE and other seminars. She has also taught as an adjunct professor in estate planning and in wealth transfer tax at the OU College of Law and has served on the boards of a number of local nonprofit organizations.



### **Vice President**

*Lane R. Neal, Oklahoma City*

Lane R. Neal practices with Durbin, Larimore & Bialick in Oklahoma City. His practice is focused on civil litigation and all aspects of insurance law. He is a member of the Oklahoma County Bar Association and American Bar Association. He is a Fellow of the

Oklahoma Bar Foundation. Mr. Neal is admitted to practice in all state and federal courts in Oklahoma and has been an associate and barrister in the Luther L. Bohanon American Inn of Court. He was a 2010 graduate of the OBA Leadership Academy.

Mr. Neal has served on the OBA YLD Board of Directors since 2010. He is currently immediate past chair of the YLD. He has previously served as chairperson, chairperson-elect, treasurer and District 3 representative. He has also served on a number of OBA committees including the Budget Committee and Strategic Planning Committee.



Mr. Neal grew up in Lawton and graduated from Lawton High School. He received his undergraduate degree from OU in 2004. During his time as an undergraduate, he was elected to several leadership positions including president of his fraternity and president of Integrated Business Core. He received his J.D. from the OU College of Law in 2008. While in law school, Mr. Neal was active in OU's advocacy competition teams and served as a note editor for the *American Indian Law Review*.

Mr. Neal is a member of Crown Heights United Methodist Church where he serves as a trustee. He also serves as a board member for United Way of Central Oklahoma and Arts Council of Oklahoma City.

Mr. Neal's wife, Laura Sams Neal, is also an attorney. The Neals have one son, William, and are expecting their second child in March.



### **Supreme Court Judicial District Three**

*David T. McKenzie, Oklahoma City*

David T. McKenzie received a Bachelor of Arts degree in political science with a minor in English in 1982 from Southwestern Oklahoma State University, a Master of Science degree in criminal justice in 1984 and a

Master of Arts degree in American studies in 1985 both from Northeastern Oklahoma State University and his J.D. from the OU College of Law in 1988.

Mr. McKenzie is currently with the Oklahoma City law firm of Mulinix Goerke & Meyer and is an adjunct professor of law at the OCU School of Law where he teaches trial practice and evidence. He was the OBA Criminal Law Section chair in 2016. Over the past 20 years, he has taught more than 50 continuing legal education courses for the OBA. Nine years ago, he started the Barry and Johnny Albert Memorial Mock Trial, which he has produced and served as a trial lawyer for ever since. He has also co-authored several articles for the *Oklahoma Bar Journal*.

Mr. McKenzie was the 1997 recipient of the Clarence Darrow Award, given by the Oklahoma Criminal Defense Lawyers Association for outstanding criminal defense litigation, the 2010 recipient of the OBA Criminal Law Section's "Professional Advocate Award, Defender of the Year" and the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers Association. In 2014, he received both the OBA's Earl Sneed Award for excellence in continuing legal

education and Maurice Merrill Golden Quill Award for excellence in writing.

Mr. McKenzie is a past member of the Civil Procedure and Evidence Code Committee, Bench and Bar Committee, Rules of Professional Conduct Committee and the Section Leaders Council. He is licensed to practice in the state of Oklahoma, U.S. District Court for the Northern District of Texas, U.S. District Courts of the Western, Eastern and Northern Districts of Oklahoma, the 10th Circuit Court of Appeals and the U.S. Supreme Court. He is the legal analyst for the KFOR television news station in Oklahoma City. Mr. McKenzie has been featured as a legal analyst for the *Atlanta Constitution*, *ID Channel*, *ABC News*, *Sky News*, *Newsday* and has been quoted in two major books written on the subject of criminal justice in Oklahoma.



### **Supreme Court Judicial District Four**

*Timothy E. DeClerck, Enid*

Tim E. DeClerck was born in Enid. He received a Bachelor of Arts from OU in 1980 and a Juris Doctor from the OU College of Law in 1983. He was admitted to the Oklahoma bar in 1983 and is admitted to practice before the U.S. District Court

of the Western District of Oklahoma, U.S. Court of Appeals 10<sup>th</sup> Circuit and the U.S. Supreme Court. He is a member of the Garfield County Bar Association.

Mr. DeClerck was an active board member of the Oklahoma Young Lawyers Division in his younger years. Currently he is a member of the OBA Estate Planning, Probate and Trust Law Section and is a member of the Oklahoma Association of Justice. He is past president of the Garfield County Bar Association.

Founded in 1893, Mitchell DeClerck PLLC, is where he started his law practice in 1983 with his father, Edward A. DeClerck. He has continued his practice with Mitchell DeClerck where he conducts a general practice with an emphasis on life and estate planning, the creation of wills, trusts and durable powers of attorney and the administration of estates.

Mr. DeClerck has been a long-time member of the Tri-State Music Festival Inc. Board of Directors, is an active member of the Enid Noon American Business Club (AMBUCS) and serves on its Board of Directors and is currently a board member of the Enid YMCA. He is a member of St. Gregory the Great Catholic Parish and serves on the Finance Committee. He has three children, Ashley, Justin and Esther, and lots of grandchildren.



### **Supreme Court Judicial District Five**

*Andrew E. Hutter, Norman*

Andy Hutter is the founding member of the Hutter Law Firm, focusing on criminal defense work. He attended OU where he earned a bachelor's degree in business administration. He then attended the OCU School of Law, graduating in

2005. Upon graduation, he went to work for Carpenter and Laquer as an associate. In 2008, he opened the Hutter Law Firm in Oklahoma City. His wife Alissa joined him in 2009, when she opened the Norman branch of the Hutter Law Firm. Mr. Hutter practices throughout the state and is also admitted to practice in the Western District of Oklahoma. He is a member of the Oklahoma County Bar Association, Cleveland County Bar Association, Oklahoma Criminal Defense Lawyers Association and the National Association of Criminal Defense Lawyers.

Mr. Hutter is quite familiar with the Board of Governors' obligations, as his wife Alissa completes her term on the board this year. He is ready to give back to the Oklahoma Bar Association and is excited to serve on the Board of Governors.



### **OBA YLD Chair**

*Brandi N. Nowakowski, Shawnee*

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.

## **CONTESTED ELECTION**

The election for this position will be held at the House of Delegates meeting Nov. 9 at the 2018 OBA Annual Meeting.



### **Member At Large**

*Josh D. Lee, Vinita*

Josh D. Lee is a trial attorney. He is nationally recognized for his expertise on forensic science related topics and has lectured over 225 times in 22 different states and two countries. In addition to his law degree, he has earned a Master of Science in

pharmacy from the University of Florida. He is also a nationally registered EMT.

Mr. Lee has lectured at the American Chemical Society (ACS) as well as the American Academy of Forensic Science (AAFS) national meetings. In 2011, he was elected forensic science co-chairman for the Chemistry and the Law Division of the ACS. He is also an assistant chromatography instructor for the ACS. He is the only Oklahoma attorney to be recognized as an ACS forensic lawyer-scientist as designated by the Chemistry and the Law Division of the ACS. In 2018, he was recognized by *Oklahoma Magazine* as a top 40 Under 40 young leader in Oklahoma. He has received two President's Awards from the Oklahoma Criminal Defense Lawyers Association and a Dean's Award from the National College for DUI Defense.

Mr. Lee is a published author on various science and law topics including gas chromatography, blood testing, breath testing, oral fluid testing, forensic science reform, drug testing, drug analogues, search and

seizure and trial advocacy. He is an instructor of the Standardized Field Sobriety Tests, certified independent operator of the Intoxilyzer 5000 and Intoxilyzer 8000 by the state of Oklahoma and is trained in the Drug Recognition Expert Program.

Mr. Lee is a founding member of the firm Ward Lee & Coats PLC. He serves on the Board of Directors for Freedom of Information Oklahoma Inc. and serves as past president of the DUI Defense Lawyers Association Justice Foundation. He is a volunteer attorney for the Oklahoma Innocence Project and has worked to successfully exonerate two men wrongfully convicted of murder after they spent 22 years in prison. He is also a volunteer firefighter in his hometown of Vinita.

Mr. Lee is licensed to practice in Oklahoma and Texas and routinely consults with attorneys from across the United States.



*Miles T. Pringle,  
Oklahoma City*

Miles Pringle is a native Oklahoman and partner at the law firm Pringle & Pringle PC. The majority of his clients are financial institutions which he counsels on regulatory compliance issues, mergers and acquisitions and vendor contracting. He also represents

clients in litigation matters, strategic business planning and succession and estate planning. He obtained his undergraduate degree from the University of Kansas and his J.D. from the University of Missouri – Kansas City, where he was a member of the National Moot Court Team and was awarded Best Brief for the Petitioner at the regional competition.

Mr. Pringle serves on the OBA Legislative Monitoring Committee and presented at the OBA Annual Legislative Reading Day and the Legislative Debrief. In conjunction with the committee, he has met with Oklahoma legislators on several occasions to educate them about the OBA and advocate for the preservation of the Judicial Nominating Commission. He has also had articles published in the *Oklahoma Bar Journal*.

For the past two years Mr. Pringle has served as the OBA Financial Institution and Commercial Law Section (FICL) chairperson and is a member of the OBA Section Leaders Council. While chairperson for the FICL, the section has conducted quarterly meetings, provided professional periodicals to its members, donated to the Oklahoma Bar Foundation, awarded scholarships to graduates from all three of

Oklahoma's law schools and presented an annual Banking and Commercial Law Update with the OBA CLE Department.

Mr. Pringle is also an active member of the Oklahoma County Bar Association. He is a member of the *Briefcase* Committee and responsible for publishing articles, such as changes to the Oklahoma Commercial Code and the impacts of the new medical marijuana laws. In June of this year, he was awarded the Geary L. Walke *Briefcase* Award for outstanding contribution to the *Briefcase*.

In addition to professional involvement, Mr. Pringle is also involved in the Oklahoma City community. He is a board member for Rainbow Fleet Inc. and serves as its fundraising chair. He is a member of Oklahoma City's Downtown Rotary Club and serves on its Program Committee. He has been a barrister member of the Luther Bohanon American Inn of Court XXIII and is a member of the Oklahoma Advisory Committee for the U.S. Global Leadership Coalition.



# EASIEST CATCH

*Don't Be Another Fish in the Dark 'Net*

Speaker: Mark Lanterman, founder, Computer Forensic Services

Annual Luncheon  
*Thursday, Nov. 8*

Sponsored by the Family Law Section  
Part of the 2018 Annual Meeting | [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting)



# 2018 OBA AWARD PRESENTATIONS

## Wednesday, Nov. 7 Law School Luncheons

### **Outstanding Senior Law School Student Award**

OCU – Alyssa Gillette, Harker Heights, Texas

OU – Collen Steffen, Enid

TU – Clint A. Summers, Tulsa

## Thursday, Nov. 8 Annual Luncheon

### **Award of Judicial Excellence**

*for excellence of character, job performance or achievement while a judge and service to the bench, bar and community*

Judge Ronald L. Kincannon, Boise City

### **Liberty Bell Award**

*for nonlawyers or lay organizations for promoting or publicizing matters regarding the legal system*

The Parent Child Center of Tulsa, Tulsa

Nathan Hedge, Oklahoma City

### **Joe Stamper Distinguished Service Award**

*to an OBA member for long-term service to the bar association or contributions to the legal profession*

M. Joe Crosthwait, Midwest City

### **Alma Wilson Award**

*for an OBA member who has made a significant contribution to improving the lives of Oklahoma children*

Sharon Wigdor Byers, Edmond

### **Neil E. Bogan Professionalism Award**

*to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession*

R. Victor Kennemer, Wewoka (posthumous)

### **John E. Shipp Award for Ethics**

*to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession*

Gerald L. Hilsher, Tulsa

### **Fern Holland Courageous Lawyer Award**

*to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession*

Josh Lee, Vinita

**Friday, Nov. 9**  
**General Assembly**

**Outstanding County Bar Association Award**

*for meritorious efforts and activities*

Kay County Bar Association  
Tulsa County Bar Association

**Hicks Epton Law Day Award**

*for individuals or organizations for noteworthy Law Day activities*

Comanche County Bar Association  
Creek County Bar Association

**Earl Sneed Award**

*for outstanding continuing legal education contributions*

Paul Brunton, Tulsa

**Golden Gavel Award**

*for OBA Committees and Sections performing with a high degree of excellence*

OBA Access to Justice Committee

**Outstanding Young Lawyer Award**

*for a member of the OBA Young Lawyers Division for service to the profession*

Lane Neal, Oklahoma City

**Outstanding Service to the Public Award**

*for significant community service by an OBA member or bar-related entity*

Allen Pease and Miss Chance, Broken Arrow  
William C. "Bill" Kellough, Tulsa

**Award for Outstanding Pro Bono Service**

*by an OBA member or bar-related entity*

Sara Murphy Bondurant, Oklahoma City

**Maurice Merrill Golden Quill Award**

*best Oklahoma Bar Journal article*

Michael J. Davis, Durant



# 2018 Annual Meeting



## President's Reception Wednesday | Nov. 7

*Open to all Annual Meeting registrants*

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



# 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 registration 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

## HOW TO REGISTER



### Online

Register online at  
[www.okbar.org/  
annualmeeting](http://www.okbar.org/annualmeeting)



### 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](mailto:marks@okbar.org)

## DETAILS

### 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](http://www.okbar.org/annualmeeting). A discount rate of \$115 per night is available on reservations made on or before Oct. 14.

### 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 \_\_\_\_\_

Badge Name (if different from roster) \_\_\_\_\_ Bar No. \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone \_\_\_\_\_

Name of Nonattorney guest \_\_\_\_\_

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

Check all that apply: ☐ Judiciary ☐ Delegate ☐ Alternate

	**Early Rate	Standard Rate	*New Member Early Rate	*New Member Standard Rate
<b>Meeting Registration</b>	<input type="checkbox"/> \$75	<input type="checkbox"/> \$100	<input type="checkbox"/> \$0	<input type="checkbox"/> \$25

✓Check your choice

\*New members sworn in this year

\*\*Early rate applies to registrations  
made on or before Oct. 14.

SUBTOTAL \$ \_\_\_\_\_

## CLE

Early rate valid on or before Oct. 14. ✓Check the box next to your choice.

	Early Rate With Meeting Registration	Standard Rate With Meeting Registration	Early Rate Without Meeting Registration	Standard Rate Without Meeting Registration
<b>Wednesday</b>	<input type="checkbox"/> \$50	<input type="checkbox"/> \$100	<input type="checkbox"/> \$75	<input type="checkbox"/> \$125
<i>Getting Out of the Weeds: What You Need to Know about the New World of Marijuana Regulation</i>				
<b>Thursday</b>	<input type="checkbox"/> \$50	<input type="checkbox"/> \$100	<input type="checkbox"/> \$75	<input type="checkbox"/> \$125
<i>The Internet of Things and Leveraging Digital Evidence, Mark Lanterman, and Cybersecurity Panel, Eide Bailly LLP, Anglin PR and GableGotwals</i>				

SUBTOTAL \$ \_\_\_\_\_

## LUNCHEONS AND EVENTS

Annual Meeting registration not required

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

SUBTOTAL \$ \_\_\_\_\_

## PAYMENT

☐ Check enclosed: Payable to Oklahoma Bar Association TOTAL COST \$ \_\_\_\_\_

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

Card # \_\_\_\_\_ CVV# Exp. \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_



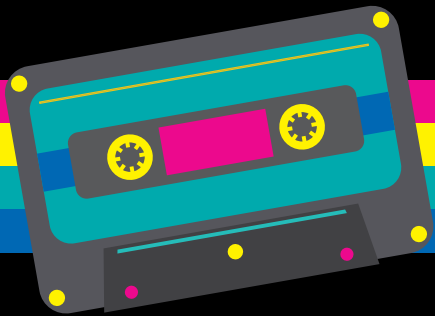


*Kim & Alan's*

# HOUSE PARTY

*Thursday, Nov. 8*

*Part of the 2018 Annual Meeting  
Open to all - no registration required!*



*Co-hosted by*



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AWARDS

# OBA Diversity Awards 2018

*By Telana McCullough*



**THE OBA DIVERSITY** Committee is set to host its annual Ada Lois Sipuel Fisher Awards Dinner Oct. 18, 2018, in Oklahoma City. The event will feature a keynote address from Susan Carns Curtiss. Ms. Curtiss is the founder of Girl Attorney LLC, a national organization that works to advance, promote, support and encourage women in the legal profession and beyond. The event will also feature a special presentation by Professor Cheryl Wattley. Professor Wattley is the author of *A Step Toward Brown v. Board of Education: Ada Lois Sipuel Fisher and Her Fight to End Segregation* and *I'll Do It*, a play about Ada Lois Sipuel Fisher and the fight for civil rights.

The Diversity Committee will honor six individuals and organizations with the Ada Lois Sipuel Fisher Diversity Award in recognition of their efforts in promoting diversity and inclusion in Oklahoma.

To attend the dinner, visit [www.okbar.org/diversityawards/dinner](http://www.okbar.org/diversityawards/dinner).

## AWARD RECIPIENTS

### Member of the Judiciary



**Judge Lydia Y. Green**

Judge Lydia Y. Green was appointed to the 7th Judicial District, State of Oklahoma, Oklahoma County on Feb. 13, 2017, as a special judge. She was born and raised in Dallas and earned

her Bachelor of Science degree in biology with a minor in chemistry from Texas Tech University and her J.D. from the OCU School of Law.

Prior to being appointed to the bench, Judge Green was in private practice with a focus primarily in the areas of family law, juvenile law and criminal defense. Simultaneously, she served as the staff attorney for the Metropolitan Fair Housing Council of Oklahoma Inc. with an emphasis on civil rights discrimination. During her tenure with Metropolitan Fair Housing, she partnered with the U.S. Department of Justice and the U.S. Department of Housing and Urban Development to advocate for victims of housing discrimination.

Judge Green is actively involved in her community. She currently serves as an executive board member for the OCU School of Law and The Metropolitan Fair Housing Council of Oklahoma Inc. From 2014 to 2017, she served as vice president of the Association of Black Lawyers Inc. In addition, she has served as a volunteer with Oklahoma Lawyers for Children, the Selection Committee for Habitat for Humanity and is a proud member of Delta Sigma Theta Sorority Inc.

### Attorneys



**Betsy G. Jackson**  
Betsy G.

Jackson is a shareholder at Hall Estill where she practices securities, business transactions, commercial finance,

mergers and acquisitions and real estate. She received her undergraduate degree from Southern Methodist University and her J.D. from the TU College of Law. She is past chair of Hall Estill's Recruitment & Diversity Committee, as well as the Associate Review Committee.

She is involved as a volunteer in the Tulsa community. Ms. Jackson is the current executive vice chair and incoming president of the Board of Directors for Tulsa CARES, an organization committed to creating a community where all people with HIV/AIDS have equal opportunities for healthy living. In addition, she and her husband, Gerry, served as co-chairs of the 2018 Red Ribbon Gala.

Further, she serves as vice-chair for the Mayor's Commission on the Status of Women where she was instrumental in the development of the Female Incarceration Action Plan (May 2016). The plan was a road map designed to identify gaps in services and programs available to women in Oklahoma incarcerated for nonviolent crimes. In addition, she serves as vice chair of the Board of Directors for the Tulsa Area United Way.



**Rep. Emily Virgin**

Rep. Emily Virgin was born and raised in Norman. She attended OU where she worked as an equipment manager for the OU football team. She graduated *magna cum laude* from OU in 2009 with a degree



in political science and a minor in criminology. Rep. Virgin was also selected as a member of Phi Beta Kappa.

She began law school at the OU College of Law in the fall of 2009 and was elected to the Oklahoma House of Representatives in November 2010. She serves on the Appropriations & Budget, Judiciary, Public Safety and Higher Education committees in the House of Representatives and is the Minority Caucus chair. She graduated with honors from OU law in 2013 and was a member of the *Oklahoma Law Review*.

Rep. Virgin is also active in numerous organizations in her community. She is a past board member of the Thunderbird Clubhouse, an organization in Norman serving those with mental health issues, and Dreamer Concepts, a nonprofit art gallery. She is a current board member of the Norman Arts Council and Bridges, a nonprofit organization that serves homeless teens in Norman.

She was named the Legislator of the Year in 2015 by Freedom Oklahoma, the state's largest LGBT advocacy organization, and has twice received the Distinguished Service Award from the Oklahoma State Regents for Higher Education.

#### Organizations



**GIRL ATTORNEY®**

#### Girl Attorney LLC

Girl Attorney LLC exists for women attorneys to advance, promote, support and encourage one another. Though the focus of the community is about being working women, generally, and the practice of law, specifically, the community is welcome to both those that do, and do not, practice law.

In the fall of 2010, Susan Carns Curtiss noticed the need for an organization of this kind after being the only female attorney at her law office and one of the few female attorneys in larger legal networks. She searched the internet for a

supportive community for working women but could not find one.

Over the next several years, considerable thought, research, observations, experiences and conversations contributed to the development of the context of Girl Attorney LLC brand as a whole. She is fundamentally committed to providing a forum for a community of support and encouragement to women attorneys across the globe.



**METROPOLITAN FAIR HOUSING COUNCIL**

#### Metropolitan Fair Housing Council of Oklahoma Inc.

Since 1979, the Metropolitan Fair Housing Council Inc. (MFHC) has served as the only full-service, 501(c)(3) private nonprofit, qualified fair housing enforcement and advocacy organization in Oklahoma. MFHC provides free fair housing enforcement and legal resources to alleged victims of housing discrimination, responds to consumer complaints of unfair treatment from the housing industry, conducts free fair housing/fair lending education and outreach training for consumers, housing providers, attorneys, public and private organizations and conducts counseling and mediation services to promote equal housing opportunity.



#### Oklahoma People First

Established in 1988, Oklahoma People First Inc. (OPF) is a self-advocacy organization serving people with intellectual disabilities and is the first statewide nonprofit 501(c)(3) organization run for and by people with intellectual disabilities. Living by the motto, "Nothing About Us, Without Us," OPF's mission is to "promote equality; assist each other

in speaking for ourselves; educate self-advocates; and to support self-advocacy activities in Oklahoma."

Currently, with 13 active chapters across the state, OPF serves as a powerful voice concerning disability issues at the national, state and local levels. Self-advocates work to educate others on the stigma of the label "mental retardation" and have participated in the "Getting Rid of the 'R' Word" campaign. OPF was also instrumental in getting the Oklahoma Respectful Language Act passed to remove the term mental retardation from state legislation and policies. Numerous OPF members were active advocates in closing the last two state institutions for people with intellectual and developmental disabilities.

OPF hosts Developmental Disability Awareness Day at the Oklahoma State Capitol, which gives self-advocates the opportunity to meet and educate legislators. OPF teaches self-advocates how to listen and learn and encourages them to form their own opinions on candidates and legislation. OPF is dedicated to training and registering voters with disabilities.

OPF coordinates the Oklahoma Self-Advocacy Network (OKSAN), a state advocacy action partnership. This partnership has allowed for the development of peer-training, such as Self-Advocate Leadership Training, Emergency Preparedness and Taking Control of Your Health. Trainings have been conducted across the state and at national conferences. Members of OPF serve as both the developers and trainers. OPF has also developed disability awareness trainings that have been presented across the state to provider agencies and civic groups.

#### ABOUT THE AUTHOR

Telana McCullough chairs the OBA Diversity Committee and works for Legal Aid Services of Oklahoma.

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[www.celebrateprobono.org](http://www.celebrateprobono.org)

**OKLAHOMA BAR  
ASSOCIATION CENTER  
OKLAHOMA CITY**

**OCTOBER 16, 2018  
8:30AM-5:00PM**

**LUNCH PROVIDED**

**TOPICS TO INCLUDE:**

**BANKRUPTCY CHAPTER 7 AND ADV CIRCUMSTANCES**

**PRIMER ON GUARDIANSHIPS**

**IMMIGRATION VAWA AND U VISAS PLUS EMERGING  
TOPICS**

**SENIORS AND THE LAW**

**ETHICAL CONCERNS WITH DOMESTIC VIOLENCE CLIENTS**

**CURRENT LEGAL AID PRIVATE ATTORNEY VOLUNTEERS  
AND**

**NEW ATTORNEY VOLUNTEERS WELCOME**

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CLE IS 6 CREDIT HOURS, WHICH INCLUDES 1 ETHICS CREDIT



# New Attorneys Take Oath

**BOARD OF BAR EXAMINERS** Chairperson Roger Rinehart announced that 201 applicants who took the Oklahoma Bar Examination on July 24-25 were admitted to the Oklahoma Bar Association on Tuesday, Sept. 25, or by proxy at a later date. Oklahoma Supreme Court Chief Justice Douglas Combs administered the Oath of Attorney to the candidates at a swearing-in ceremony at the Oklahoma State Capitol in Oklahoma City. A total of 276 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Thomas M. Wright, Muskogee; Robert Black, Oklahoma City; Monte Brown, McAlester; Tommy R. Dyer Jr.,

Jay; Brant Elmore, Norman; Juan Garcia, Clinton; Bryan Morris, Ada; and Loretta F. Radford, Tulsa.

**The new admittees are:**

Tyler Lewis Akers  
Emily Elizabeth Allan  
Ambrielle Rose Anderson  
Stephanie Elaine Anderson  
Justin Paul Ashlock  
Jennifer Leigh Atkinson  
John Wesley Austin  
Tessa Christine Sheffield Baker  
Brooke Lindsay Ballard  
Isabel Victoria Bautista  
Kathryn Lauren Bautista  
Keah Beeftu  
Shannon Sara Bell  
Branton James Leland Bentley  
Kelly Lucile Bergin  
Margaret Maryanna Birkel

Justin Edward Boerner  
Rachel Hope Bokmeyer  
Andrew Tyler Boone  
Mariah Kathleen Borek  
Hallie Elizabeth Bovos  
Cathleen Hope Brantley  
Eleanor Claire Burg  
Gregory Thomas Buzzard  
Colby James Byrd  
Courtney Lynn Cagle  
Christopher John Campbell  
Cesar Israel Cano Pascual  
Andrew Bryce Cartmell  
Kane Bennett Cassil  
Kathryn Christine Chevis  
Lauren Kay Clifton  
Janay Marie Clougherty  
Madeline Patricia Coffey  
Theodore Nicholas Cooper  
Mackenzie Leigh Coplen  
Matthew David Craig  
Robert Eugene Craig III  
Sheila Ann Cunningham  
Thomas Allan Cunningham  
Austin Taylor Dail  
Nana Abram Dankwa  
Debra Lynn Davis  
Justin Kyle Davis  
Gerard Michael D'Emilio  
Matthew Ryan Dever  
Danielle Kristine Dezort  
Mitchel Dalton Downing  
Matthew Allen Dunn  
Garrett Allen Eller  
Fallon Angeline Elliott  
Joshua Richard Fanelli  
John Scott Farley III  
Robert Everett Ferrell  
Skylar Augustus Forster  
Mary Hope Forsyth  
Jonathan Alan Fried  
Kathryn Elizabeth Gardner  
Molly Beth Gardner



*A new lawyer signs the Roll of Attorneys at the OU College of Law swearing-in reception.*





*New lawyers stand to take the attorney's oath at the OCU School of Law swearing-in ceremony in the House of Representatives at the state Capitol.*

Evan Blake Gatewood Jr.  
 Ryan Edmond Geary  
 Levi Grant Gibson  
 Drew Wortham Gilbert  
 Grant Thomas Gille  
 Olivia Suzanna Glazner  
 Kathryn Kamillah Miller Grow  
 Tiffany Teneé Guillot  
 Katherine Blair Hand  
 Chad Tyler Hantak  
 Travis Evan Harrison  
 Jennifer Briana Hartsell  
 Brittany Samantha Hayes  
 Valerie Ann Hays  
 Miles Jackson Heald  
 Kymberli Jan-Miyoko  
 Heckenkemper  
 Ashley Rene Helberg  
 Abby Marie Meaders Henderson  
 David Ray Herber  
 Abby Rae Herren

Jonathan Herrera  
 James Matthew Hill  
 Robert Wallace Hill  
 Stacy Wyatt Hill  
 Austin Tyler Hilterbran  
 Eric William Holeý  
 William Joseph Holland III  
 Jordan Danielle Hutchison  
 Stephanie Renae Jackson  
 Ashley Ann Janzen  
 Casey Raquelle Johnson  
 William Floyd Johnston  
 William Caleb Jones  
 Tara Lindsay Jordan  
 Will Thomas Jordan  
 Gunner Brock Joyce  
 Phoebe Anne Kasdin  
 Kelly Suzanne Kinser  
 Robin Michelle Kirk  
 Connor Brian Kohlscheen  
 Aaron Christopher Kroier

Lorena Marie Laks  
 Jacob Hale Laughlin  
 Kellie Renee Reidlinger Laughlin  
 Joseph Morgan LeMay  
 Lauren Nicole Lenahan  
 Vanessa Laurine Lock  
 Megan Elizabeth Lombardi  
 Martin James Lopez III  
 Amanda Michelle Lowe  
 Stacy Lenice Lubbers  
 William Henry Frederick Lutz  
 Bryan Ross Lynch  
 Morgan Rae Lyness  
 Patrick Colin Madden  
 Danya Mahjoub  
 Aimee Lynn Majoue  
 Kyle Scott McAllister  
 Garrett Lee McKibben  
 Cole Braden McLanahan  
 Eric William Meissner  
 James Ryan Moody



*TU College of Law graduate Emalie Lynne Rott proudly holds her wall certificate declaring her new status as an Oklahoma Bar Association member.*

William Orlando Moon III  
 Thomas Lake Moore V  
 Wendi Kathleen Morse  
 Benjamin David Moser  
 Alex Edward Mustain  
 Tracy Ella Neel  
 Courtney Nicole Nelbach  
 Amber Dawn Nelson  
 Andersen Brady Newville  
 Lynn Hollis Nix  
 Alison Eva Nutt  
 Garrett Reed Oates  
 Ashley Rose Ogle  
 Carly MacKenzie Ortel  
 Manuel Madrid Pallarez III

Amy Christine Patrick  
 Alex Anthony Pedraza  
 Lindsey Anne Pever  
 Allyson Colleen Pogue  
 Stephen James Pontius  
 Alexander Gabriel Price  
 Matthew Jason Primm  
 Michael Scott Proctor II  
 Raymond Conrad Purdom III  
 Austin Bradley Rabon  
 Emily Anne Ramseyer  
 Ryan Patrick Raupe  
 Brett Taylor Reavis  
 Melissa Diane Revell  
 Grant Thomas Reynolds

Mari Claire Riera  
 Johanna Faye Roberts  
 Brady Wear Robison  
 Kace Selee Rodwell  
 Mary Cynthia Rogers  
 Erik Girard Roscom  
 Wyatt Mathew Rosette  
 Emalie Lynne Rott  
 Jonathon Cory Sanchez  
 Ty Edward Schoenhals  
 Jeff David Scott  
 Peter Alexander Shadid  
 Michael David Shouse  
 Phillip John Shyers Jr.  
 Alexandra Lauren Simmons  
 Caleb Jeffrey Smith  
 Alexander Sokolosky  
 David Phillip Spielman  
 Emily Jo Steinert  
 Jackson Thomas Stone  
 Alexander Michael Sullivan  
 Preston Michael Sullivan  
 Jessica Ann Swapp  
 Quin Mary Swiney  
 Brian Michael Taylor  
 Benjamin Joshua Tech  
 Grant Bailey Thetford  
 Alexander Kerr Thomas  
 Blaine Joseph Timonera  
 Alexandra Courtney Towler  
 Brian Christopher Trent  
 Logan Thomas Turner  
 Caitlin Ann Vance  
 Kanton Brock Vaverka  
 Paige Elizabeth Vitale  
 Ernest Raymond Walcher III  
 John Harrison Warden  
 John William Warren  
 Lauren Nicole Watson  
 John David Weidman II  
 Patrick Augustus Weigant  
 Lucas Michael West  
 Michael Phillip Whaley  
 Abigail Leigh Wilburn  
 Katie Ann Wilmes  
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# Conference to Focus on Breaking the Glass Ceiling

By Melanie K. Christians

**THE WOMEN IN LAW** Committee is breaking the glass ceiling in more ways than one this year with its conference planned for Oct. 19 at the Downtown Medical Center Embassy Suites in Oklahoma City. Attendees will receive six hours of MCLE credit, including one hour of ethics.

The conference will highlight the Oklahoma Bar Association's *very first* ethics CLE session on the new medical marijuana law presented by General Counsel Gina Hendryx. In her presentation Ms. Hendryx will discuss how to navigate the legal and ethical obstacles of the new law as it relates to you and your clients. The conference will also help attendees understand and utilize the Family Medical Leave Act to effectively transition in and out of the workforce and will teach attorneys how to challenge legislation by offering an inside look at the litigation that surrounded Oklahoma's new alcohol law.

In addition to highlighting local issues, the Women in Law Committee brings national issues to the forefront this year. On the heels of the Me Too and Times Up movements, the conference will offer a session on sexual harassment with a unique angle of addressing the public relations perspective versus the



Lis Wiehl

legal perspective. Next, taking inspiration from the Ruth Bader Ginsburg (RBG) phenomenon, the committee will present a panel of seasoned female lawyers who have broken the glass ceiling for women in the legal profession in Oklahoma – Nancy Coats, Valerie Couch and Renée DeMoss.

To top it off, Lis Wiehl is featured as the keynote speaker during the Mona Salyer Lambird Awards Luncheon. Ms. Wiehl is one of the nation's most prominent trial lawyers and highly regarded commentators. For 15 years, she was a legal analyst on the Fox News Channel and Bill O'Reilly's co-host on the weekly "Is It Legal?" segment on *The O'Reilly*

*Factor*. Not only is Ms. Wiehl a skilled lawyer and legal analyst, she is a zealous advocate of employment equality and female empowerment in the legal profession and the workplace at large. Her keynote will highlight the progression of legal protections for women in the pursuit of gender equality. Ms. Wiehl will also moderate the panel discussion.

Conference attendees will receive Ms. Wiehl's ebook, *The 51% Minority: How Women Still Are Not Equal and What You Can Do About It*.

In addition to the annual conference, the Women in Law Committee holds several networking events throughout the year and gives back by assisting nonprofit organizations empowering women in the community.

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Christine Batson Deason,  
Oklahoma City  
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Jonna Kauger Kirschner,  
Norman  
Amy Santee, Tulsa

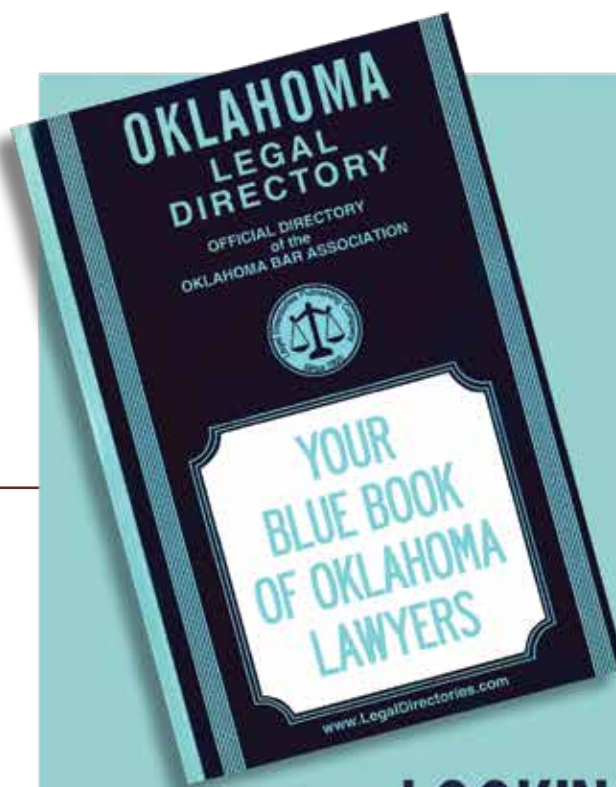
Already this year, the committee has held spring and summer social mixers in Oklahoma City and Tulsa and sponsored a clothing drive for Suited for Success for which more than 300 items were collected. The committee is also establishing relationships with Oklahoma law schools to connect female law students and attorneys to expand mentoring, networking and professional opportunities for the next generation of female lawyers. If you are not a member of the Women in Law Committee, now is a great time to join!

For more information and to register for the conference, go to [okbar.inreachce.com](http://okbar.inreachce.com) and search for Women in Law.

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#### **ABOUT THE AUTHOR**

Melanie K. Christians is a partner with DeWitt Paruolo Meek Attorneys in Edmond and co-chairs the Women in Law Committee.



## **LOOKING FOR SOMETHING?**

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### **CHECK YOUR BLUE BOOK!**

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](http://www.legaldirectories.com). To see the digital version, visit [tinyurl.com/OKLegalDirectory](http://tinyurl.com/OKLegalDirectory).

# Legislative Debriefing

By John Morris Williams

**ON AUG. 14, THE LEGISLATIVE** Monitoring Committee held its first “Legislative Debriefing.” The day before the event we had 191 registered attendees, more than 40 on a waiting list and eight members buying the CLE program online. I’d say for a Tuesday in the middle of August we had a pretty good turnout.

The committee, chaired by Angela Ailles Bahm, produced a free, two-hour CLE to a packed house. Surveys from the popular event indicated that the subject matter, no cost and lunch were, in that order, responsible for the big turnout.

Many thanks to Administrative Director of the Courts Jari Askins for moderating the legislative panel with Reps. Virgin and Kannady and Sens. Daniels and Brooks. Also, a big thanks to those members of the Legislature who took time to participate in the panel.

I must admit the attendance far exceeded my expectations. Hopefully, next year as we plan for this event, we will listen carefully to the member surveys and find a way to ensure we do not wait-list anyone.

As I extend my congratulations to the Legislative Monitoring Committee, I also need to acknowledge the support of President Kimberly Hays and the OBA staff who worked hard behind the scenes to make all this happen.

The Legislative Monitoring Committee was dormant for a number of years and about 12 years or so ago it was brought out of

the mothballs and rebirthed with Duchess Bartmess at the helm for many years. The committee reinstated Legislative Reading Day. In the beginning it was a tough Saturday ordeal with members divided into groups and assigned many bills to review. Over time and with the ready access to legislation online, the process has been streamlined. It is still a fun Saturday with free CLE and lunch. Yes, free CLE and lunch is sort of a theme of this committee. Perhaps that is why it is the largest committee at the OBA.

As you contemplate signing up for committees next year, you may want to choose the Legislative

Monitoring Committee. As with all things at the OBA, it is non-partisan and geared to alert members on legislation they may wish to watch during the legislative session. The OBA has a very restricted and narrow rule on legislative engagement. Basically, the Rules Creating and Controlling the OBA and the OBA bylaws restrict legislative involvement to issues that directly relate to the practice of law and the administration of justice. Of course, fair and open courts are an essential part of the administration of justice, as well as access to justice for the citizens of the state of Oklahoma. However, the OBA is



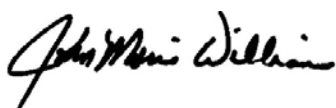
*Oklahoma City attorney Dick Rouse asks a question during the popular Legislative Debriefing seminar.*



under the superintending control of the Oklahoma Supreme Court and only undertakes advocacy on these limited areas subject to guidance from the Supreme Court.

The purpose of our Legislative Monitoring Committee is to assist members in educating themselves about pending legislation and new laws. After all, as lawyers the law is our business. In furtherance of being of assistance to the legislative branch of government, the committee has also produced materials to aid legislators in testing the constitutionality of pending bills and other assistance when requested.

If you want to get all the pre-filled bills, get updates during the session, debriefing at the end of the session, free CLE and lunch, join the Legislative Monitoring Committee! Besides good information, the committee has collegiality and even has a few laughs as it monitors events at the Capitol.



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



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# Building and Maintaining Your Professional Network

*By Jim Calloway*

**T**ODAY, BUSINESSES OFTEN succeed or fail based on their marketing plans and activities. A good product or service may theoretically sell itself, but if no one knows about the business offering or if the only fact someone knows is negative, there's little chance of success.

Lawyers have traditionally had a strained and nervous relationship with marketing activities.

That's not surprising because the Rules of Professional Conduct (ORPC) includes restrictions on a lawyer's ability to market their law practice. One rule that is drilled into first-year law students is that a lawyer cannot solicit employment from a potential client. ORPC covers information about legal services in Rules 7.1 through 7.5.

ORPC 7.3(a) states:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact, solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer, or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

The rationale for prohibiting face-to-face solicitation is stated in Comment [2] to ORPC Rule 7.3.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

There is enough potential discussion about the application of this rule as it applies in the digital age to fill many volumes of law reviews, but this month we are going to discuss networking.

## NETWORKING FOR LAWYERS

You've probably attended several events where the agenda included a "networking lunch," but for many attendees, networking at lunch is now primarily cellphone networking, returning calls and emails.

Many lawyers say they hate networking. For others, it appears to be effortless and natural.

Yet, in my experience, the vast majority of lawyers consistently say that their best clients – the ones who listen to the lawyer's advice, appreciate the lawyer's services and pay their bills – come from referrals and clients returning for more assistance.

In other words, the best clients come from your social and professional networks.

The prohibition on solicitation was intended to protect the public. Some have criticized its relevance today in this age of nonstop electronic communication, but it is clearly the rule.

There's no doubt in my mind that it would be very difficult for a young lawyer to build a successful practice today by sitting quietly in his or her office waiting for the phone to ring or someone to knock on the door, as some say the rules intend, but even in the preinternet days, I question whether that was ever the actual professional standard for the legal profession.



Large firm lawyers seeking corporate clients joined the “right” clubs and attended the “right” events. Small-town lawyers were generally very active in their communities, volunteering and serving in many community organizations.

One way of looking at client solicitation reflects some of the gender-based dating rules of my youth. The potential client should be the one to “ask you out.” Your role is to let potential clients know if you’re available and interested.

Improper solicitation is a violation of the rules, but many effective networking activities are not improper solicitation.

First among these are meetings of groups of lawyers. From the OBA Annual Meeting to serving on an OBA committee, there are many opportunities to get better acquainted with your fellow lawyers.

By definition, there is no improper solicitation under ORPC 7.3 in attempting to obtain legal business from another lawyer, whether it is seeking referrals of matters the lawyer doesn’t handle or offering to serve as co-counsel in an area where you have deep expertise. Other lawyers are thought to be able to handle “the private importuning of the trained advocate in a direct interpersonal encounter.”

I always tell lawyers attending the Opening Your Law Practice program that they should participate with their local county bar and attend those meetings when possible. There are many benefits, including having the opportunities to chat informally with lawyers you might not otherwise meet and to visit with judges in a less formal setting than the courtroom. Enjoying a laugh or a

meal with another lawyer makes things go better the next time you have a high-conflict matter with the lawyer as opposing counsel.

Developing and maintaining good relationships with a large variety of other lawyers should be an important element of your marketing business plan.

Some lawyers say they would rather suffer physical pain than attend a lawyer networking event. Self-identified introverts are quite willing to explain how they feel in social media and online forums posts. Even many who appear to be extroverts have more anxiety in some of these situations than others might guess. Everyone has had that moment where an event breaks into small conversation groups and you notice you are the only one in yours.

One can do an internet search for “how to work a room” and



read many suggestions and tips about strategies and goals for in-person networking. For most lawyers in private practice, attending some networking events and lawyer meetings is very important, whether you relish or fear the opportunity, but a network of only lawyers is certainly not a complete path to success. You need a much broader network.

### WHO MAKES UP 'YOUR NETWORK'?

To discuss the idea of building and maintaining your professional network, I reached out to Michael Whelan, author and host of the Lawyer Forward conference.<sup>1</sup> I asked him if networking events were the same today as in the past or if they had changed. He said, "They are fundamentally the same. What has changed is what we expect from them, and every other kind of networking we do. We believe that being social is the same as caring for our network, but Dr. Robin Dunbar showed that our brains can only handle 150 close friendships, and we can't let these more shallow networks substitute for caring deeply for our close network. That close network is enough to live a quality life.

"I should say," he continued, "that the math for running a law practice is a little more complicated than that 150 number implies.

"Dunbar imagined three concentric circles of your social network: your closest 150, a kinship group of some 1,000 and a tribe of some 2,500. The tribe we attract by writing, speaking, and sharing ideas; the kinship group nicely lines up with Kevin Kelly's '1,000 true fans' who'll buy enough from us to build a quality business; and the 150 is the group most invested in our personal success. If we do it right, our best referral sources will be in that closest group, and we'll treat them like family," he said.

Rather than just thinking in terms of networking, Whelan likes the term social capital. "Social capital is about connections and values, the ties we create with people who 'speak our language,'" he says. "It's about building reputation and nurturing a tribe. These connections provide money, but also human relationships, experiences and self-fulfillment. Money cannot do that. Social capital is a more complete way to measure your life's work."

### TRADE SHOW NETWORKING

Now that Whelan has shared some deep thoughts on networking with us, let's move on to a "shallow networking" example – the law firm being a sponsor or having a booth at an industry trade show or other public event. It is no longer unusual to see law firms with sponsorship booths at certain events. If 75 percent of your law firm's work is in the construction law area and there is a big annual statewide conference of all the major players in construction, it certainly makes sense for your law firm to sponsor that event and perhaps have a trade show booth with brochures and other information. The goal of that effort is to get more legal business and to maintain visibility in front of existing clients.

Is this improper solicitation? In my opinion, this is generally not problematic. (I must note my opinion doesn't reflect any OBA policy, and members seeking specific ethics advice about their intended actions should contact Ethics Counsel Joe Balkenbush for advice.) My practice management advice is that any staff working at the event who are not lawyers probably need some pre-event

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"Social capital is about connections and values, the ties we create with people who 'speak our language'. It's about building reputation and nurturing a tribe. These connections provide money, but also human relationships, experiences and self-fulfillment. Money cannot do that. Social capital is a more complete way to measure your life's work."

training about solicitation rules and some lawyers might want a refresher. If you don't know what you would do at a trade show booth, Sally Schmidt, president of Schmidt Marketing Inc. and co-founder and the first president of the Legal Marketing Association, has written a nice piece titled *Checklist for Staffing Your Law Firm's Trade Show Booth*.<sup>2</sup>

I also think re-reading Comment [2] to ORPC Rule 7.3 makes us appreciate there is a difference between talking to a corporate official with a dozen years of experience that includes hiring and firing several law firms and meeting with someone in their hospital room about a possible civil suit relating to injuries they received a few hours earlier, both with the experience of the person receiving the message and the emotional situation. Even if you have been appropriately summoned to the hospital room by a family member at the direction of the potential client, care must still be taken to make certain no unfair advantage is taken.

Rule 7.3 also excludes from the definition of solicitation those who have "a family, close personal, or prior professional relationship with the lawyer." This is why client newsletters and similar post-representation contacts have been favored by lawyers. If you are going to send out a digital client newsletter or other email marketing effort, the challenge is getting the recipient to open the email, so a good subject line is important, but you will also have to read the rest of ORPC Rule 7.3 dealing with specific requirements for email advertising. The ABA recently made changes to Rule 7 of the Model Rules, eliminating some requirements, but those changes have not yet been considered in Oklahoma.

If you note that you haven't heard from a previously great referral source in the last couple of years, it is possibly too late to repair the situation. This doesn't mean you shouldn't try. What it likely means is you failed to nurture this relationship in the way that one of your top 150 deserved. There's more to nurturing the relationship than sending an annual holiday gift or card. It's personal. It requires time and effort.

If you are an introvert who hates networking events, you can cope with that challenge through planning, study and preparation. I'm biased, but I believe our OBA Solo & Small Firm Conference is great for education and the painless networking, but if you aren't going to attend networking events or, after doing a few, you find your return on investment is zero, then rather than deeming yourself a failure, you should determine a way to utilize your strengths to build your network. Maybe it is time to finally start legal blogging on a subject you love after considering doing it for years. Maybe it is time to stop saying no when asked to be an officer in your county bar or local civic group because you like working on projects with others more than trying to sell yourself. Maybe you should attend some high school sporting events where the only goal is to be a spectator, but you still have a chance to say hello to a lot of people you know.

One thing that is certain is you have to build and maintain your "tribe" in a way that makes sense to you – a method you will be able to continue into the future.

## CONCLUSION

I'm going to return to Michael Whelan for the conclusion. He says, "Make a concerted effort to foster connections. Take care of your reputation. Serve others,

keep track of them and develop deep human relationships. That is your career's insurance policy."

That may be as good a definition of effective networking for lawyers as you are likely to find.

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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](mailto:jimc@okbar.org). It's a free member benefit!

## ENDNOTES

1. Lawyer Forward, [www.lawyerforward.com](http://www.lawyerforward.com).
2. Sally J. Schmidt, "Checklist for Staffing Your Law Firm's Trade Show Booth," *Attorney at Work*, Oct. 25, 2017, [www.attorneyatwork.com/checklist-for-staffing-your-law-firms-trade-show-booth](http://www.attorneyatwork.com/checklist-for-staffing-your-law-firms-trade-show-booth).



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## Meeting Summaries

*The Oklahoma Bar Association Board of Governors met on Friday, July 20, via BlueJeans conferencing.*

### REPORT OF THE PRESIDENT

President Hays reported she appointed a SQ 788 working group and reviewed related issues. She attended the Solo & Small Firm Conference, Tulsa County Bar Association/Board of Governors joint reception, funeral for former board member Vic Kennemer, Lawyers Helping Lawyers Committee meeting, OBA Annual Meeting event planning meeting, OBA Family Law Section meeting, OBA Family Law Section Annual Meeting planning meeting and Women in Law Committee meeting via phone.

### REPORT OF THE VICE PRESIDENT

Vice President Stevens reported he attended the Solo & Small Firm Conference, Tulsa County Bar Association reception for President Hays and Lawyers Helping Lawyers Committee meeting.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Chesnut reported he attended the Solo & Small Firm Conference at which he presented the program "Just a Simple Probate," Lawyers Helping Lawyers Committee meeting, Oklahoma Bar Foundation Board of Trustees meeting and Bar Center Facilities Committee meeting.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Solo & Small Firm Conference, Tulsa County Bar Association reception, Legislative Monitoring Committee meeting, Access to Justice Commission planning meeting for Access to Justice Summit to be held Oct. 11 at the Oklahoma Bar Center, funeral for former board member Vic Kennemer, Bar Center Facilities Committee meeting to discuss landscaping, Lawyers Helping Lawyers Committee meeting and other planning meetings on the website and other items. He also made two television appearances to discuss medical marijuana.

### REPORT OF THE PAST PRESIDENT

Past President Thomas, unable to attend the meeting, reported via email she attended the Solo & Small Firm Conference, Tulsa County Bar Association reception, funeral services for former board member Vic Kennemer and the State Bar of Texas Bar Leader Conference as the out-of-state liaison to their Board of Directors.

### BOARD MEMBER REPORTS

**Governor Beese** reported he attended the Solo & Small Firm Conference and Muskogee County Bar Association meeting. **Governor Coyle** reported he attended the Solo & Small Firm Conference, Tulsa County

Bar Association reception and Oklahoma County Bar Association meeting. **Governor Fields** reported he attended the OBA Ethics in 18 Holes CLE at the Patriot Golf Course, Solo & Small Firm Conference and Tulsa County Bar Association reception. **Governor Hennigh** reported he attended the Solo & Small Firm Conference and Tulsa County Bar Association reception. **Governor Hermanson** reported he attended the Solo & Small Firm Conference and Bar Association Technology Committee meeting. He also attended the Oklahoma District Attorneys Council Summer Conference at which he was installed as council chair and the Oklahoma District Attorneys Association Annual Meeting, at which he was installed as ODAA president. **Governor Hicks** reported he attended the Tulsa County Bar Association reception honoring President Hays, OBA Ethics in 18 Holes CLE at Patriot Golf Course, Arapahoe County Bar Association meeting in Littleton, Colorado, OBA Access to Justice Committee meeting, TCBF Board of Trustees meeting and OBA Clients' Security Fund Committee meeting. **Governor Hutter** reported she attended the Solo & Small Firm Conference, Tulsa County Bar Association reception, Cleveland County Bar Association Executive Committee meeting, OBA Bench and Bar Committee meeting and Women in Law Committee meeting.



**Governor Morton**, unable to attend the meeting, reported via email he attended the Solo & Small Firm Conference, Oklahoma Criminal Defense Lawyers Association Criminal Defense Institute and OBA Legislative Monitoring Committee meeting. **Governor Oliver** reported he attended the June Payne County Bar Association meeting, Solo & Small Firm Conference and Lawyers Helping Lawyers meeting. **Governor Will** reported he attended the Solo & Small Firm Conference, Tulsa County Bar Association reception and Bar Center Facilities Committee meeting. **Governor Williams** reported he attended the Tulsa County Bar Association June Board of Directors meeting, TCBA reception for President Hays, Solo & Small Firm Conference, OBA Professional Responsibility Tribunal's annual meeting, OBA Diversity Committee's Civil Rights in Education CLE presentation and OBA Diversity Committee's July meeting.

#### BOARD LIAISON REPORTS

Governor Williams said the Diversity Committee's civil rights CLE was well attended with 75 people. The deadline for submitting diversity award nominations is near, and the committee has moved its boot camp to Oct. 20. Governor Hicks said the Access to Justice Committee is moving forward with a seminar that will include limited scope rules. Executive Director Williams said the Bar Association Technology

Committee looked at a complete inventory of equipment and licenses. The IT Department has talked to a vendor about updating the technology strategic plan. Governor Morton reported via email the Legislative Monitoring Committee will hold a Legislative Debrief Day on Aug. 14 from 11:30 a.m. - 1:30 p.m. at the Oklahoma Bar Center. Bills passed during the last legislative session will be discussed. The event is worth 2 hours of CLE and is free to attend in person. If viewing via the web, there is a \$100 fee. Lunch is being provided for those in attendance. Executive Director Williams said good speakers have been recruited for presentations.

Governor Hermanson said the Law Day Committee is working on the TV show, decided to continue with *The Oklahoman's* Newspapers in Education (NIE) program, will hold a joint meeting with the Law-Related Education Committee to write lesson plans and will produce new Q&A segments for the TV program. Governor Oliver said the Law-Related Education Committee confirmed NIE program sponsorship with the Law Day Committee and is working on website review. Governor Will said the Bar Center Facilities Committee reviewed an illustrated landscape plan designed as three phases including walkways, trees, lighting, irrigation, gravel and changing the narrow south side parking spaces into a courtyard. The grand total

is nearly \$1.4 million. Funding options including a campaign were briefly discussed.

Governor Hutter said the Bench and Bar Committee discussed proposed amendments for the Committee on Judicial Elections, limited scope representation and tabled action regarding a committee on the unfair criticism of judges. The newly created victims protective order video will be posted on OSCN.net, and people who would benefit from watching the video will be given a piece of paper with the web address at courthouses. The next video to be produced will be forcible entry. Governor Hutter said the Women in Law Committee is confirming conference speakers, finding a location to store clothes for its Suited for Success clothing drive and has set the date of Aug. 21 for its next social mixer. Governor Hicks said the Clients' Security Fund Committee met and reviewed claims.

#### REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Tribunal met for its annual meeting. New members transitioned in, and Justice Noma Gurich attended. A written report of Professional Responsibility Commission actions and OBA disciplinary matters for June was submitted to the board for its review.

## STATE QUESTION 788 AND POTENTIAL CHANGES TO RULES OF PROFESSIONAL CONDUCT

President Hays said the new working group dealing with legal issues resulting from the recent approval of medical marijuana will meet today to determine if changes are needed to the Rules of Professional Conduct. Executive Director Williams reported the Rules of Professional Conduct Committee will draft an amendment and submit it to the House of Delegates. He said 30 states plus the District of Columbia have dealt with this issue. President Hays shared that Executive Director Williams recently did two media interviews on this topic.

## KUDOS

President Hays congratulated Management Assistance Director Jim Calloway and other staff members who worked on the excellent Solo & Small Firm Conference.

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*The Oklahoma Bar Association Board of Governors met on Friday, Aug. 24, at the Simmons Center in Duncan.*

## REPORT OF THE PRESIDENT

President Hays reported she attended the medical marijuana working group meeting, Rules of Professional Conduct Committee meeting, OBA Annual Meeting event planning meeting, OBA Family Law Section meeting, OBA Family Law Section Annual Meeting planning meeting, Stephens County Bar Association reception and dinner, Tulsa County Bar Association Annual Luncheon, webcast of Legislative Monitoring Committee's Legislative Debrief program at the bar center and OBA Audit Committee meeting. She spoke to the Cleveland County Bar Association. In Chicago she attended the Southern Conference of Bar Presidents meeting, National

Conference of Bar Presidents meeting, Oklahoma ABA delegate dinner and ABA House of Delegates.

## REPORT OF THE VICE PRESIDENT

Vice President Stevens reported he attended the Cleveland County Bar Association August meeting and CLE.

## REPORT OF THE PRESIDENT-ELECT

President-Elect Chesnut reported in Chicago he attended the Southern Conference of Bar Presidents, National Conference of Bar Presidents, American Bar Association meeting, Oklahoma delegates meeting and American Bar Association House of Delegates. He also attended the Ottawa County Bar Association meeting and Stephens County Bar Association reception and dinner. He worked on committee appointments to House of Delegates committees.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended NABE, SCBP and NCBP meetings in Chicago in conjunction with the ABA meeting, Legislative Monitoring Committee Legislative Debriefing CLE, monthly staff celebration, staff budget meetings, meeting with 3IG and Group Insurance Committee

chair regarding new potential products, Access to Justice Commission meeting, medical marijuana working group meeting, Annual Meeting planning meeting and board event in Stephens County. He briefed the board on the success of the debriefing seminar.

## REPORT OF THE PAST PRESIDENT

Past President Thomas reported in Chicago she attended the Southern Conference of Bar Presidents meeting, National Conference of Bar Presidents meeting, American Bar Association meeting, Oklahoma delegates meeting and dinner and ABA House of Delegates. She also attended the OBA Audit Committee meeting by teleconference and Washington County Bar Association meeting.

## BOARD MEMBER REPORTS

**Governor Beese** reported he attended the Muskogee County Bar Association meeting and joint Law Day/Law-Related Education committee meeting. **Governor Coyle** reported he attended the Oklahoma County Bar Association meeting. **Governor Hennigh** reported he attended the Garfield County Bar Association and OBA Audit Committee meetings. **Governor Hermanson** reported he attended the Association of Oklahoma Narcotic Enforcers

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President Hays said the new working group dealing with legal issues resulting from the recent approval of medical marijuana will meet today to determine if changes are needed to the Rules of Professional Conduct.

Annual Meeting, six meetings of the DAC and ODAA, OBA Professionalism Committee meeting by phone, OBA joint meeting of the Law Day and LRE committees by phone and Stephens County Bar Association reception and dinner. He presented a CLE program on ethics for prosecutors and made a presentation to the Oklahoma Bicameral Legislative Committee on medical marijuana. **Governor Hicks** reported he attended the OBA Access to Justice Committee meeting via teleconference, Tulsa County Bar Foundation Board of Trustees meeting, OBA Clients' Security Fund meeting and Tulsa County Bar Association Annual Luncheon. He announced Governor Williams received the Gary Clark Distinguished Service Award at the TCBA luncheon. **Governor Hutter**, unable to attend the meeting, reported via email she attended the Cleveland County Bar Association executive meeting and monthly meeting that featured President Hays as the speaker in addition to attending the OBA Bench and Bar Committee meeting. **Governor Kee** reported he worked on preparing for the Board of Governors August meeting in Duncan. **Governor Morton** reported he attended the August Cleveland County Bar Association meeting and Legislative Monitoring Committee Legislative Debriefing CLE at the bar center. **Governor Oliver** reported he chaired the Audit Committee's review of the 2017 OBA financial audit and also attended the Lawyers Helping Lawyers Committee meeting by telephone and Payne County Bar Association August meeting. **Governor Will** reported he attended the OBA Audit Committee meeting. **Governor Williams** reported he attended the OBA Diversity Committee August meeting, TU College

of Law Professionalism Day/ Professionalism Panel presentation, Tulsa County Bar Association past president meeting/photo shoot, TCBA/TCBF Annual Meeting and Awards Luncheon and OBA Board of Governors dinner with the Stephens County Bar Association.

## REPORT OF THE YOUNG LAWYERS DIVISION

Governor Richter reported he chaired the July YLD monthly board meeting and attended the ABA YLD Annual Meeting in Chicago and Canadian County Veterans Court Committee meeting. He said his goal this year has been to garner interest in YLD involvement. An example of success is that in the upcoming election, of the 10 open seats on the division's board, eight are contested. YLD members have also been quick to volunteer for Wills for Heroes events.

## BOARD LIAISON REPORTS

President Hays reported the Rules of Professional Conduct Committee has been working, and Executive Director Williams reported the committee has submitted a resolution for the House of Delegates. The resolution will be included on the Annual Meeting website and in the bar journal. Governor Williams reported the Diversity Committee has selected its award winners and will present the awards at an Oct. 18 dinner at the Oklahoma Judicial Center. Governor Oliver reported the Law-Related Education Committee held a joint meeting with Law Day Committee members to divide up assignments for lesson plans and contest writing prompts. The lesson plans will be provided to teachers throughout the state who participate in the Newspapers in Education program and published in *The Oklahoman*. President Hays reported the Women in Law Committee held a clothing

drive and social events. Governor Hicks reported the Access to Justice Committee is planning a summit. Executive Director Williams said the biggest names in access to justice will speak at the Oct. 11 summit at the Oklahoma Bar Center. President Hays encouraged board members to sign up as volunteers for Oklahoma Free Legal Answers. Governor Hennigh reported the Legal Internship Committee has decided to divide the intern application questions into two sections – licensed legal internship applicants and academic applicants. The committee is also considering how to deal with interns who are lax in submitting requests for a change in supervising attorneys. A committee member is writing an interpretation.

## REPORT OF THE GENERAL COUNSEL

First Assistant General Counsel Farabow reported a written report of PRC actions and OBA disciplinary matters for June and part of July was submitted to the board for its review.

## 2017 AUDIT COMMITTEE REPORT

As Audit Committee chairperson, Governor Jimmy Oliver said the committee met to review and discuss the audit. Committee members did not see any concerns that needed to be called to the board's attention. He introduced Leah Logan with Smith, Carney & Co., who reviewed their audit procedures that included examining processes of handling transactions. She called the board's attention to the firm letter describing the scope of the audit and their responsibilities. She reviewed highlights within the statements of financial position. The board approved the audit.



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Executive Director Williams said an inspection of the bar center was done, and the need to repair and replace items in the fire suppression system was identified.

#### **PROPOSED AMENDMENTS TO RULES OF THE SUPREME COURT FOR MANDATORY CONTINUING LEGAL EDUCATION**

Executive Director Williams reported three changes are being recommended: Rule 1. Mandatory Continuing Legal Education Commission, para. a; Rule 6. Noncompliance and Sanctions, para. e; and Rule 7. Regulations, para. 4.1.9, which would not limit the number of credits earned from electronic-based programs. He reviewed the proposals and the rationale for the amendments. Discussion followed. The board approved the rule change and will submit the changes to the Supreme Court for its consideration.

#### **CLIENTS' SECURITY FUND APPOINTMENT**

The board approved President Hays' appointment of Laura Robinson, Tulsa, to complete the unexpired term of Brad Brown expiring 12/31/2019 on the Clients' Security Fund Committee.

#### **COMMISSION ON CHILDREN AND YOUTH APPOINTMENT**

The board approved submitting the names of Lorena Rivas, Tulsa; Javier Ramirez, Okmulgee; and Dario Elizondo Jr., Oklahoma City, to Gov. Fallin for her consideration and appointment of one person to

the Commission on Children and Youth with a term to expire 12/31/2020.

#### **PROPOSAL TO PETITION SUPREME COURT FOR APPROVAL OF REQUEST FOR BUDGET SUPPLEMENTAL FUNDS**

Executive Director Williams said an inspection of the bar center was done, and the need to repair and replace items in the fire suppression system was identified. Administration Director Combs explained how the fire system works; however, the building has two systems with one old panel and one new panel. The old panel is wired to the new panel, which could create a problem. The repair cost estimated at \$20,000 was not budgeted. Executive Director Williams said the OBA has the funds to make the repair, but since the expense was not included in the budget approved by the Supreme Court, an amendment is required. The board authorized Executive Director Williams to write a letter to Chief Justice Combs requesting an amendment to the budget.

#### **REPORT ON INFORMATION TECHNOLOGY STRATEGIC PLAN**

Executive Director Williams reported the OBA Information Technology Department during the past year has upgraded the association

management system, implemented the cloud-based Microsoft Office 365 service and unveiled a new OBA website. He described the improvements to the website. Upcoming projects for 2019 were shared.

#### **RATIFICATION OF EMAIL VOTE**

The board voted to ratify the email vote approving the names of Doug Jackson, Enid; Danny Chappelle Williams, Tulsa; John B. Heatly, Oklahoma City; Sanford C. Coats, Oklahoma City; and Tracy E. Schumacher, Norman, for submission to the presiding judge of the Court on the Judiciary, Trial Division. Past President Thomas abstained from voting.

#### **ANNUAL MEETING**

President Hays reported nominating petitions have still not been filed for some 2019 board positions. Possible candidates were discussed. President Hays and Executive Director Williams reviewed Annual Meeting highlights.

#### **NEXT MEETING**

The Board of Governors met in September. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, Oct. 12, at the Oklahoma Bar Center in Oklahoma City.

# Impact Update - Trinity Legal Clinic

*By Candice Pace*

**E**ARLIER THIS YEAR, THE Oklahoma Bar Foundation invested \$1.36 million in grants to 17 nonprofit organizations. Trinity Legal Clinic received a \$75,000 grant to support their program, Good Neighbor Initiative. They hired a full-time staff attorney to help clients, some of whom have been on a waiting list for as long as six months, with legal issues that present barriers to overcoming poverty, such as employment, housing, education and family stability. We asked Executive Director Lori Young to describe how this grant is impacting the Oklahoma City community.

**Q. Can you describe how your organization feels about this funding opportunity?**

**A.** We are very pleased to be a part of the efforts our entire community is making together to improve the lives of those struggling in poverty. This funding opportunity is a tremendous step toward ensuring justice for all, regardless of income, wealth or status.

**Q. What is the biggest need you see in your day-to-day programming?**

**A.** People are often taken advantage of by someone who thinks they have the upper hand simply because the person cannot afford to do anything about it. Our biggest funding need is to provide a voice to those who are being oppressed. Most of our clients struggle from paycheck to paycheck, but they are getting by and working hard to support their families. When a legal need arises, they simply cannot afford to hire an attorney to advocate for them. The biggest problem our organization has is placing a case for representation where the legal need is either urgent or complex (time-consuming).

**Q. How will this grant help meet that need?**

**A.** This grant will help because we have used the grant to hire a full-time staff attorney to provide representation to those clients who need an attorney, but a volunteer is not available for them. We have a waiting



*Volunteer lawyer Ali Kahlili meets with a Trinity Legal Clinic client.*

list that has been as long as six months, and those cases can be immediately placed with the new attorney. This will be a tremendous blessing for these clients.

**Q. How many clients will receive assistance through this grant in the next year?**

A. We anticipate approximately 300 clients will be helped by this grant. We also plan to present community education programs that will impact many more people and their families.

**Q. Can you share a client story that specifically shows the impact of this funding?**

A. This grant was for the formation of a medical-

legal partnership with Crossings Community Clinic for the purpose of addressing health-harming social issues whose basis is a legal problem. One of our clients came to our Crossings Clinic for help because his driver's license had been wrongfully suspended due to an administrative error. This elderly client had not received notice of the suspension, and he was sent to jail for it when he was pulled over on a routine traffic stop. He tried for weeks to clear up the problem on his own, but to no avail. Already afflicted by serious health problems, and now without a driver's license to be able to go to the doctor, his health was placed in terrible jeopardy. As he contemplated

his choice between missing his doctor's appointments or driving to them and risking going to jail again, this only added additional stress and further harmed his health. A Trinity Legal Clinic attorney helped him dispute the agency error that first led to the wrongful suspension, which allowed him to have his driver's license reinstated. This is only one of many types of cases where Trinity lawyers can help clients struggling with health-harming legal issues.

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

# LAW | ALUMNI

## 2018 Law Reunion

November 2-3

Register today!

[lawalumni.utulsa.edu/reunion](http://lawalumni.utulsa.edu/reunion)

## Alumni Awards Luncheon

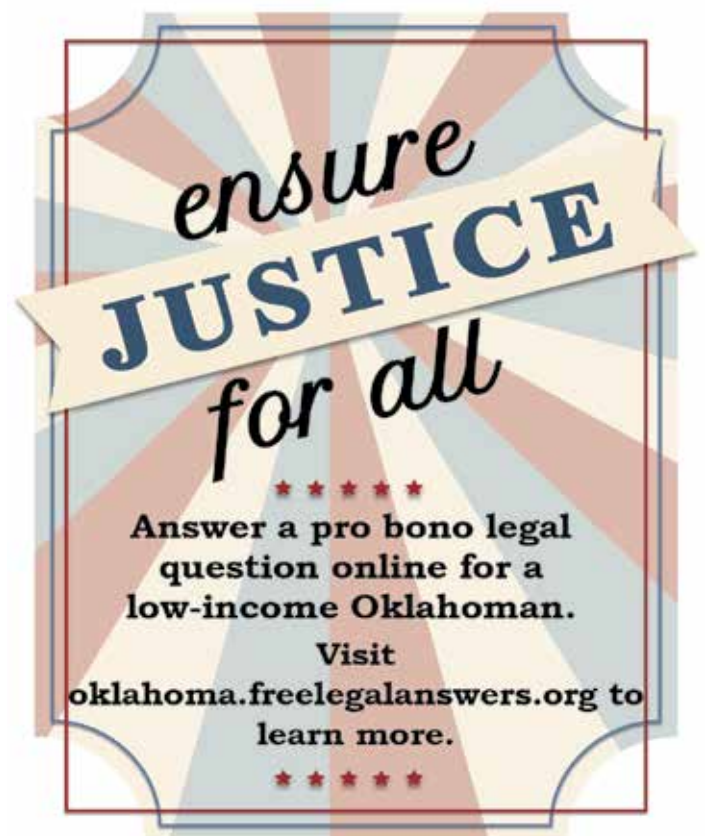
Wednesday, November 7

12:00-1:30 p.m.

Hyatt Regency Tulsa, \$40

Register by Oct. 31 at

[okbar.org/annualmeeting](http://okbar.org/annualmeeting)







## WAYS TO SUPPORT THE **OKLAHOMA BAR FOUNDATION**



### **Fellows Program**

*An annual giving program for individuals*



### **Community Fellows Program**

*An annual giving program for law firms, businesses and organizations*



### **Memorials & Tributes**

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



### **Unclaimed Trust Funds**

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



### **Cy Pres Awards**

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



### **Interest on Lawyer Trust Accounts**

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

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# What to Expect at This Year's Annual Meeting

*By Nathan D. Richter*

### HEADING TO THE ANNUAL

Meeting for the first time? Want to make the most of it and still be standing by the end? Here are some tips to navigate the Oklahoma Bar Association's 114<sup>th</sup> Annual Meeting Nov. 7-9 in Tulsa.<sup>1</sup> All the details can be found at [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting).

### BEFORE YOU GO

Get in touch with friends or colleagues who may be attending, ask whether they are coming, encourage them to attend if they are not planning on doing so or schedule a lunch/happy hour if they are planning to attend. Even if they are not attending this year, someone else in your area of practice or a law school colleague might be there, and you will make or renew a connection. Scout out a CLE program or event of interest to you, make an itinerary and prioritize. Annual Meeting is as much about collaboration and networking as it is about bar business and continuing legal education.

### WEDNESDAY, NOV. 7

Wednesday, Nov. 7, is kick-off for the Annual Meeting with a focus on renewing relationships, introducing change, conducting a little business and ending the day with fun! Wednesday starts with Oklahoma law school alumni luncheons, allowing lawyers to

renew relationships forged during that stressful time in our young lives when all that mattered was studying and trying to avoid being called on in class! After the euphoria of seeing classmates from law school, get high on learning about the effects of SQ 788 in which a host of experts will present "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.

Join President Kimberly Hays that 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.

### THURSDAY, NOV. 8

Thursday holds more continuing legal education, committee and section meetings and the Annual Luncheon – a prime opportunity to connect with one another and break bread.

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. He 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, and the event is sponsored by the Family Law Section.

House Party! The '80s theme for the entire meeting started with this social event as the inspiration. Dressing up in fashions from the decade is encouraged, and prizes will be given for best dressed – and best hair. The fun starts with a reception and then ramps up with a pair of DJs who I'm told show videos and put on a heck of a light show along with the '80s tunes. A photo booth and a variety of free accessories will help those in business attire get in the mood for fun. OBA President Hays and her husband, Oklahoma Bar Foundation President Alan Souter, are the party hosts, and they know how to throw a great party! Another way bar members are being asked to participate is by sending a photo of themselves from the 1980s for a slideshow. For most YLD members, this will be baby photos – making it harder to guess identities. Send your photo to Laura Stone at [lauras@okbar.org](mailto:lauras@okbar.org).

## FRIDAY, NOV. 9

Friday is for finality, business and tradition. The most important association business of the year takes place Friday morning – OBA Award presentations, updates from judicial and OBA leaders, recognition of new bar leadership and consideration of Title Examination Standards and resolutions.

During the General Assembly leaders of the Oklahoma Supreme Court and Court of Criminal Appeals will share their current challenges and triumphs in their annual State of the Courts address. OBA President Kim Hays will review milestones accomplished by the OBA during the year and give insight on the future of the

association. Come see your colleagues, and maybe your local bar association, honored with OBA awards. The General Assembly will begin at 9:30 a.m. and is open to all bar members.

Taking place immediately following the General Assembly will be the House of Delegates where the selection of bar leadership officers and Board of Governors members for 2019 will take place. The OBA House of Delegates will meet to conduct association business as it has done 113 times before. There will be voting on resolutions, decisions made about OBA's legislative program and discussion of other important issues for next year. Currently on the agenda is Resolution One: Amendment to Oklahoma Rules of Professional Conduct Adding a Limited Exception for Lawyers Providing Counsel to Clients Regarding Marijuana-Related Laws of the State of Oklahoma. The debate could be interesting, and for those inquiring into this new area of practice, you won't want to miss the CLE, this discussion and the opportunity to vote.

## THE YLD IS HERE TO HELP

You are the best part of the association. As a first-time attendee, you may be overwhelmed by the schedule, complexity of the meeting or the sheer number of people to see and things to do. We are here to help you navigate the processes and network in your areas of practice. Annual Meeting is a time to gather, reconnect, renew and make new relationships that bind us all together as lawyers. Whether you practice in the area of probate or personal injury, contracts or criminal law, there is something for you. Please consider joining us in Tulsa this year, and, if you do, stop by the YLD suite and stay a while. You may just find a home. I look forward to seeing you all there!

## YLD ELECTIONS

An email with a link to online voting was sent to all YLD members on Oct. 1. Candidate information was published in last month's *Oklahoma Bar Journal* and is online at [www.okbar.org/yld/elections](http://www.okbar.org/yld/elections). Cast your vote before 5 p.m. Friday, Oct. 26. If you didn't receive the email, 1) check your spam filter for email from Elections Online and 2) if it's not there, contact Immediate Past YLD Chair Lane Neal at [LNeal@dlb.net](mailto:LNeal@dlb.net).

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

## ENDNOTE

1. All events of the 114th Annual Meeting of the Oklahoma Bar Association will be held at the Hyatt Regency Tulsa, 100 E 2nd St, Tulsa, OK 74103, unless otherwise stated.



2017 YLD Chair Lane Neal presented Melanie Christians (left) and Brittany Byers with Outstanding Board Member awards at the 2017 OBA Annual Meeting.



Celeste England, Amber Godfrey and Roger Nayar at last year's President's Reception.



## FOR YOUR INFORMATION



Judge Charles B. Goodwin

### JUDGE CHARLES B. GOODWIN TO SERVE AS U.S. DISTRICT COURT JUDGE

The U.S. Senate confirmed Charles Goodwin as a federal judge in Oklahoma City after he was nominated by President Trump.

Prior to his confirmation, Judge Goodwin served as U.S. magistrate judge for the Western District of Oklahoma and was chair of the Western District's Local Civil Rules Committee. From 2000-2013 he was a litigator at Crowe & Dunlevy. His practice focused on business defense litigation in federal courts across the country. Judge Goodwin has also served as a federal law clerk and as editor for *The Cordell Beacon*.

Judge Goodwin graduated from the OU College of Law in 1997, where

he had a distinguished academic record and was on the editorial board of the *Law Review*. He serves as a volunteer for several community causes, most notably legal assistance to homeless veterans and the support and improvement of public education in Oklahoma.

### 2019 PROPOSED BUDGET

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association, Charles W. Chesnut, president-elect and Budget Committee chairperson, has set a public hearing on the 2019 Oklahoma Bar Association budget for Thursday, Oct. 11, at 10 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, in Oklahoma City. Budget details were published in the Sept. 22 *Oklahoma Bar Journal* court issue.

### 2018 OBA SOLO & SMALL FIRM MATERIALS AND FORMS AVAILABLE FOR PURCHASE



If you missed the 2018 Solo & Small Firm Conference this year, here's your chance to purchase the materials, which are usually only provided to attendees, for only \$50.

This year the conference featured six speakers who spoke at the ABA TECHSHOW 2018 and materials included probate forms, several LLC operating agreement forms and papers on virtual law practice using client portals and limited scope services.

To purchase the materials, login to your MyOKBar account and visit the Online Store. Once you are in the Online Store, select Publications from the drop-down list. For further assistance, call the MAP Department at 405-416-7008. This offer is only good through the end of the year, so act now!

### VISIT COURTFACTS.ORG FOR INFORMATION ON JUSTICES AND JUDGES

Election day is less than a month away! Find information about the 12 judicial candidates who will be on the retention ballot at [www.Courtfacts.org/retentionballot](http://www.Courtfacts.org/retentionballot). Be sure to share this resource with other voters.



### OBA MEMBER REINSTATEMENTS

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

Bryan Lynn Kingery  
OBA No. 15507  
P.O. Box 398  
Ada, OK 74821-0398

Sherry Abbott Todd  
OBA No. 13389  
821 N. Mississippi  
Ada, OK 74821

Ryan Steven Wiehl  
OBA No. 32893  
500 W. 74th Street  
Tulsa, OK 74132

### IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, Nov. 12 in observance of Veterans Day. The bar center will also be closed Thursday and Friday, Nov. 22-23, for Thanksgiving. Remember to register and join us for the OBA Annual Meeting to be held in Tulsa Nov. 7-9.

## ON THE MOVE

**Justin B. Munn** joined the Tulsa office of Doerner, Saunders, Daniel & Anderson LLP. Mr. Munn practices family law, civil litigation, estate planning, trust and probate matters.

**Lizzie Stafford** joined the Tulsa-based firm of Tamera A. Childers PLLC as an associate. Ms. Stafford focuses her practice on family, juvenile and appellate law.

**Mitch D. McCuistian** and **John David Weaver** were named partners of Evans & Davis PLLC. Both Mr. McCuistian's and Mr. Weaver's practices focus on estate and business succession planning. **Brian J. Barrett** was also appointed director of the firm's Probate Division. Mr. Barrett's practice focuses on probate and business transactions. These three attorneys practice at the firm's Edmond office.

**Kevin E. Krah** was named municipal judge for the City of Nichols Hills. Mr. Krah is a former Oklahoma County assistant district attorney.

## KUDOS

**Sue Ann Arnall** of Oklahoma City will receive the Lifetime Achievement Award at the 32nd OCU Hall of Honor luncheon. Ms. Arnall is president of the Arnall Family Foundation, which provides services for vulnerable children and animals.

**Jay Adkisson** of Henderson, Nevada, released his book *The Charging Order Practice Guide: Understanding Judgment Creditor Rights Against LLC Members*. The book was published by the American Bar Association Business Law Section.

**Michael C. Turpen** of Tulsa received the Key Contributor Award from Oklahoma Academy at the organization's 25th Annual Oklahoma Academy Salute.

**Kimber J. Palmer** of Laredo, Texas, was named 2018 Outstanding Teacher of the A. R. Sanchez Jr. School of Business at Texas A&M International University (TAMIU). Ms. Palmer has been teaching undergraduate law-related courses at TAMIU for 18 years.

## AT THE PODIUM

**Jay Adkisson** will moderate the panel "Charging Order Hot Topics" at the American Bar Association's LLC Institute in Washington, D.C., Oct. 11-12.

### 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 December issue must be received by Nov. 1.*

## IN MEMORIAM

**M**arilyn Diane Allbaugh of Oklahoma City died May 14. She was born Nov. 18, 1953, in Oklahoma City. She graduated from Putnam City West High School in 1972. She received a bachelor's degree in education from Cameron University in Lawton, a master's degree in communication from OU and a J.D. from the OU College of Law. Ms. Allbaugh served as an attorney for the Oklahoma Tax Commission, an attorney with Hance Scarborough in Austin, Texas, of counsel with Barbour, Griffith and Rogers in Washington, D.C., and of counsel to the New York law firm of Entwistle & Cappucci. She fundraised for and founded the Texas regional office of the National Center for Missing and Exploited Children in Austin, Texas. She enjoyed fresh water fishing and going to professional baseball games.

**J. Scott Andrews** of Ardmore died Aug. 27. He was born Sept. 4, 1964, in Sherman, Texas. He received his undergraduate degree in business from OSU. After graduating he worked for Allied Bank of Texas in Houston and then First Enterprise Bank in Oklahoma City. Mr. Andrews received his J.D. from the OCU School of Law in 1993. In 1994, he moved to Ardmore to manage Overland Corp. In 2000, he joined First Bank & Trust Co. as vice president and trust officer. In 2005, he became the first executive director of the Mercy Memorial Health Center Foundation. Mr. Andrews was past president of the Carter County Bar Association,

past treasurer of Salvation Army Board, served on the Sunshine Industries board and he also served as municipal judge for Dickson. He loved deer and turkey hunting and scuba diving.

**H**enry C. Bonney of Duncan died Aug. 15. Mr. Bonney was born Feb. 16, 1936, in Yazoo City, Mississippi. Upon graduating from high school in 1954, he accepted a scholarship to play football for OU. He was a member of the 1955 National Championship team. He was a member of the Phi Delta Theta Fraternity and received a degree in geological engineering. Mr. Bonney received his J.D. from the OU College of Law in 1961. He practiced in Duncan for nearly 60 years. Donations in his honor can be made to the Duncan Regional Hospital Health Foundation, P.O. Box 2000, Duncan, 73534, and to the University of Oklahoma Foundation, P.O. Box 258856, Oklahoma City, 73125-8856.

**J**ohn Harold Conway Jr. of Tulsa died Aug. 21. He was born June 11, 1924, in Tonkawa. **He served in the U.S. Navy during the mid-1940's.** He graduated with a B.S. of naval science in 1945, a B.A. in accounting in 1946, a LL.B from OU in 1950 and later a J.D. from the OU College of Law. After working with Arthur Young & Co., he began practicing with Martin Logan Moyers. Mr. Conway also joined the Mabee Foundation in 1948. He became senior partner of Moyers Martin Conway Santee & Imel and after retirement continued as the Mabee Foundation chairman.

**S**hannon K. Emmons of Oklahoma City died June 7. She was born Nov. 10, 1960, in Blackwell. She graduated from Blackwell High School in 1978. In 1987, she received her B.A. in letters from OU. Ms. Emmons received her J.D. from the OU College of Law in 1990. She was a member of the *Oklahoma Law Review*. She was a shareholder, director and member of the Executive Committee of the law firm Phillips Murrah. Ms. Emmons was director and the vice chairman of the Board of the Latino Community Development Agency. She enjoyed spending time with her friends, family and pets, traveling, reading and making dinner reservations whenever possible. Donations in her honor can be made to the Latino Community Development Agency at [www.lcdaok.com](http://www.lcdaok.com) or 420 SW 10<sup>th</sup>, Oklahoma City, OK 73109.

**L**arry George Grant of Antlers died July 25. He was born Feb. 14, 1943, in Antioch, California. **After high school, he served in the U.S. Navy from 1965 to 1969.** After his service, he received his undergraduate degree from East Central University in Ada. In 1978, Mr. Grant received his J.D. from the OCU School of Law. He served as the assistant district attorney for Coal County, the district attorney for Bryan County and the assistant district attorney for Pushmataha, Choctaw and McCurtain counties. He enjoyed riding motorcycles, doing carpentry and spending time with friends and family.



**J**ohn Harris III of Jenks died Aug. 21. He was born July 2, 1949, in Houston. He received his bachelor's degree from Angelo State University. Following college, he was a bank examiner. During his career he also worked on an oil rig in the ocean. He was a land man and various other positions within the oil and gas industry. In 1993, he received his J.D. from the TU College of Law. He practiced oil and gas law and criminal law. He enjoyed spending time on the beach in Big Sur, California, and the Monterey/Carmel area nearby.

**H**arold Eugene Heath of Holdenville died Aug. 6. He was born June 23, 1947, in Lawton. He graduated from Central State College in 1969 and obtained his J.D. from the OU College of Law in 1973. He started his legal career in 1974 in Holdenville practicing with J. C. Daugherty. He practiced for over 40 years. He enjoyed ski trips, coaching little league, attending OU football games, playing golf and watching his kids play sports. Donations in his honor may be made to the Leukemia and Lymphoma Society, Holdenville Education Foundation or the Holdenville General Hospital Foundation.

**D**avid C. Johnston Jr. of Oklahoma City died Nov. 24, 2015. He was born Feb. 26, 1931, in Oklahoma City. He attended New Mexico Military Institute. He received a B.A. in business from OU. In 1961, he received his J.D. from the OCU School of Law. **He served in the U.S. Air Force during the Korean War.** Mr. Johnston practiced aviation law and piloted private airplanes. He

was an active participant in Habitat for Humanity, past president of the Downtown Lions Club and served two terms as president of Heritage Hills Historic Preservation Inc. He enjoyed family ski trips, bird hunting, singing in the choir at St. Luke's, woodworking projects and sailing his boat. He was a rancher, cowboy camp cook and team roper.

**R**obert L. Kasper of Perry died Aug. 2. He was born July 9, 1929, in Billings. He graduated from Billings High School in 1947 and earned an associate's degree from Northern Oklahoma Junior College in Tonkawa in 1950. **He was called to serve in the U.S. National Guard Company I in Korea from October 1951 to April 1952.** Mr. Kasper earned a B.A. from the University of Kansas in 1953 and his J.D. from the OU College of Law in 1957. He served as president of the Company I Memorial Foundation for almost a decade. He spent 45 years as a director and general counsel of Exchange Bank and Trust Co. He was active in the Chamber of Commerce, American Red Cross, Democratic Party and Perry Golf and Country Club. He served as president of the Noble County Bar Association.

**B**urke Greider Mordy of Ardmore died Aug. 10. He was born April 8, 1930, in El Reno. He attended OU where he earned a B.S. in accounting. Mr. Mordy received his J.D. from the OU College of Law in 1954. After graduation, he worked for Shell Oil Corp. in Tulsa until 1956 when **he was activated for duty as a judge advocate for the U.S. Air**

**Force. He retired from the U.S. Air Force Reserves as a lieutenant colonel in 1990.** Mr. Mordy moved to Ardmore in 1959 where he was hired as assistant county attorney. He then served as the first district attorney in Carter County. He was elected to the Oklahoma House of Representatives in 1967. He served as the chief counsel of the House Investigating Committee as the prosecuting attorney during the impeachment trial of Oklahoma Supreme Court Justice N.B. Johnson in 1965.

**B**rent Pitt of Oklahoma City died Aug. 7. He was born Feb. 18, 1958, in Ada. He received his J.D. from the OU College of Law in 1983 and practiced in Oklahoma City for 35 years. He was passionate about music, art and film. Donations in his honor may be made to Sky Line Urban Ministry.

**D**ouglas L. Taylor of Broken Arrow died Aug. 10. He was born Oct. 1, 1947, in Caney, Kansas. He received his B.S. from OSU in 1969. **From 1969 to 1970, he served in the Navy on the U.S.S Sanctuary in Vietnam.** He graduated from the OU College of Law in 1973 and practiced with Phillips Petroleum Co. until his retirement in 1999. Mr. Taylor worked in Bartlesville, Houston and Stavanger, Norway, during his career. He loved golf, music and Sooner sports. Donations in his honor can be made to the American Heart Association or the University of Oklahoma Foundation.

**G**ary David Underwood of Tulsa died Aug. 4. He was born Oct. 21, 1947. After graduating from the TU College of Law in 1978, he practiced family law for almost 40 years. He was a delegate to the 1980 Democratic Convention and served two terms as chairman of the Tulsa County Democratic Party. Mr. Underwood had a passion for politics, social justice and the environment. He loved vacations and was constantly planning the next one. He was a skydiver, skin diver and trapeze flyer.

**W**oodrow Neil Wilson of Grove died Aug. 6. He was born June 7, 1944, in Collinsville. He graduated high school in Collinsville in 1962 and from OU in 1966. He received his J.D. in 1969 from the OU College of Law. Mr. Wilson practiced law in Miami for 34 years. He was a Rotarian in both Miami and Grove and president of the group in Miami. He loved to fish, hunt, read and garden.



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# OKLAHOMA BAR JOURNAL

## EDITORIAL CALENDAR

### 2018 ISSUES

#### NOVEMBER

##### Torts

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

#### DECEMBER

##### Ethics & Professional Responsibility

Editor: Leslie Taylor  
leslietaylorjd@gmail.com

### 2019 ISSUES

#### JANUARY

##### Meet Your Bar Association

Editor: Carol Manning

#### FEBRUARY

##### Estate Planning

Editor: Amanda Grant  
amanda@spiro-law.com

#### MARCH

##### Criminal Law

Editor: Aaron Bundy  
aaron@fryelder.com

#### APRIL

##### Law Day

Editor: Carol Manning

#### MAY

##### Technology

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

#### AUGUST

##### Appellate Law

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

#### SEPTEMBER

##### Bar Convention

Editor: Carol Manning

#### OCTOBER

##### Indian Law

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

#### NOVEMBER

##### Starting a Law Practice

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

#### DECEMBER

##### Ethics & Professional Responsibility

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

*If you would like to write an article on these topics,  
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## Hotel Info

Registration does not include hotel accommodations. The deadline to take advantage of the discounted room rate booked through the hotel website is Oct. 14.

[Goo.gl/aTPnHf](http://Goo.gl/aTPnHf)

## CLE

OBA CLE programs are being offered Wednesday afternoon and Thursday morning. Sign up to learn about the new world of marijuana regulation and the importance of digital evidence and electronically stored information and how to best utilize it in court.

[www.okbar.org/annualmeeting/cle](http://www.okbar.org/annualmeeting/cle)

## Bar Business

It's important to know what's going on in your organization! Read up on resolutions, House of Delegates info and get to know the candidates for next year's officers and Board of Governors before the Annual Meeting.

[www.okbar.org/annualmeeting/  
barbusiness](http://www.okbar.org/annualmeeting/barbusiness)

## OBA Awards

Congratulations to this year's OBA Award winners.

[www.okbar.org/annualmeeting/awards](http://www.okbar.org/annualmeeting/awards)

## Program of Events

This year's lineup includes luncheon speaker Mark Lanterman, Delegates Breakfast speaker Ted Streuli, several great CLE opportunities, the President's Reception, OBA sections event and more!

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# True Strength

By Michael T. Gibson

**L**AWYERS NEED POWER – and the strength to use it.

I saw remarkable proof of that years ago while clerking for a federal judge.

As an accomplished litigator, he had delicately crafted jury instructions, negotiating each word with opposing counsel, but jurors who had no legal training, heard those instructions read all at once and heard them read *only* once. If instructions were so important, how could jurors do justice without their own copies to read?

He joined the bench before computers, so his secretary kept a binder, one instruction to a page. The judge picked them; she assembled and copied them.

It was Friday, the last day of a complex trial with 12 jurors, two alternates, multiple attorneys and others.

Marlene had 23 sets of instructions ready. At 7:30 a.m. the lawyers walked in and asked for “a few changes.” The judge led them to his office and closed the door. Marlene prepared for battle. The judge had promised the jury he would instruct them at 9 a.m. She would make sure he did. I ran down the hall to turn on the copier.

When I returned, Marlene was pulling staples from 23 sets of instructions, but her desk was full; we had no table. She pointed to the floor. I laid 23 sets of instructions – 42 pages each – in three rows. The judge emerged, dictated new #8 and returned to his chambers. Marlene typed. I ran down the hall, made copies and returned. Out went old #8; in went the new.

But the judge was dictating again. Marlene was typing, and I was falling behind. The stack

of discarded instructions grew. Stacks of new instructions multiplied. I fell more behind.

About 8:45 a.m., I heard the judge emerge, close his door and say, “They’re upset about #27, but I’m not going to change it.” Marlene slumped over her keyboard. The judge stepped beside me, looked down and said “Mike, you’ve got quite a mess down there.” He was right.

Five minutes later, I heard the judge’s door open. A bewildered lawyer said, “Marlene, we seem to have lost the judge.”

Then he looked in front of her desk and saw the chief judge of the U.S. District Court of Nebraska, appointed by the president of the United States with the advice and consent of the Senate, constitutionally guaranteed “a Compensation, which shall not be diminished during [his] Continuance in Office,” on hands and knees, collating jury instructions.

Practitioners, judges and even law professors like me need power and the strength to use it wisely. We need strength to talk less and listen more, to admit when we’re wrong, to turn the spotlight so it shines on those whose work is overlooked.

And sometimes we need the strength to get down on our hands and knees to do a menial task at 8:45 on a Friday morning, if that will help a jury do justice.

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Mr. Gibson is a professor at the OCU School of Law.







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