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THE OKLAHOMA BAR 01010000

Volume 89 - No. 32 - December 2018

ETHICS & PROFESSIONAL RESPONSIBILITY

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Jim Jesse, Esq., CEO/Founder, Rock N Roll Law

This basic course is meant to give attendees an overview of music copyright law concepts, including how to establish and register a copyright for your music, what is a copyright and how to get one. You will learn the two copyrights in every song. You will also drill down to discuss the sources of revenue songs can generate as well as explore the exclusive rights of a copyright and what those basic rights mean under federal law. You will explore how the music industry as it pertains to the law has changed over the years.

Lastly, you will delve into future issues of music streaming and sampling. The course will also explore user-generated content; performing rights organizations' role in music, and the future of copyright lawsuits.

Ethics Portion of Course

The one-hour ethics portion focuses even more particularly on representing a band or artist and uses the final few years of The Beatles as a case study.

BUT MOST OF ALL, YOU WILL ENJOY THE MUSIC **AND HAVE FUN!**

Early registration by December 21, 2018, is \$225. Registrations received after December 21 will increase \$25 and \$50 for walk-ins. Continental breakfast and networking lunch included. For a \$10 discount, enter coupon code FALL2018 at checkout when registering online for the in-person program. Registration for the live webcast for all members is \$250. All programs may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org to register.

THEME: ETHICS & PROFESSIONAL RESPONSIBILITY Editor: Leslie Taylor

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Year-End Reflections

T FIND IT A CHALLENGE TO DESCRIBE in this limited space all the 2018 accomplishments. Highlights include the Solo & Small Firm Conference in a new venue – Tulsa's River Spirit Casino Resort, where attendees and their families enjoyed the new facility and multiple diverse CLE topics. The OBA 114th Annual Meeting in Tulsa was a success with outstanding and well-attended CLE. Kim & Alan's House Party with the '80s

theme was enjoyed by the many attendees. Special thanks to ALL my fellow Tulsa attorneys who attended. Your support of my year as president and of the OBA Annual Meeting was the highlight of my year.

The OBA Rules of Professional Conduct Committee was an active committee due to the passage of State Question 788. Chair Paul Middleton and all the members of the committee spent hours researching and discussing possible amendments to our Oklahoma Rules of Professional Conduct. During the OBA Annual Meeting, the House of Delegates considered Resolution No. One – the proposed amendment

to Rule 1.2 of the Rules of Professional Conduct (5 O.S. ch. 1, app. 3 A). The proposed amendment added to Rule 1.2 "(*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.*" The House of Delegates voted to adopt the resolution, which is now presented to the Oklahoma Supreme Court for its consideration.



Rimberly Halp

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

The Oklahoma Access to Justice Commission, American Bar Association and the OBA joined forces to offer an interactive website providing free legal information to needy Oklahoma citizens. I am very proud of the volunteer attorneys who are helping fellow Oklahoma citizens through Oklahoma. freelegalanswers.org. Angela Ailles Bahm and the Legislative Monitoring Committee held monthly meetings and tracked relevant legislation. The Legislative Reading Day and OBA Day at the Capitol were well attended as was the new 2018 Legislative Debrief, with a summary of enacted legislation. The OBA Access to Justice Committee, chaired by Rod Ring, with

Jim Calloway and his department continued the important work to enhance programs to offer all Oklahoma citizens access to justice. The committee presented the first Oklahoma Summit on Access to Justice featuring an extraordinary lineup of both national and local leaders sharing ideas.



Alan Souter and Kim Hays

I appreciate OBA Executive Director John Morris Williams and his guidance and experience. I feel blessed that John was here to walk me through this year. I thank Debbie Brink, his executive assistant, for her organization and support. Thanks to each and every OBA director and OBA staff member. My year would not have been a success without their skills and

creativity. Past President *Linda Thomas* was a mentor and constant source of advice, and I am grateful for her wisdom. I appreciate Vice President *Richard Stevens'* willingness to serve this year, and I am thankful for his support. I served with the dedicated and outstanding OBA Officers and Board of Governors.

2019 OBA President *Charles W. "Chuck" Chesnut* will be an outstanding and innovative leader. 2019 OBA President-Elect *Susan Shields* is hard-working, and I look forward to her accomplishments in 2020. The OBA is in excellent hands.

Our children, Noelle and Parker, and my mother, Judy Hays, were supportive of my time away from family throughout the year. My service to the OBA would not have been possible without the encouragement, devotion and dedication of 2018 Oklahoma Bar Foundation President/my husband, *Alan Souter*. My legal assistant, *Stephanie Pierce*, was invaluable during this year.

Thank you for your support and for allowing me the privilege of serving as your OBA president. I wish each of you a happy and successful 2019!

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ETHICS & PROFESSIONAL RESPONSIBILITY

Ethical Issues That Arise in the Practice of Estate Law

By Alison A. Cave

MANY DIFFERENT ETHICAL ISSUES can arise when a lawyer is an estate planning practitioner. Generally, clients tend to be older, financially established and perhaps have a blended family. Clients will often request the lawyer to prepare documents for multiple members of the family or even family business. Sometimes, the clients rely heavily on someone else to communicate information to the lawyer. These types of scenarios lead to numerous ethical issues.

CONFLICT OF INTEREST

The lure of multiple representations can present a tempting prospect. An increased fee without dealing and consulting with another lawyer, especially in a circumstance where the client is encouraging it in order to economize fees, have cohesive plans and to help resolve issues, is hard to oppose. The risks of trying to serve more than one client are considerable.

What is the first step in avoiding a conflict of interest? Every law office should devise a conflict of interest procedure and system. Even the law office which has only one attorney may fail to remember having represented a person a few years back when a new party approaches the attorney for assistance. The attorney may have spent several valuable hours on the matter before realizing there is a conflict with a former client. These expended, unbillable hours can be costly to a solo practitioner.

The conflict of interest system can range from a high-tech software program to a card file. However, even the most expensive system is of no assistance if the procedure is not followed or the system is not maintained. The value of the system is actually dependent upon the efficiency of the user. Conflicts need to be checked prior to the attorney accepting the legal project and checking the request for conflict should be an automatic initial response to a new file.

What information needs to be contained in the system? Every conflict of interest system ought to include every client represented by the attorney and in addition to the client, all other protected persons, such as spouse, partners, shareholders, directors and officers of corporations. If additional parties are brought into the matter at a later time, they should be added to the list as well. Also include all names such as the former or maiden name of a client should this client's name change at a later time, as well as any other pertinent parties.

When a lawyer joins a law firm or simply creates a partnership with another lawyer or lawyers, or when two law firms combine, it is absolutely critical each lawyer provide a complete list of past and present clients which is then merged into a master list, so conflicts can be checked. Similarly, when new staff members are hired who may have worked for other law firms, they should check the law firm's list of clients to see if by working on a case for the lawyer a conflict could develop from data obtained while working at the previous firm.

Identifying potential conflicts of interest before they occur is essential since one of the crucial elements in the practice of law is loyalty and independent judgment to the client. A breach of these key elements can result in a bar disciplinary action or a legal malpractice action. By its very essence, a conflict of interest will imply the attorney is unable to have complete loyalty or provide independent judgment to the client, because of prior knowledge acquired from another client which may work to the detriment of the current client. The Oklahoma Rules of Professional Conduct (ORPC) can be instructive to the lawyer in recognizing potential conflicts of interest and in what types of circumstances a conflict may arise. In particular, Rule 1.7 through 1.11 of the ORPC and the comments thereto address the issues of conflicts of interest and an attorney's responsibility to the client when such a conflict arises.

Conflict claims arise in a variety of ways. They often take place when an attorney has performed extensive work on behalf of many members of the same family, frequently in the context of doing work for a family company and then attempting to perform work for one or more of the family members in their estate planning. The other way a conflict occurs is when a husband and wife come in together and it is a blended family with children from previous marriages or relationships. Husband and wife appear to agree on the division of the property, but when the spouse dies, the surviving spouse does not want to share the estate with the children from the previous marriage or the children do not want to share the estate with the stepparent.

There was a recent published opinion discussing the conflict of interest issue.¹ Although not an Oklahoma case, it is a good example of how a conflict can arise. Scott Hudson died intestate in 2005 with only two heirs, his wife (Letty) and his son from a previous marriage (Kyle). When Mr. Hudson died, he left an estate consisting of various assets located in a number of countries, totaling multiple millions of dollars. Letty was appointed the administrator of the estate.

Letty hired a firm that had done work for the primary disputed asset in the probate case, a bus company. The firm entered its appearance in the case as the "attorneys for the administrator." However, the firm in some pleadings noted they were counsel for the estate by its administrator or simply "attorneys for the estate." As the case became more adverse between Letty and Kyle, it became apparent the firm was advocating Letty's position that she owned 100 percent of the bus company instead of 50 percent as Kyle asserted, allowing Letty to dissipate the estate's assets and allowing Letty to withhold assets from Kyle. Eventually, Letty was removed as administrator and a neutral party was appointed

ENGAGEMENT LETTER

One of the most important points to take away from the *Estate* of *Hudson* case is the engagement letter. A trusts and estates practitioner must clearly and specifically define the client and scope of services to be performed in the firm's engagement letter.

The engagement letter should identify the client whose interests are being represented. Equally as important is to specifically clarify whose interests are not being represented by

Identification is key in the estate planning field to avoid the misunderstandings by relatives of the client that the attorney is not the "family" lawyer.

administrator. The estate, Kyle and even Letty, filed a legal malpractice action against the firm.

Although the court chastised the lawyers for the lack of an appellate record, it determined there was a factual question of whether the firm had a conflict of interest in this litigation. The firm attempted to argue they only represented Letty and relied on their engagement letter. However, the engagement letter failed to define the scope of employment and did not state the purpose for Letty retaining the firm. The trial court had agreed with the firm that they represented Letty only and had no duties to the estate or Kyle, thus granting the firm's motion for summary judgment. The appellate court reversed and remanded the matter for further proceedings.

the attorney. Identification is key in the estate planning field to avoid the misunderstandings by relatives of the client that the attorney is not the "family" lawyer.

Making the scope of the work performed under the terms of an engagement letter as wide ranging as possible is a natural response. This is often based upon the unwise theory a far-reaching engagement letter will create additional legal work. In fact, an engagement letter with a loosely defined scope of the work covered does little more than expose an attorney to potential liability well outside the range of services the attorney intended to perform. Rule 1.2(c) of the ORPC, provides for a lawyer to reasonably limit the terms of the engagement, provided the client is aware of the limitations and consents.

INADEQUATE FACTS/ DISCOVERY

Issues arise when there are not documents showing an adequate inquiry was made and then detailing that inquiry into the testator's mental capacity. The estate and trust practitioner must develop questions to ask the client which show the client's general awareness of the client's heirs and assets. Some practitioners video their clients to show mental capacity. With regard to assets, relatives, etc., the better practice is to create a questionnaire the client completes and signs.

The attorney must make sure there is documentation that inquiry was made regarding undue influence. The practitioner must meet with the testator alone. The attorney needs to develop a list of standard questions, so the attorney is confident there has been no undue influence.

Standard inquiries often get overlooked when the practitioner is representing friends and/or family. The best recommendation would be not to act for family or friends, but should the practitioner decide to go forward, be particularly vigilant about recording the answers to all of the inquiries to insure capacity, assets, beneficiaries and undue influence.

In administering an estate, claims arise when distributions are made without ensuring adequate money is in the estate to pay the taxes or creditors' claims. The attorney needs to err on the side of caution when making an interim distribution. Estate taxes can generate ethical issues in these two areas: 1) where the personal representative believes the attorney is going to make sure the estate taxes are handled - the estate tax issue should be addressed in the engagement letter; and 2) if the attorney is handling the estate taxes, the attorney should double check the availability of the deceased

spousal unused exclusion portability and be aware of the amount and the time limitations.

The estate and trust practitioner must make sure all heirs are notified. The attorney needs to double check any distributions from the estate include all who are entitled to that distribution and the portion that heir is entitled. In other words, disclose, document and confirm!

FAILURE TO FOLLOW CLIENT'S INSTRUCTIONS

Issues arise when the attorney's notes taken from the meetings do not agree with the drafted estate planning documents and there is no documentation showing the client instructed the attorney differently after the initial consultation. The estates and trusts practitioner needs to make and take the time to compare the draft estate planning documents with the notes taken during the consultations. Fortunately, this issue is one of the easiest to prevent. The attorney must document the work performed for the client. Then, the attorney needs to confirm the information the client provided, the advice given to the client, the client's instructions and what steps were taken on those instructions. This can be done in the attorney notes, a reporting letter or a confirming email. Taking the time to make detailed dockets, such as "telephone conference with client regarding the following changes to the will" can prevent an error. In other words, document everything! A paper trail can help refresh the practitioner's memory as to why the document was drafted in this manner.

Proof reading can be tedious, but it is extremely important in estate planning. This requires double checking the math and making sure 100 percent of the estate is accounted for in the testamentary documents. Additionally, the attorney needs to double check beneficiaries and what their distributions will be. One of the most tedious tasks is proof reading the drafted estate planning documents for ambiguities in the wording and double checking to make sure all necessary provisions and/or clauses are included.

CONCLUSION

With the changing demographics of the population at large, there is more work in estate planning than ever, and at the same time, more exposure to a malpractice claim or an ethical violation. This risk of a legal malpractice claim cannot be totally eliminated. However, the risk can be reduced by improving communications with the client and documentation of all work performed for the client.

ABOUT THE AUTHOR

Alison A. Cave is senior vice president of claims with Oklahoma Attorneys Mutual Insurance Co. She graduated from the OU College of Law. Ms. Cave began her career as a law clerk for Justice Yvonne Kauger. She has received the OBA President's Award and the Mona Salyer Lambird Spotlight Award.

ENDNOTE

1. Estate of Hudson et al v. Tibble et al, 421 III. Dec. 105, 99 N.E.3d 105, (2018).

ETHICS & PROFESSIONAL RESPONSIBILITY

Ethics: A View From the Bench

By Judge Michael C. Flanagan

THE PRACTICE OF LAW IS A TOUGH BUSINESS, and the trial process can be contentious and difficult. Nevertheless, our legal system is the best in the world. A good trial, handled fairly and with healthy advocacy, usually results in a rough form of justice. As difficult as the process may be participants should not have to suffer discourteous, impolite, impudent, uncivil or impertinent behavior from each other.

The roles of lawyers and judges are especially important in this process because they assume a solemn duty to protect legal rights and work for justice under law. Their behavior indicates how seriously they take this role.

We all know lawyers who are difficult, hard to get along with, short-tempered, impatient or contentious. Some lawyers will tell you they charge more when a particular lawyer is on the other side and with good reason. How many times has a lawyer warned clients about a particular judge? Recently, the conduct of a judge was the focus of nationwide attention for intemperate behavior, ignoring due process and fundamental rights of individuals and disregarding applicable laws, particularly contempt law.

A lawyer once told me there is a fine line between advocacy and rudeness. While most lawyers and judges are respectful, reasonable, hard-working, prepared and conscientious, some cannot control their emotions and use difficult behavior as a method of practice. Most would agree that effective representation does not require, and is in fact impaired by, conduct which can be characterized as uncivil, rude, abrasive, abusive, vulgar, antagonistic or obnoxious, and that rude behavior hinders effective advocacy.

Lawyers should be reminded that the Preamble of the Rules of Professional Conduct states: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. A lawyer's professional responsibilities are contained in the Rules of Professional Conduct but they are also guided by personal conscience and the approbation of professional peers."¹

The Preamble of the Code of Judicial Conduct states: "Judges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence."²

Professionalism is not just a behavior to be practiced for advantage or appearance. Rather, it should be practiced in a way to create an atmosphere conducive to effective advocacy, fair decision-making and achieving just results. It should also promote public respect for the legal profession. U.S. Supreme Court Justice Louis Brandeis once said, "If we desire respect for the law, we must first make the law respectable."³ The same applied to our behavior.

For lawyers:

- Refrain from engaging in conduct which exhibits or is intended to appeal to bias against a person based on their race, color, national origin, ethnicity, religion, gender, sexual orientation or disability;
- Do not, even if requested by a client, indulge in offensive conduct directed to opposing counsel, parties or witnesses;
- Refrain from disparaging personal remarks and acrimony toward opposing counsel, parties or witnesses;
- Treat opposing counsel, parties, and witnesses with respect, civility and fairness;
- Your word is your bond keep it;

- Do not knowingly misstate, distort or exaggerate any fact or legal argument;
- Do not mislead anyone opposing counsel or the court – and immediately disclose or correct mistakes or misstatements;
- Present your case based on the facts and law, accurately, concisely and fairly, without unfairly attacking opposing counsel or party;
- Make every reasonable effort to conduct discovery by agreement and with promptness;
- To the extent that your client's interest will not be adversely affected, do not be unreasonable concerning requests for extension of deadlines, scheduling changes and hearings, and make reasonable accommodations; and
- Stipulate to undisputed facts.

For judges:

- Be courteous, respectful and civil to all lawyers, parties and witnesses;
- Maintain control of the proceedings and immediately correct any incivility between lawyers. Use contempt proceedings sparingly and only when absolutely necessary. Above all, follow the law;



- Do not employ hostile, demeaning or humiliating words in opinions or in communications with lawyers, parties or witnesses;
- Be punctual in convening all hearings. If delay is necessary, notify all lawyers;
- Be flexible. When scheduled hearings conflict with the schedules of attorneys, parties or witnesses, if possible, make accommodations;
- Make a reasonable effort to decide all matters presented for decision in a prompt manner;
- Be deliberate, impartial and studious when considering the issues. Where necessary, write orders with detailed findings of fact and conclusions of law;
- Avoid unnecessary delays but be considerate of time constraints, pressures and exigencies of lawyers and their practices;
- Allow sufficient time for presentation of facts and legal argument. If a case cannot be settled, put on the robe, go in the courtroom and try the case. Respect each party's right to be heard;
- Do not impugn the integrity or professionalism of any lawyer because of the client or legal cause he represents; and
- Avoid delays or procedures which needlessly increase the cost of litigation.

Justice John F. Reif of the Oklahoma Supreme Court stated, "The fact that our system of justice is referred to as the adversary system does not mean that the process and people involved must be antagonistic and combative. Indeed, our system is adversarial only in the sense of allocating burdens regarding issues, proof, and persuasion, and in allowing an opportunity for each party to contest and controvert whether their opponent met their assigned burdens. Otherwise, our system of justice is marked by the reasoned, peaceful resolution of disputes."4

Obviously, lawyers seek to win their cases – that's why they are hired. Wins enhance a lawyer's reputation, which in turn means more, and better, cases and more, and better, fees. Judges seek to make good decisions which are respected by the lawyers and the public and which are affirmed if appealed. Even more important than the skill and reputation of lawyers and judges is the way we conduct our business. Society values a legal system whose main goal is achieving just and fair results. I submit we can do that with the highest professionalism.

ABOUT THE AUTHOR

Michael C. Flanagan has been the associate district judge of the Cotton County District Court since January 2007. Before taking the bench, he practiced law in Cotton County for 26 years. Judge Flanagan has served on the Oklahoma Supreme Court's Juvenile Justice Oversight and Advisory Committee since 2011, having been appointed by Chief Justice Steven W. Taylor and reappointed by Chief Justice Douglas Combs.

ENDNOTES

1. Okla. Stat. Tit., Title 5, Ch. 1, App. 3-A, Preamble: A Lawyer's Responsibilities.

2. Okla. Stat. Tit. 5, Ch. 1, App. 4, Preamble. 3. Louis Brandeis, in the Cleveland Plain Dealer (15 October 1912) as cited in *A Treasury of Jewish Quotations*, ed. Joseph L. Baron, Rowman & Littlefield (1996), p. 269.

4. The Standards of Professionalism: Preserving the Longstanding Tradition of Civility, by Justice John F. Reif, Oklahoma Supreme Court, Sovereignty Symposium XXX 2017 -Restoration, II.



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MCLE CREDIT

AM SESSION 3/3 PM SESSION 3/1

6/4

No one likes ethics CLE. We know. That's why we have Stuart Teicher, "the CLE Performer," coming to town. You simply will not believe how he makes ethics...well, not horrible. We know that you don't particularly care about the rules that he will discuss (...which are 8.3 Reporting Misconduct, 1.6, Confidentiality, 1.7 Conflicts, and more). What you care about is that he won't make you fight back a nap for 3 hours. Trust us, this is a different kind of ethics...because it's not awful.

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The Attorney's Ethical Duty to Maintain Technological Competence

By Alexandra G. Ah Loy



A CCORDING TO AN AMERICAN COMMUNITY SURVEY REPORT published by the U.S. Census Bureau in 2015, the percentage of households in the United States with a computer has steadily increased from 8 percent in 1984 to 87 percent in 2015.¹ Likewise, the percentage of households using internet has steadily climbed from 18 percent in 1997 to 77 percent in 2015.² Computers have become an integral part of everyday life. With advancements in technology, the practice of law has necessarily evolved as well. It would be unfathomable for a lawyer today to use a typewriter in his day-to-day practice, and lawyers practicing in the 1980s would have dismissed as fantastical the idea that legal research could be performed via an "app" on a hand-held cellular phone. The reality is, most entrylevel lawyers of the 2030s will never have heard the expression "word processor." As technology continues to advance, lawyers have an ethical obligation to stay abreast of practical developments in technology and to incorporate such advancements into their practice.

Lawyers have a duty to provide competent representation to clients. The Oklahoma Rules of Professional Conduct (ORPC) provide that "[c] ompetent representation requires the legal knowledge, skill thoroughness, and preparation reasonably necessary for that representation."3 Since 1988, Comment 6 to Rule 1.1 has explained, in part, that maintaining competence meant to engage in continuing study and education.⁴ In 2008, Comment 6 to Rule 1.1 was amended to include "a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all legal education requirements to which the lawyer is subject."5

Rule 1.1 of the ORPC largely mirrors its counterpart of the ABA Model Rules. In 2012, Comment 8 to ABA Model Rule 1.1 was amended to read:

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

Most of the states have adopted the duty of technological competence referenced in the ABA Model Rules.⁷ In 2016, the ORPC were amended to include their first reference to a duty of technological competence. Specifically, Comment 6 to Rule 1.1 was amended to provide: [6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject, *including the benefits and risks associated with relevant technology.*⁸

Interestingly, Comment 6 to Rule 1.1 varies slightly from that of the ABA Model Rules. Although the clause related to relevant technology is identical, its location within the comment differs. With the ABA Model Rules, the duty of technological competence appears to be that a lawyer "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant

technology." 9 Although there is not yet any legal authority on point to address the construction of Oklahoma's Comment 6 to Rule 1.1, it is arguable that Oklahoma has adopted a lesser standard: "a lawyer should...engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject, including the benefits and risks associated with relevant technology."10 Thus, it is possible Oklahoma's Rule 1.1 only imposes a duty upon attorneys to stay apprised of continuing legal education pertaining to technology. The reasoning behind this divergence from the ABA Model Rules is unclear.

Given the recentness in most states' adoption of the duty of technological competence to Rule 1.1, few courts have had an opportunity to address this unique issue. However, some courts have authored scathing reprimands of attorneys who have defended discovery misconduct with claims of computer illiteracy. For example, in 2014, the Court of Chancery of Delaware flatly rejected such a defense by an attorney, interpreting the amendment to Rule 1.1 to include a duty to either master necessary technological advancements or to hire outside consultants who can assist such counsel in conforming to the duty of technological competence:

Then, during the hearing on the motion for sanctions, National's counsel offered a different explanation: "I have to confess to this Court, I am not computer literate. I have not found presence in the cybernetic revolution. I need a secretary to help me turn on the computer. This was out of my bailiwick." Professed technological incompetence is not an excuse for discovery misconduct. Effective March 1, 2013, the **Delaware Supreme Court** amended Comment 8 to Rule 1.1 of the Delaware Lawyers> Rules of Professional Conduct, which addresses competence, to include maintaining technological competence. The new comment states that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology...."⁵ This language finds parallels in the Pennsylvania Rules of Professional Conduct. where National's counsel is admitted to practice, and the Model Rules of Professional Conduct. Compare id. with Pa. Rules of Prof'l Conduct R. 1.1 cmt. 8 and Model Rules of

practice of law and associated ethical constraints." Judith L. Maute, *Facing 21st Century Realities*, 32 Miss. C.L.Rev. 345, 369 (2013). Legal publications in Delaware and Pennsylvania have discussed the amendments to Rule 1.1 in similar terms.¹¹

Other courts have expressly recognized the duty upon attorneys to adapt to technological advancements, including learning to use computer-assisted legal research such as WestLaw or LexisNexis. In 2009, the Florida District Court of Appeals noted that "[l]awyers have also become expected to use computer-assisted legal research to ensure that their research is complete and up-todate."12 In sum, while courts have not had an opportunity to squarely address the interpretation of the duty of technological



Prof'l Conduct R. 1.1 cmt. 8. "[D] eliberate ignorance of technology is inexcusable.... [I]f a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the competence, there is a prevailing attitude among practitioners that, at a minimum, practicing attorneys have an ethical duty to maintain technological awareness.

Additionally, many states have begun issuing ethics opinions to provide additional guidance as to the precise requirements for technological competence. For example, many states have issued ethics opinions regarding attorneys' use of "cloud computing," explaining an attorney must take reasonable care to ensure the conduct of the cloud computing service provider conforms to the rules to which the attorney himself is subjected and outlining various safeguards that attorneys should employ to protect confidential information.¹³ Similarly, some states have issued ethics opinions explaining that attorneys should take due care to "scrub documents" (i.e., remove metadata) prior to producing electronic documents to opposing parties, and that there is a presumption that disclosure of metadata is inadvertent and would be unethical for opposing counsel to view.¹⁴

Finally, it bears noting that there has been a movement among courts toward electronic filing (e-filing) systems. For instance, all three of the federal district courts in Oklahoma have authorized e-filing. Some courts in other jurisdictions have moved toward mandatory e-filing and have been unforgiving with attorneys who refuse to learn how to e-file and at least arrange for someone in their office to e-file for them.¹⁵ In practice, filing pleadings electronically can save the time of traveling to the courthouse and copying costs.

For many attorneys there will be a learning curve. However, it is incumbent upon attorneys to adapt with the practice of law and to utilize resources, such as e-filing, which save their clients billable time and costs. Although change can be difficult, the consequences for failing to adapt to changes in the practice of law can be costly, both ethically and competitively. As such, attorneys should embrace a bit of old wisdom from 1867: "In a progressive country change is constant. Change is inevitable."16 Because advancements in

technology are unavoidable, attorneys are behooved to stay abreast of developments and changes in technology and to adapt their practices accordingly.

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ETHICS & PROFESSIONAL RESPONSIBILITY

Have You Ever Had a Case That Stuck With You?

Recognizing and Overcoming Secondary Trauma

By April Merrill and Sarah Young

"Being a lawyer is not just a job, it's an identity. It defines who we are, how we think, and what we believe we can do in the world."

SIDE FROM DOCTORS, ATTORNEYS ARE VIEWED as one of the most sophisticated and highly regarded professionals in the United States. Attorneys are known for being intelligent, analytical and refined individuals. Starting in law school, aspiring legal professionals are immersed into dense academics that require a complete shift in priorities. Students often put their personal relationships and hobbies aside in order to attain the level of rigor that is necessary to be successful within the legal profession. However, after passing the bar, issues arise when new attorneys are faced with emotional and moral dilemmas presented by their clients' cases.²

Unfortunately, legal education does not adequately equip attorneys with tools to successfully navigate the personal aspects of the practice of law.³ As a consequence, attorneys may begin showing symptoms of being negatively affected by their clients' distressing situations, otherwise known as secondary trauma.⁴ This often leads to feelings of isolation and ineptitude within the legal profession.⁵

To put this into perspective, other professions, such as social work, human medicine and even veterinary medicine have been addressing the personal and professional impacts of secondary trauma in their training for decades.⁶ Unfortunately, the legal profession has failed to adequately follow suit.⁷ Because of this, attorneys are not trained to identify when a client relationship has affected their mental health.⁸ In these situations, attorneys may have an ethical obligation to terminate the client relationship and seek assistance for themselves.

TRAUMA OVERVIEW

"You can stuff things down and ignore them, but eventually they will come back and revisit you." – Joseph Balkenbush, OBA Ethics Counsel

Most attorneys enter the profession expecting to be intellectually challenged but may not anticipate or understand the psychological or emotional challenges they will face.⁹ Such emotional challenges arise not merely from the infinite workload or countless hours, but rather from the effects of having to be faced with a client's darkest day. Attorneys who work in immigration, family, criminal and many other facets of law know this bleak reality all too well.¹⁰ From hearing clients recount their experiences, to viewing graphic images, the attorney is not just learning and gathering facts about the client's traumatic experiences; the attorney, being human, is being affected by it.¹¹

The impacts of such situations can lead individuals, including attorneys, to become traumatized.¹² There are two broad categories of



Being immersed in this level of detail, for extended periods of time, increases the chances that an attorney will experience secondary trauma.¹⁶

trauma primary and secondary trauma and both are relevant in the practice of law. Primary trauma is caused by a distressing event that someone experiences directly, while secondary trauma is caused by a distressing event experienced indirectly.¹³

Consequently, as a part of the job, attorneys are exposed to traumatic material indirectly.¹⁴ Examples include reviewing material such as photographs, recordings and transcripts that contain disturbing content.¹⁵ Whether the case involves a heinous situation such as a crime against a child or even a standard property dispute, every detail matters to an attorney who is attempting to effectively advocate for their client. Being immersed in this level of detail, for extended periods of time, increases the chances that an attorney will experience secondary trauma.¹⁶

IMPACTS OF TRAUMA

"I don't think attorneys give themselves permission to hurt." – Judge Doris L. Fransein, Chief Judge Tulsa Juvenile Division

While an attorney may readily imagine the effects of primary trauma, particularly in their clients, identifying the effects of secondary trauma and how it may transpire in an attorney's own life may not be as obvious. Trauma can adversely affect attorneys in multiple aspects of their lives. These manifestations of trauma may translate into some of the following behaviors within the workplace:

- Avoidance (arriving late, leaving early, missing meetings, avoiding clients, skipping certain questions during interviews),
- Hypervigilance (feeling on-edge, perceiving colleagues and clients as threatening, feeling like all clients are in danger),
- Seeing things as "black or white" rather than tolerating ambiguity,
- 4) Becoming argumentative and
- 5) Shutting down or numbing out (alcohol and drug use are common coping mechanisms).

Besides the workplace, effects of trauma can seep into personal lives as well. Symptoms may include:

- 1) Sleep disturbances and nightmares,
- 2) Headaches,
- 3) Stomach pains,
- PTSD symptoms such as intrusive thoughts and memories; severe emotional distress or physical reactions

to something that reminds the person of the traumatic event; avoidance of people, places or things that remind the person of the event; irritability, angry outbursts or aggressive behaviors; inability to focus; being easily startled; hypervigilance,

- 5) Extreme fatigue/always tired,
- 6) Negative thinking and a tendency to become upset about everything,
- 7) Strained relationships with family and friends,
- 8) Compromised parenting and
- Doubts about whether the world is a safe place.¹⁷

Trauma affects everyone in a different way. It is important for attorneys to be mindful and identify when they begin to show symptoms. If an attorney finds they have been significantly affected by a client's trauma, they have options for how to proceed ethically.

DECLINING OR TERMINATING REPRESENTATION

"Acknowledge your own issues and biases, face them, and set them aside. If you are unable to do that, you must let someone else handle the case." – Judge Deborah C. Shallcross

In the legal profession, trauma can affect an attorney's ability to effectively and zealously advocate for a client.¹⁸ By failing to walk away from a case that significantly affects their mental health, an attorney may be in violation of the Oklahoma Model Rules of Professional Conduct.¹⁹

Such issues are addressed in the rules, beginning with the preamble.

Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. . . Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.²⁰

The preamble suggests that particularly challenging ethical dilemmas can arise that can affect an attorney's ability to effectively represent a client. More interestingly, the preamble states that an attorney must not only use professional judgment, but also moral judgment. Even so, what does that really mean concerning trauma and its effect on attorneys?

The rules go on to discuss further in Rule 1.16 Declining or Terminating Representation.

A lawyer may withdraw from representing a client if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement, or other good cause for withdrawal exists.²¹

As discussed, trauma can significantly affect clients and attorneys.²² If an attorney finds themselves struggling with symptoms of trauma, they should take time to determine if it will continue to impact their ability to effectively advocate on their client's behalf.23 For example, in the medical profession, some hospitals have guidelines that prohibit doctors from treating or operating on family members because emotions can cloud professional judgement.²⁴ Accordingly, if it is likely that an attorney's judgment will be hindered, they should sincerely consider stepping aside, in accordance with the model rules.

Initially, it may be easier for an attorney to attempt to endure whatever it is that they are experiencing, but as human beings, they need to take a step back and determine the repercussions likely to affect the client, but also themselves.²⁵ By not declining or terminating representation when a case has had a profound negative effect on the attorney's mental health, the attorney may find themselves in violation of the model rules.

ETHICAL DILEMMAS INVOLVING ATTORNEY WELL-BEING CONFIDENTIALITY

"You can't talk to anyone. Sorry, but that's what you signed up for when you became an attorney." – Anonymous

The above statement is something that is being told to aspiring attorneys before they even step foot into the practice of law. It is often argued, and sincerely believed, that attorneys owe an ethical duty to their clients to maintain confidentiality at all costs. After all, attorneys must abide by their ethical duty, otherwise they could be sanctioned, or even worse, disbarred. Imagine an attorney who just represented a domestic violence victim. The attorney advocated for their client and obtained both a protective order against the client's spouse and emergency custody of their children. Soon after, the spouse murders the client. If the attorney finds themselves significantly affected by this event to the point that it seeps into their other work, even their personal life, what course of action does the profession suggest the attorney take?

From speaking with those in the legal field, the general belief is that they are unable to seek therapy to address traumatic events independent from the bar because "the records could be subpoenaed and client confidentiality would be breached." Another way to state this is to say that attorneys who find themselves struggling with the effects of having been exposed to disturbing material or events is that they will endure punishment for allegedly "breaching client confidentiality." This is simply not true.

OBA Ethics Counsel Joseph Balkenbush said, "As attorneys, we have a duty to protect our clients, but we also have a duty to protect ourselves and our well-being. If a case is one that has deeply affected you on professional or moral level, Rule 1.16 of the ethics rules allows you to withdraw from representation. You can't be the best lawyer you can be, unless you take the best care of yourself."

Situations where an attorney's records would *actually* be subpoenaed by the court are exceedingly rare. This belief simply is not based on reality and creates yet another barrier surrounding the stigma of addressing mental health. The perception that closely follows the idea that attorneys are unable to seek therapy and speak about work-related topics harms the profession more than it protects it. It is of paramount importance that attorneys balance their ethical



obligation with an understanding of also serving the greater public good, which includes taking care of oneself and one another.²⁶ Though it is important to err on the side of caution when interpreting the model rules, it is equally important to interpret the rules with common sense.

If an attorney feels as though they have been affected by trauma, one solution is to call the OBA's Lawyers Helping Lawyers hotline at 800-364-7886. The hotline is staffed 24/7 by a licensed mental health professional. You might want to take advantage of up to six hours of free counseling with someone in your area, and the service is strictly confidential. The phone call to the hotline is the first step. Next, the ethics counsel can provide confidential advice regarding the implications trauma has on effective representation and whether an attorney may disclose particular information to a medical professional. Contact Joe Balkenbush at 405-416-7055 or ethicscounsel@okbar.org.

CONCLUSION

The dedication and intellectual pursuit that the practice of law demands is no small task; however, it is just as important to recognize that the practice of law requires that those within it take the steps necessary to protect themselves to not only ensure that the clients' best interests can be met with effective advocacy, but to also ensure one's own sustainability within the profession. Being aware of secondary trauma and how it can affect an attorney's mental health can begin the conversation within the legal community so that attorneys impacted by trauma no longer feel isolated or the need to leave the profession entirely. It is important for attorneys to remember that being affected by a client's case does not make them weak, it makes them human.

ABOUT THE AUTHORS

April Merrill is the lead attorney for Medical-Legal Partnership Initiatives for Legal Aid Services of Oklahoma Inc. She currently serves as a board member of the Community Service Council. She enjoys teaching for the Tulsa Community College Paralegal Program. Ms. Merrill is 2010 graduate of the TU College of Law. She previously served as a senior fellow with the Charles and Lynn Schusterman Family Foundation managing the Child Advocacy portfolio.

Sarah Young is a second-year law student at the TU College of Law. She is an Albert Schweitzer Fellow and CASA volunteer. She previously worked in special education as a teacher and consultant. She is a graduate of Northeastern State University and Cameron University.

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ETHICS & PROFESSIONAL RESPONSIBILITY

Attorneys Are Responsible for Actions of All Employees

By Joseph Balkenbush

THE OKLAHOMA RULES OF PROFESSIONAL CONDUCT (ORPC) mandate that attorneys are responsible for the conduct of all persons in their employ.¹ That includes not only attorneys, but also all legal support staff including legal assistants, receptionists, expert witnesses and perhaps even the janitorial staff.

ORPC Rule 5.1 - Responsibilities of Partners, Managers and Supervisory Lawyers states in subsection (a):

A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

This section of the rule usually presents few issues because all lawyers have been well-educated regarding ethics and professional responsibility and are particularly mindful of same. Subsections (b) and (c) of Rule 5.1² provide further clarification regarding the supervising lawyer's obligations.

Next, ORPC Rule 5.2 -Responsibilities of a Subordinate Lawyer subsections (a) and (b) states:

- (a) A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty."³

If, after reviewing subsection (b), you're wondering if it was purposefully drafted to be vague to allow broad interpretation, the obvious answer is yes. An attorney cannot "stick their head in the sand" if they are instructed to take action that violates the ORPC. If a supervising attorney and subordinate attorney disagree regarding whether a certain act is in conflict with the rules, so long as the supervising attorney's resolution of the issue is reasonable, logical and sensible, the subordinate attorney will not be prosecuted when they follow the direction of the supervising attorney. The comments to Rule 5.2 provide a

well-stated explanation of this section of the rule.

SUPERVISING NONLAWYERS

Most lawyers are aware of the responsibility to manage and supervise subordinate lawyers, but for some reason many are not equally concerned with their responsibility for the acts of nonlawyer assistants. ORPC Rule 5.3 - Responsibilities Regarding Nonlawyer Assistants sets forth our responsibilities.⁴

In an article in the January 2018 ABA Journal titled "Supervision is the key to effective employment of paralegals," author David L. Hudson Jr. wrote "the use of legal assistants and by attorneys continues to grow, mainly due to the cost of an attorney compared to the cost of a paralegal. In Missouri v. Jenkins, a 1989 school desegregation case, the U.S. Supreme Court stated that paralegals provide a "cost-effective delivery of legal services."5 Those of us who employ them are well aware of their value to the efficient operation of a law practice. There are so many things they can do to ease the never-ending list of things that we attorney have to get done.



As Hudson notes, because of the supervisory role imposed by Rule 5.3, "attorneys must be aware of ethical issues that can and do arise from the use of paralegals and legal assistants." This rule contains the same language that Rules 5.1 and 5.2 contain, that lawyers "shall make reasonable efforts to ensure" those working under them comply with the "professional obligations of the lawyer."

The rule goes on to state a lawyer who has supervisory authority over nonlawyers "shall be responsible for such conduct of a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer."

As usual, the comments to the rules provide a clearer explanation. Comment 2 to Rule 5.3 states: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must assure that such assistants receive appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

There are so many things lawyers have to do well to run an efficient, ethical and profitable law practice. A legal support staff member can often perform a task more quickly and efficiently than a lawyer can, but attorneys must be careful to not delegate too much work to them, nor instruct them to perform tasks they should not be doing.

In his article, Hudson went on to say, "Some experts believe that this is the No. 1 ethical concern for attorneys, *i.e.*, maintaining adequate supervision over nonlawyer employees." Hudson also quotes Keith A. Call, who has written about ethical issues involving paralegals in the *Utah Bar Journal*. Call said that "the biggest minefield I see is overworked or inattentive lawyers failing to provide adequate direction and supervision, leaving the paralegal to figure things out on [their] own...

As is evident from a reading of ORPC Rule 5.3, attorneys are responsible for nonlawyer employee violating client confidentiality. Rule 1.6 - Confidentiality of Information, and the duty of confidentiality, must be clearly communicated to all legal support staff.

All too often, overworked or careless lawyers can be tempted to dump too much responsibility on the paralegal and fail to follow up with adequate supervision." That can easily result in a paralegal being overworked and overwhelmed and not paying as much attention to detail as they usually would.

SPECIFIC CONCERNS

There is also the possibility that we place so much responsibility on our legal assistant that they walk a fine line between doing their job and practicing law. Many paralegals have been working with the same attorney for a long time and have acquired by a sort of osmosis a significant amount of knowledge of the area of law their attorney practices. Sometimes, in an effort to help the attorney and/ or client, they improperly give the client the advice they have heard the attorney give in what they believe is a similar circumstance, only to find that an "and" or "but" changed the answer.

One area lawyers should *always* discuss with a legal assistant is the absolute necessity of maintaining

client confidentiality. Not doing so can be a reason for termination of employment. As is evident from a reading of ORPC Rule 5.3, attorneys are responsible for nonlawyer employee violating client confidentiality. Rule 1.6 -Confidentiality of Information, and the duty of confidentiality, must be clearly communicated to all legal support staff.

MAKE REASONABLE EFFORTS

Having said all that, attorneys can rely on a key phrase contained in the rules, that is to "make reasonable efforts." That can be accomplished as easily as having firm policies and procedures in place which require that all employees be familiar with the ORPC. It is also advisable that each new employee be provided with a copy of the ORPC and to have a firm meeting annually in which the ORPC are discussed.

ABOUT THE AUTHOR

Joe Balkenbush is OBA ethics counsel. He graduated with his J.D. from the OCU School of Law in 1986, has been in private practice and was a district court judge before he took the position of ethics counsel. Have an ethics question? Get tips, FAQ answers, ethics opinions and more online at www.okbar.org/ec or contact Mr. Balkenbush at ethicscounsel@ okbar.org or 405-416-7055; 800-522-8065. All inquiries are confidential per Oklahoma law.

ENDNOTES

1. ORPC Rule 5.1(a), www.oscn.net/ applications/oscn/DeliverDocument. asp?CiteID=448960.

2. ORPC Rule 5.1(b), (c), www.oscn. net/applications/oscn/DeliverDocument. asp?CiteID=448960.

3. ORPC Rule 5.2, www.oscn.net/ applications/oscn/DeliverDocument. asp?CiteID=73713.

4. ORPC Rule 5.3, www.oscn.net/ applications/oscn/deliverdocument.asp?=413000. 5. David L. Hudson Jr., "Supervision is key to effective employment of paralegals," ABA Journal.

January 2018, www.abajournal.com/magazine/ article/assistant_supervision_employment_paralegals.





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NOTICE

DESTRUCTION OF RECORDS

Pursuant to Court Order SCBD No. 3159, the Board of Bar Examiners will destroy the admission applications of persons admitted to practice in Oklahoma after 3 years from date of admission.

Those persons admitted to practice during **2014** who desire to obtain their original application may do so by submitting a written request and \$25 processing fee. **Bar exam scores are not included.** Requests must be received by **Dec. 27, 2018.**

Please include your name, OBA number, mailing address, date of admission, and daytime phone in the written request. Enclose a check for \$25, payable to Oklahoma Board of Bar Examiners.

Mail to: Oklahoma Board of Bar Examiners, P.O. Box 53036, Oklahoma City, OK 73152.



PHOTO HIGHLIGHTS



Seated from left Jessi Hesami, Deb Holt and Renee DeMoss. Standing from left Candice Pace, Alan Souter and Kara Smith

Below: Rev. Nathan Hedge accepts the Liberty Bell Award from OBA President Kim Hays.



Roy Tucker and Molly Aspan enjoy the President's Reception.



Lisa L. Pittman presents "Getting Out of the Weeds: What You Need to Know About the New World of Marijuana Regulation."





Top left: *Mark Lanterman addresses Annual Luncheon attendees.*

Top right: *Luke Barteaux receives a President's Award from President Kim Hays.*

Right: Betty Kennemer accepts the Neil E. Bogan Professionalism Award on behalf of her late husband Vic Kennemer. She is surrounded by Vic's fellow Seminole County colleagues.



OBA President Kim Hays recites the Pledge of Allegiance at the General Assembly.

Below: Former Journal Record editor Ted Strueli addresses attendees at the Delegates Breakfast.



AHOM/

1

OBA President Kim Hays presents the Outstanding Service to the Public Award to Allen Pease and Miss Chance.

OBA President-Elect Chuck Chesnut addresses attendees at the House of Delegates.



Kim and Alan's House Party. Above: Nathan Richter and Dylan

Erwin get in character at Kim and Alan's House Party.

Left: Alissa and Andrew Hutter dress up in their best '80s attire.

More photos are available on the OBA Facebook page at www.facebook.com/ okbarassociation.





HOUSE OF DELEGATES ACTIONS

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* October 2018 issue.

Title Examination Standards

The Oklahoma Title Examinations Standards revisions and additions published in OBJ 89 1395 (Oct. 13, 2018) issue were approved in the proposed form. The revisions and additions are effective immediately.

2019 OBA Officers and New Board Members

<u>Officers</u> President Charles W. "Chuck" Chesnut, *Miami*

President-Elect Susan B. Shields, *Oklahoma City*

Vice President Lane R. Neal, *Oklahoma City* <u>Board of Governors</u> Supreme Court Judicial District Three David T. McKenzie, *Oklahoma City*

Supreme Court Judicial District Four Tim E. DeClerck, *Enid*

Supreme Court Judicial District Five Andrew E. Hutter, *Norman*

Member At Large Miles T. Pringle, *Oklahoma City*

Join A Committee

The OBA encourages you to join one of its 24 committees that cover a diverse range of topics that impact attorneys in their everyday practice. The opportunity to join and participate in the work of committees is among the most effective and rewarding benefits of membership.

Here are several reasons why: it increases your knowledge in areas of interest to you; joining a committee helps build relationships with some of the OBA's most talented professionals; and you're guaranteed to make new friends. You have the chance to contribute to the growth and future success of the OBA. I've been a member of many committees and have experienced all of these benefits.

I understand that it's hard to leave the office for meetings, but now you don't have to. New remote technology called BlueJeans makes geography irrelevant. You can attend right in your office; however, in-person committee involvement is a good reason to get out of town. An occasional, professional break can do wonders for your mental health and energy – and builds your network, which can be vital to your practice.

Sign up today; it's easy. Option #1 – online at www.okbar.org, click on the "2019 Committee Signup" button. Options #2 & #3 – fill out this form and mail or fax as set forth below. I'll be making appointments soon, so please sign up by Dec. 21.

husk

Charles W. "Chuck" Chesnut, President-Elect

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

Please Type or Print				
Name				
	OBA #			
Address				
City				_ State/Zip
Fax	Email			
Committee Name				
1st Choice				
2nd Choice				
3rd Choice				
Have you ever served on this committee? If so, when? How long?				
1st Choice	□Yes	□No		
2nd Choice	□Yes	□No		
3rd Choice	□Yes	□No		
Please assign me to one two or three committees.				
Besides committee work, I am interested in the following area(s):				

Mail: Chuck Chesnut, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152 Fax: (405) 416-7001

Standing Committees

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

Supreme Court Makes Changes to Mandatory Continuing Legal Education Rules

By John Morris Williams

ANDATORY CONTINUING Legal Education (MCLE) and the MCLE Commission came into being in Oklahoma in 1986 by order of the Oklahoma Supreme Court. Beverly Petry Lewis began working at the OBA as MCLE administrator on April 1, 1986. She remains in that position today and is the most tenured member of the OBA staff. At that time the OBA had about 9,000 members and 1,100 of them were not in compliance at the end of the year. Today, with over 18,000 members, we usually have around 200 members who have compliance issues when we get to the "show cause" deadline. These numbers vary from year to year, but, overall with members having online access to their MCLE records and a compliance/noncompliance communication before the end of the year, there is little reason for members to not know the status of their MCLE compliance before the Dec. 31 deadline.

Beginning in 2019, OBA members will be able to get all 12 hours of CLE credit online due to a recent amendment of the MCLE Rules by the Oklahoma Supreme Court. Although members could technically get all 12 hours online in the past by subscribing to a "live" program for 6 hours, the live versus archived distinction is no longer of substance as far as getting credit is concerned. *This rule change does not go in effect until the 2019 compliance year*. Members for 2018 will still need at least 6 hours of "live" CLE credit to comply.

Hopefully, this change will allow OBA members who wait until the end of the year to get their credit to select CLE programs that are more having to come to the bar center to view videos. Overall, we hope this will provide better member service and better learning opportunities for OBA members.

Soon after I became executive director we ceased the process of mailing out thousands of MCLE reporting documents and requiring members to fill them out and mail them back to us. Our system shows your credit if you have

Beginning in 2019, OBA members will be able to get all 12 hours of CLE credit online due to a recent amendment of the MCLE Rules by the Oklahoma Supreme Court.

meaningful to their practice area rather than attending programs for credit that may have no relevance to their practice, solely for obtaining credit. For our few "frequent flyers" who perpetually fail to meet the compliance deadlines, they too can obtain late credit online rather than attended a program where the provider is approved and submits an attendance list to us. We have over 800 approved providers and review over 10,000 programs each year, so it is a big task. With a staff of only three, we do what some bar associations with half our
membership do with five or six staff members. Thanks to a very dedicated and hardworking staff, no bar in the country does what we do in MCLE with our low staffing ratios.

The changes in online credit for 2019 will not change the workload in the MCLE Department. If anything, it may make it more difficult due to the large number of online CLE providers. I urge you to check your credit online before calling our thinly stretched staff to verify credit. We love hearing from you, but at the end of the year the MCLE Department receives hundreds of calls. Many of those calls are to verify credit we have already provided in the compliance report or to inquire about credit posted in the member's online account. If you have not signed into your online MCLE account, you may do so by going to www.okmcle.org or simply click the MCLE Information link on the homepage at www.okbar.org.

The OBA does provide a wide array of continuing legal education programs through our CLE Department. As far as MCLE is concerned, the OBA CLE Department is just another provider with a totally separate staff and mission. While we appreciate you obtaining your CLE credit from the OBA, it is certainly not required as is evident by the extraordinary number of CLE providers from which OBA members are obtaining credit. The increase in free programming, plus the large number of CLE sellers in the market, have substantially decreased revenues for the OBA CLE Department.

The request for the change to allow total online credit was about member service and learning experiences and not about CLE sales. While I personally believe in-person learning experiences and the opportunity to interact with my peers is the best learning environment for me, I understand that others can have good learning experiences online. For them, 2019 is their year.

(pha Mari William

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

Oklahoma Bar Intellidrafts

Automated Document Assembly for Oklahoma Lawyers By Jim Calloway

"HIS IS BIG.

At the Annual Meeting the Oklahoma Bar Association announced Oklahoma Bar Intellidrafts, an automated document assembly service for OBA members. You can enjoy a free trial until the end of 2018 by going to oba.intellidrafts.com.

I've given many presentations on automated document assembly, both at ABA TECHSHOW and the OBA Solo & Small Firm Conference. It has been interesting to share the tools that a lawyer can use to automate their own documents. Some firms have automated some documents and processes, but for many lawyers, the quite understandable response (even if not verbalized) reminded me of *Star Trek's* Dr. McCoy, "I'm a lawyer, not a computer programmer!"

Oklahoma Bar Intellidrafts is definitely a tool for real lawyers, not computer programmers. It is extremely easy to use.

Before we discuss the details of this new service, let's discuss forms, templates and document assembly.

Over the years, lawyers have taken offense at comments from outsiders that legal work is often just filling in the blanks on legal forms.

A lawyer once cited rock legend Bob Seger, saying that, while a lawyer drafting a document for a client might operate from one or more forms, the most important thing was to know "what to leave in, what to leave out." Almost every lawyer has seen a bad result from someone who got their hands on a legal form and completed it improperly.

For new lawyers moving from law school into private practice, having access to checklists, practice aids and, yes, forms are all valuable resources for them that also benefit their clients.

But I'd argue that for every lawyer, using automated document assembly to prepare routine legal documents is a better process:

- The possibility of mistakes is lessened compared to using copy and paste many times or other manual use of forms.
- The cost to the law firm of preparing the document is less and hopefully some of the savings can be passed along to the client.
- To the extent lawyers spend less time drafting and proofreading (and proofreading again) documents, they have more time available to dedicate to legal strategy, legal advice and other more valuable professional client services.

I've been exploring the possibilities of automated document assembly for the legal profession for years. Lawyers of a certain age will remember a WordPerfect macro set called the Grande Macros created by Doug Loudenback. It turns out that Doug and I weren't the only ones in Oklahoma thinking about this.

So was Oklahoma attorney Gabe Bass, founder of Intellidrafts.

"The Intellidrafts platform is the result of me scratching my own itch," Mr. Bass said. "From the time I began practicing law 15 years ago, I've wanted a product to enable me and others in my firm to more efficiently draft high-quality documents for our clients. Any time I drafted a document, whether it was an engagement letter, probate pleading, discovery requests or real estate purchase contract, I was constantly frustrated at how inefficient and error-prone the process could be. I knew there were so many ways to improve the process at every step – from finding a reliable form, to customizing the document for the particular circumstances, to saving and improving the form for future use.

"Over the years," he continued, "I tried many different products. While some products were better than others, I never found a solution that fully achieved my vision for what could be built to serve lawyers like me by marrying high-quality forms content with modern document assembly technology. I finally came to the conclusion that if I wanted this product to exist, I was going to have to make it happen. What started out as a project to build something for my own use has grown into a turnkey solution that will enable all Oklahoma lawyers to have access to high-quality, technology-enabled forms. I couldn't be more thrilled that the OBA has joined with Intellidrafts to offer this product to every Oklahoma lawyer who wants to draft better documents, faster."

Allow me to repeat myself. This is big. It is a game-changer for many lawyers, particularly solo and small firm lawyers. I think it is awesome, but more importantly, you have a chance to try it for free and decide for yourself for the remainder of 2018. It will then be available as an online subscription service at the cost of \$300 per year. We hope to add more templates in the future, perhaps with the assistance of some of the other subject matter experts in Oklahoma.

As technology advances, it impacts virtually all types of business operations, including the way law is practiced. It is my opinion that we are going to continue to see more attorneys charging fixed fees for certain tasks or a blend of hourly billing for certain parts of the representation. Professional responsibility for a client's matter is an important value even as changes in business technology often decrease the time required to do certain tasks.

Sometimes a lawyer might use their prior work as a form

or template. There are some inherent pitfalls in that practice. That last project might have something added that is not suitable to the current one or something removed that is. I wrote about the importance of beginning with a great template in *Law Practice Magazine* last year in a column called "Implementing the Gold Standard."¹

The result generated by Oklahoma Bar Intellidrafts is contained in a Word document. So, it is simple to make whatever changes one wishes. I hope you give Oklahoma Bar Intellidrafts a try.

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

ENDNOTE

1. Law Practice Magazine, May/June 2017, dashboard.mazsystems.com/webreader/49127?page=74.

FREE ACCESS TO JUSTICE RESOURCES ARE AVAILABLE

The Oklahoma Summit on Access to Justice in October drew a substantial audience and great reviews. This is a significant subject that impacts all of us in the legal profession. If you missed the summit, here are ways you can still learn about this subject matter.

Legal Talk Network covered the summit and created an online resource of podcast interviews with the speakers at the summit. Included among these podcasts, which were guest hosted by OBA Executive Director John Morris Williams, were Oklahoma Supreme Court Chief Justice Douglas Combs, OBA President Kimberly Hays and former Oklahoma Attorney General Mike Turpen. The podcast and pictures from the summit are available at legaltalknetwork. com/blog/2018/10/oklahoma-access-to-justice-summit/.

The summit webpage (www.okbar.org/a2jsummit/) has a link to download the written materials that were provided to all attendees. Any OBA member is welcome to download these materials. Included in the materials is OBA MAP Director Jim Calloway's 100-plus page guide on "Delivering Limited Scope Services Effectively and Safely," which relates to practicing in view of Oklahoma District Court Rule 33 on limited scope services.

OKLAHOMA BAR INTELLI DRAFTS

Automated document assembly for Oklahoma lawyers using Oklahoma-based forms

Intellidrafts templates enable you to produce sophisticated and current legal documents. Intellidrafts employs a team of technologists and legal professionals committed to continuous improvement of the template library and prompt updates to address changes in the law and best practices.

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Meeting Summary

The Oklahoma Bar Association Board of Governors met Oct. 12 at the Oklahoma Bar Center in Oklahoma City.

REPORT OF THE PRESIDENT

President Hays reported she attended the Payne County Bar Association luncheon following the board meeting, Southern Conference of Bar Presidents in New Orleans including related receptions and presentations, Oklahoma Summit on Access to Justice at which she delivered opening welcome remarks and the OBA Family Law Section meeting. She spoke at the swearing in of new admittees, worked on Annual Meeting planning, coordinated the selection of Mona Salyer Lambird Spotlight Award recipients and presented the awards at the Women in Law Conference.

REPORT OF THE VICE PRESIDENT

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

REPORT OF THE PRESIDENT-ELECT

President-Elect Chesnut reported he attended the OAMIC Board of Directors meeting, OBF Speakeasy event, Budget Committee meeting, Ottawa County Bar Association monthly meeting and Southern Conference of Bar Presidents. He also worked on appointments to the Forensic Review Board.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the OBF/ YLD Putting on the Ritz event, YLD board meeting, new admittee swearing-in ceremonies, Southern Conference of Bar Presidents meeting, Legislative Monitoring Committee meeting, Oklahoma Summit on Access to Justice, budget hearing, monthly staff celebration and meeting with a potential new vendor for network administration.

REPORT OF THE PAST PRESIDENT

Past President Thomas reported she attended the luncheon hosted by the Payne County Bar Association, State Bar of Texas Board of Directors meeting, Southern Conference of Bar Presidents meeting, Children's Court Improvement Program, law library board meeting, County Courthouse Building Commission meeting and community sentencing meeting.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Muskogee County Bar Association meeting and OBA Budget Committee meeting. **Governor Coyle** reported he attended the Oklahoma County Bar Association meeting. **Governor Fields** reported he attended the Pittsburg County Bar Association meeting and Legislative Monitoring Committee meeting. **Governor**

Hermanson reported he presided at the Noble County Bar Association meeting, spoke at the Marsy's Law Forum for Oklahoma Watch at the Oklahoma History Center in Oklahoma City, presented an award to the outstanding prosecutor at the Domestic Violence Awareness Awards ceremony at the Oklahoma Capitol and spoke to the Tonkawa Lions Club on state questions. He attended the OBA Legislative Monitoring Committee meeting and funeral for District Attorney Rob Burris. Governor Hicks reported he attended the Tulsa County Bar Association board meeting and retreat in addition to the OBA Access to Justice Committee meeting. Governor Hutter reported she attended the Payne County luncheon following the September board meeting in addition to the Cleveland County Bar Association monthly meeting and executive meeting. Governor Kee reported he contacted all the county bar presidents in his district encouraging them to contact their members and encourage them to attend the OBA Annual Meeting. Governor Morton reported he attended the Legislative Monitoring Committee meeting. Governor Williams reported he attended the Oklahoma Summit on Access to Justice.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Richter reported he attended the Canadian County Bar Association meeting, OBA Budget Committee meeting, OBF Speakeasy event and Legislative Monitoring Committee meeting. He chaired the September YLD board meeting and spoke at the swearing-in ceremonies for new admittees.

REPORT OF THE GENERAL COUNSEL

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

PROPOSED AMENDMENTS TO INDIAN LAW SECTION BYLAWS

Section Chairperson Valery Giebel reviewed the changes proposed to the section bylaws. The board approved the bylaws amendments.

PROPOSED AMENDMENTS TO THE RULES FOR THE COMMITTEE ON JUDICIAL ELECTIONS

David Swank, Bench and Bar Committee co-chair, said the committee reconsidered proposed amendments to the rules presented at the May board meeting. Revisions to the original amendments were being presented today. He reviewed the changes, and questions were asked. The board approved the amendments and to submit them to the Supreme Court for its consideration.

FORENSIC REVIEW BOARD APPOINTMENT

The board approved President-Elect Chesnut's recommendations to submit the names of Michael D. Segler, Yukon; Christopher D. Jones, Durant; and Jan P. Gaddis, Duncan; to Gov. Fallin for her consideration and selection of one candidate, who will be submitted for Senate confirmation during the upcoming legislative session. The term will expire 12/31/2024.

THE NEXT GENERATION OF THE OBA FORM BOOK

Management Assistance Program Director Calloway said the responsibility for the OBA form book has been transferred to his department. He explained forms have evolved to automated document assembly, which is within his expertise. The vision is that the form book would be automated and made available to OBA members for a monthly fee estimated to be \$25-30. All routine documents will be able to be executed within 5-6 minutes. It is hoped availability of the new product could be announced at Annual Meeting. Oklahoma City attorney Gabe Bass has developed the product, and negotiations are still underway. He said other options were considered but eliminated because of cost.

The service will be made available to only OBA members. This product would be a revenue stream for the OBA. Mr. Bass demonstrated the product, which his firm has been using internally. Discussion followed.

Executive Director Williams suggested discussions should be held with the OBA Family Law Section, which sells a practice manual that includes forms. As per the Policy for **OBA** Involvement with Private Vendors and Membership Benefits, the OBA's relationship with Mr. Bass would be category #1 – an endorsed private vendor offering a product that benefits members. The board authorized the project to move forward, but without any family law forms until discussions with the section take place. Board members encouraged more collaboration with sections on the forms being included.

OKLAHOMA BAR FOUNDATION APPOINTMENT

The board approved President Hays' appointment of Kaleb Hennigh, Enid, to the Oklahoma Bar Foundation Board of Trustees. His term will expire 12/31/2019.

The vision is that the form book would be automated and made available to OBA members for a monthly fee estimated to be \$25-30. All routine documents will be able to be executed within 5-6 minutes.

RATIFICATION OF EMAIL VOTE ON AMENDMENTS TO RULES OF THE SUPREME COURT FOR MCLE

The board voted to ratify the email vote approving an additional amendment to Rule 1 and to the Application to Amend Rule 1 of the Rules of the Supreme Court for Mandatory Continuing Legal Education.

ANNUAL MEETING

President Hays reported Josh Lee of Vinita, a candidate for the Board of Governors at large position, has withdrawn his nominating petition resulting in the election of Miles Pringle of Oklahoma City. She urged board members to email a photograph of themselves from the 1980s to Laura Stone to be used in a slide show at the Thursday night House Party event at Annual Meeting.

OKLAHO

OFFICIAL DIRECTORY OF LINE OKLAHONA BAR ASSOCIATION Board members were encouraged to attend the medical marijuana CLE seminar on the first day of the Annual Meeting.

2019 PROPOSED BUDGET

President-Elect Chesnut reviewed the budget consideration process. Administration Director Combs reviewed highlights from the budget executive overview he prepared. He said dues revenue is expected to increase due to the change in classification of senior lawyers still practicing. Expenses have been significantly reduced by converting bar journal court issues to electronic delivery. The board approved the proposed budget.

BOARD COMMITTEE LIAISON APPOINTMENTS

President-Elect Chestnut asked returning board members to contact him if they want to make changes to their assigned committees.

NEXT MEETING

The Board of Governors met in November and December. Summaries of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 3 p.m. Thursday, Jan. 17, 2019, at the Oklahoma Bar Center in Oklahoma City.

LOOKING FOR SOMETHING? CHECK YOUR BLUE BOOK!

It's all in here!

AHOMA VERS Conference Control of courts. professional associations including OBA committees and sections. To order a print copy. Call 800-447-5375 ext. 2 or visit www.legaldirectories.com. A free digital version is available at tinyurl.com/2018oklegaldirectory.

BAR FOUNDATION NEWS

Scholarship Recipient Highlights

FELLOWS SCHOLARSHIP



Liz Stevens

Hometown:	Norman
Law School:	OU College of Law
Graduation Year:	2019
What field of law are you studying:	International Human Rights
Undergraduate:	OU
Undergrad Major:	European History
Undergrad Graduation Year:	2011

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

I want to find a job in the international human rights field that allows me to travel around the world. I am very interested in women's reproductive rights and would like to be able to work in that arena in developing countries. Personally, I would like to travel to 100 countries by the time I turn 50 and eventually visit every country in the world.

What made you decide to attend law school?

Prior to attending law school, I lived in both Rwanda and Russia – two countries that have less than perfect human rights records. I wanted to have a career where I could help people in counties like those and getting a law degree seemed like the best option to facilitate that goal.

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

The continued discussions and restrictions on abortion and women's right to make decisions about their own bodies, especially considering *Roe v. Wade* was decided over 40 years ago.

What historical figure inspires you and why?

Eleanor Roosevelt inspires me because of her independence and ability to change the world. She made a huge impact on human rights and women's rights in a time when women were still considered second-class citizens.

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

The most important thing I have learned in law school is how to think critically.



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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



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

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Outstanding Efforts Recognized

By Nathan D. Richter

HESTNUTS ROASTING ON

an open fire? Jack Frost nipping at your nose? The holiday season is here, and many now begin to reflect on the year's successes and failures and plan to make next year better than the last. My prayer is that each of you find peace with the events of the past year, hope for the opportunity of next year – and strength and resolve to make it happen.

As I conclude my time as YLD chair, the process of reflection is littered with mixed emotions. While I am relieved to regain a significant portion of my time and focus, there is no doubt I will miss the job – particularly the daily interaction with the OBA and my fellow young lawyers. It has been a wonderful experience. I have learned from some of the best, forged life-long friendships and managed to avoid steering the organization into dismay and turmoil! Sometimes what you accomplish pales in comparison to what you avoided. Ha! Seriously, by all accounts, 2018 was a great success for the YLD.

At this year's Annual Meeting, several YLD directors, friends and fellows were honored for their outstanding work this year. The YLD Officer of the Year for 2018 was April Moaning, who served as the 2018 YLD secretary. April thrived this year not only in promoting diversity in the law by visiting local high schools and facilitating a job fair but also was the key cog in the wheel of information keeping directors and members informed of YLD events, meetings and service projects.

The YLD awarded two Outstanding Board Member of the Year Awards to Tulsa's Brad Brown and Oklahoma City's Dylan Erwin. Brad distinguished himself as the unofficial ambassador of the YLD promoting the organization to young lawyers and law students in the Tulsa area. His zeal for the YLD is infectious and interest in the YLD soared as a result of his efforts. Dylan was this year's community service project czar. He single-handedly accepted the responsibility of organizing and facilitating two Wills for Heroes events in Broken



Visiting at the Annual Meeting President's Reception are (from left) Brandi Nowakowski, Bryon Will, Nathan Richter, Brittany Byers, Brian Morton and Bobby Faulk.



YLD members enjoying the '80s-themed Kim & Alan's House Party event at the Annual Meeting pose for a group photo.

Arrow and Tulsa's Berryhill community. After the tragic loss of a first responder, an event was requested, and Dylan seized the opportunity. Through his efforts, the Wills for Heroes events will continue in the future with 2019 events already in the planning stages. To April, Brad and Dylan, congratulations on an outstanding year of service to your community and to the YLD. I am forever indebted to you for your leadership and vision. Thank you.

The YLD also acknowledged Candice Pace, the Oklahoma Bar Foundation's director of development and communications, as this year's Friend of the YLD. The foundation and the YLD partnered on several events this year including the Solo & Small Firm Conference, the OBF Speakeasy event to recognize OBF scholarship recipients and the Annual Meeting. These relationships are critical to the sustainability of both outstanding organizations, and the YLD is honored and humbled by Candice's loyalty and friendship. Cheers, Candice, to the future of the Oklahoma Bar Foundation and the Young Lawyers Division.

The YLD Fellow's Award winner needs no introduction as under his steadfast leadership for the last decade the Oklahoma Bar Association has excelled. John Morris Williams has selflessly and gracefully guided the organization through rough waters and has poured into the YLD his wisdom and his vision for the future. If a leader's success is measured by the legacy of leadership he or she leaves behind, Mr. Williams is a legend. The YLD is stronger because of his influence, his guidance and his patience, and we are forever thankful for the sacrifices he has made over the years to the success of the YLD and the OBA. Thank you, John.

The YLD's future is bright as Brandi Nowakowski prepares to take the helm. I am solemn as I leave behind the YLD but am forever grateful to the OBA for the opportunity I have been given to serve the YLD. Thank you, and God bless!

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

SPEED UP OKLAHOMA BAR JOURNAL SEARCH WITH HEINONLINE



HeinOnline is an OBA member benefit that allows bar members to access and research archived *Oklahoma Bar Journal* issues dating back to 1930. No more searching issue by issue or

waiting until December for the bar journal indexes to be printed.

Users can view, print or save as a PDF any article or an entire issue, as well as use the easy search tools to find the article, topic or author desired.

The easiest way to access HeinOnline is by going to ams.okbar.org. Enter your bar number and password. Once logged in, your OBA profile page will be displayed. Click the red "HeinOnline" link and then the *Oklahoma Bar Journal* Collection link.

LAW PRACTICE TIPS ARTICLE CORRECTION

In the November Law Practice Tips column titled "Ten Tips From the OBA Opening Your Law Practice Program" it was stated that the OBA Family Law Section Practice Manual is available for \$100 per year. The price for the manual has increased to \$250 per year.

The OBA Family Law Section Practice Manual is a collaborative work by local attorneys for local attorneys entering or practicing family law. All funds are allocated for advancing the practice of family law in the state of Oklahoma. To receive access to the manual, visit flspm.com.

FEB. 2, 2019 – OBA LEGISLATIVE READING DAY

The Oklahoma Legislature reconvenes in February and hundreds of bills will be prefiled. Much of the proposed legislation could affect the administration of justice, and some will undoubtedly affect your practice. Join the OBA Legislative Monitoring Committee at 10 a.m. Saturday, Feb. 2, 2019, at the Oklahoma Bar Center as they identify top bills of interest to the OBA and your practice area. Plus, earn two hours of MCLE credit. Lunch will be provided. RSVP to Debbie Brink at debbieb@okbar.org if you'd like to attend.



MEMBER DUES STATEMENTS AVAILABLE ONLINE

In an effort to save money and cut down on the cost of printing and postage, the OBA Membership Department has posted member dues statements online at ams.okbar.org. As a follow up, a paper statement was mailed around the first of December to those members who have not yet paid. Please help the OBA in this effort by paying your dues today!

Members can pay their dues three different ways. They can pay by credit card online at ams. okbar.org, by calling 405-416-7000 or by mailing a check to the OBA Membership Department, P.O. Box 960101, Oklahoma City, OK 73196. Dues are due Wednesday, Jan. 2, 2019.

MCLE DEADLINE APPROACHING

Dec. 31 is the deadline to earn any remaining CLE credit for 2018 without having to pay a late fee. Not sure how much credit you still need? You can view your MCLE transcripts online at www.okmcle.org. Still need credit? Check out great CLE offerings at www.okbar.org/cle. If you have questions about your credits email mcle@okbar.org.

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday and Tuesday, Dec. 24-25, in observance of Christmas. The bar center will also be closed Tuesday, Jan. 1, 2019, for New Year's Day and Monday, Jan. 21, 2019, in observance of Martin Luther King Jr. Day.

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:

Brent Douglas Berry OBA No. 18013 West Ylla Gosney Law Office 8 S.W. 89th Street, Suite 200 Oklahoma City, OK 73139-8533

David Levi Hanes OBA No. 22580 2853 Ridge Drive Broomfield, CO 80020

Donald Dale Stemple OBA No. 21832 P.O. Box 1716 Amarillo, TX 79105

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

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

ASPIRING WRITERS TAKE NOTE

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

OBA MEMBER RESIGNATIONS

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

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

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

Tomme Jeanne Fent OBA No. 14482 2152 S.E. Beaver Creek Ln. Troutdale, OR 97060-2275

Brian David Malkmus OBA No. 21880 Malkmus Law Firm 305 Park Central West Springfield, MO 65806 Francis Joseph Martin OBA No. 22360 P.O. Box 5722 Glendale, CA 91221

Ashley Elizabeth Norman OBA No. 33319 13 Mills Drive Bella Vista, AR 72714

Jared John Robertson OBA No. 21580 Malkmus Law Firm 305 Park Central West Springfield, MO 65806

Travis Kendall Siegel OBA No. 19572 Siegel Law 6568 Beachview Dr., #109 Rancho Palos Verdes, CA 90275

Michael C. Smith OBA No. 8383 308 Green Hill Dr. Anderson, SC 29621



LHL DISCUSSION GROUP HOSTS JANUARY MEETING

"How to Get Clients" will be the topic of the Jan. 3, 2019, meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to onelife@ plexisgroupe.com are encouraged to ensure there is food for all.

ON THE MOVE

Janet Hendrick and Morgan D. Potts joined Phillips Murrah. Ms. Hendrick will practice employment law in the firm's Dallas office. Ms. Potts will practice energy law in the firm's Oklahoma City office.

Blair Hand and Kymberli Heckenkemper joined Riggs Abney as associates in the firm's Tulsa office. Ms. Hand will practice family law, civil litigation, criminal law, bankruptcy and estate planning. Ms. Heckenkemper will practice civil litigation and criminal law.

Thomas Gayle joined the Tulsabased firm of Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco. Mr. Gayle will practice civil litigation.

Melissa Revell, Emalie Rott and Golden Gore joined McAfee & Taft in the firm's Tulsa office. Ms. Revell will focus her practice on transactional, corporate and regulatory matters. Ms. Rott practices civil litigation and intellectual property law. Ms. Gore will practice in the firm's Litigation Group. Les Bennett Jr. and James N. Posey formed Posey & Bennett PA, located at 3807 N. Asbury Ave., Suite 101, Bethany 73008, and can be reached at 405-789-4611. The firm focuses on probate, estate planning and real estate law.

Cana B. Mize joined the Bartlesville law firm of Robinett King Elias Buhlinger Brown & Kane. Ms. Mize focuses her practice on family law and general civil litigation.

Mackenzie Jacobson joined the Tulsa-based firm of Smakal Munn PC as an associate. Ms. Jacobson previously practiced as an assistant district attorney for Muskogee County.

Amy E. Hampton was named partner at the Tulsa-based firm of Wilburn, Masterson & Hampton. Ms. Hampton will focus her practice on insurance defense and coverage issues.

Robert H. Henry opened a law practice at 512 N. Broadway Ave., Suite 230, Oklahoma City 73102. The firm practices mediations, arbitrations, moot courts and consultations on appellate advocacy.

Alex M. Sharp joined Baer & Timberlake PC as an associate in the firm's Oklahoma City office. Ms. Sharp's practice will focus on civil litigation and foreclosures.

Joseph E. Stall joined the Edmondbased firm of Crooks Stanford & Shoop. Mr. Stall will practice litigation, employment law, business transactions, corporate structuring, contract drafting and administrative law.

T. Scott Spradling, Mark R. McPhail, John H. Edwards, Jesse C. Chapel and Michael P. Whaley joined Hartzog Conger Cason & Neville. Mr. Spradling practices transactional law. Mr. McPhail's practice is concentrated in civil litigation. Mr. Edwards practice focuses on commercial lending and financial transactions. Mr. Chapel will join the firm's tax, estate planning and corporate law practice areas. Mr. Whaley will join the firm's litigation, energy and environmental practice areas.

AT THE PODIUM

Garvin A. Isaacs of Oklahoma City spoke to a group of over 100 Wyoming public defenders on cross-examination.

T. Douglas Stump of Oklahoma City was a speaker at the American Immigration Lawyers Association Fall Conference in London. Mr. Stump spoke on nonimmigrant visa waivers and delays in the adjudication of visa applications. **Paul R. Foster** of Norman spoke at Community Bankers Association of Oklahoma Annual Convention. The presentation covered areas of current regulatory emphasis for banks including options and issues for banking medical marijuana-related business activities by community banks.

Warren E. Mouledoux III and Gary W. Farabough spoke at the Metropolitan Health Care Self-Insured Group's Annual Meeting in October at the Embassy Suites Hotel and Conference Center in Norman. The topic presented was a legislative update pertaining to workers' compensation.

Suzanne Hayden spoke at the World Policy Conference in Rabat, Morocco, on illicit trade and the global economy in October. Ms. Hayden was recently appointed to the Board of Trustees for the United Nations Interregional Crime and Justice Research Institute in Italy.

KUDOS

Mike McBride III was recently elected executive vice president of the International Masters of Gaming Law. In this role, Mr. McBride will lead, set policy, administrate and carry out IMGL's initiatives.

Eric S. Fisher and J. Blake Johnson were appointed as chair and vice chair of Crowe & Dunlevy's Cannabis Industry Practice Group. They lead a team of attorneys representing the interests of more than 100 marijuana and hemp businesses.

Philippa V. Tibbs Ellis will serve as the 2019 director for the ABA Tort Trial & Insurance Practice Section (TIPS)/American Board of Trial Advocates (ABOTA) National Trial Academy. Ms. Ellis also earned a State Bar of Georgia leadership appointment to serve on the 2018-19 Statewide Judicial Evaluation Committee.

Breea Clark was recognized by *The Journal Record* as one of 50 women making a difference in 2018. Ms. Clark was chosen for campaigns for social justice, change and inclusion.

Barbara Klepper was accepted into the American College of Trust and Estate Counsel Heart of America Fellows Institute. Ms. Klepper's practice focuses on all aspects of tax and family wealth planning as well as executive compensation and employee benefits planning. **Richard K. Boots** and **Richard A. Grimes** were honored with the OU College of Law Eugene Kunts Award at the Oklahoma Oil and Gas Reception in November. The award recognizes their many contributions to the energy industry and to the practice of oil and gas law.

Ana Basora-Walker, Jasmine Redd, Terry Cocon, Rachel Stoddard Morris, Roger Stong and Gail Stricklin were honored with the Champion of Justice Award. The Oklahoma Access to Justice Commission honored these attorneys for their efforts to increase access to justice for low-income and needy Oklahomans.

OBA Family Law Section award recipients were **Judge Joe Sam Vassar**, Judge of the Year; **Judge Sheila D. Stinson**, Judge of the Year; **BJ Baker**, Attorney of the Year; **Ben Sherrer**, Guardian *Ad Litem* of the Year; **Steven M. Holden**, Mediator of the Year; and **Jacob W. Aycock**, Parenting Coordinator of the Year. The awards were presented at the section's November meeting.

Jim Calloway was honored with the William G. Paul Oklahoma Justice Award by Legal Aid Services of Oklahoma. The award was given at the 2018 Annual Meeting General Assembly. The OBA Criminal Law Section awarded the following individuals at their November meeting: Judge Trace C. Sherrill, Judge Deason Award for Judicial Excellence; Brandon Hale, Professional Advocate of the Year; Marty Ludlum, Justice Cardozo Award; Miguel Garcia, Chair Award; James "Jake" Willson, Chair Award; and Robert Don Gifford, Recognition for Service.

OBA President Kim Hays presented six attorneys with President's Awards at the Annual Meeting. Recipients included Richard Stevens, Norman; Amy Page, Tulsa; Luke Barteaux, Tulsa; Linda Thomas, Bartlesville; Melissa DeLacerda, Stillwater and Alan Souter, Tulsa. The Tulsa County Bar Association and President Hays' legal assistant Stephanie Pierce were also President's Award recipients.

ames Robert Barnett died Oct. 3. He was born Sept. 6, 1942, in Ada. He attended OU where he earned a bachelor's degree in government in 1964 and then received his J.D. from the OU College of Law in 1967. Mr. Barnett then joined the U.S. Army, serving in military intelligence as a first lieutenant. Following his discharge in 1970, he began working for Legal Aid Services of Oklahoma. He then served as an assistant attorney general from 1972 to 1977 and as executive director of the Oklahoma Water Resources Board from 1977 to 1991. Mr. Barnett represented Oklahoma in its first successful damages action for pollution of state waters and in other matters regarding Oklahoma water resources law and planning. He then spent over 20 years in private practice. Donations in his name may be made to Legal Aid Services of Oklahoma.

liver Robert Barris III died Oct. 6. He was born Aug. 7, 1957. He graduated from OU in 1979 with a degree in political science and then went on to receive his J.D. from the OU College of Law in 1982. Mr. Barris spent most of his career in the District 25 District Attorney's Office representing the people of Okmulgee and McIntosh counties. He was unopposed for three terms as district attorney of District 25. He was a member of First Baptist Church, Okmulgee, where he taught Sunday school for 28 years. He also served as a Gideon. Donations in his honor may be made to The Gideon's International.

John Morley of Tulsa died Oct. 15. He was born Oct. 17, 1927, in Abilene, Texas. In 1949, he graduated from Yale University. He then received his J.D. from the TU College of Law. Mr. Morley enjoyed a career that included private law practice, banking trust officer and financial investment advisor. He enjoyed golf and tennis. He also enjoyed playing the piano and painting. He was a lifelong member of St. John's Episcopal Church. Donations in his name can be made to The Oklahoma Alzheimer's Chapter.

Rob L. Pyron of Seminole died Oct. 18. He was born Feb. 17, 1949, in Midwest City. He attended Southwestern Oklahoma State University and then Oklahoma Baptist University where he received his Bachelor of Science in 1971. In 1978, he received his J.D. from the OCU School of Law. Mr. Pyron served as campaign manager and press secretary to Gov. David Boren. When Gov. Boren became U.S. Sen. Boren, he continued in his role as press secretary until 1980. He then returned to Seminole to practice law for the next 38 years. Mr. Pyron served on the Seminole School Board for 21 years, was chairman of the Jearl Smart Foundation, and was a member of the Benevolent and Protective Order of Elks. Donations in his name can be made to Seminole Main Street Inc. at P.O. Box 2126, Seminole 74818-2126.

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 February issue must be received by Jan. 1.

A. Frank Skipworth of Tulsa died Aug. 11. He was born April 22, 1942, in Pawhuska. He joined the U.S. Army after graduating from Pawhuska High School. In 1965, Mr. Skipworth joined the Tulsa Police Department. Upon his retirement in 1996, he joined the City of Tulsa's Legal Department and served as a city prosecutor until his retirement.

Jeffrey C. Voiles of Amarillo died July 19. He was born Sept. 9, 1956, in Liberal, Kansas. He grew up in Perryton, Texas, and attended college at Colorado State University and Texas Tech University. He graduated with an undergraduate degree in accounting and a J.D. from Texas Tech. Mr. Voiles had a varied career in law and banking. He enjoyed playing golf, hunting, fly-fishing and trap shooting. He also enjoyed history and music.



Oklahoma Bar Journal Editorial Calendar

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

Access to Justice Editor: Melissa DeLacerda melissde@aol.com Deadline: May 1, 2019

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

SEPTEMBER

Bar Convention Editor: Carol Manning

OCTOBER

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

NOVEMBER

Indian Law Editor: Leslie Taylor leslietaylorjd@gmail.com Deadline: Aug. 1, 2019

DECEMBER

Starting a Law Practice Editor: Patricia Flanagan patriciaaflanaganlawoffice@ cox.net Deadline: Aug. 1, 2019



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WHAT'S ONLINE

Wrap Up 2018

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

Ams.okbar.org



30 Conversation Starters

The holiday season is now in full swing, which means so are the parties that come with it. Whether it's a work party or a neighborhood get together, starting conversations with people you do not know can be awkward. Try one of these 30 conversation starters at your next event to help break the ice. **Goo.gl/JZEY39**



Think Differently About Stress

Charles Swindoll, pastor and educator, said "Life is 10 percent what happens to you and 90 percent how you react to it." When you change your perception of a situation, you can move past feeling threatened by stress and instead view it as a challenge and opportunity.

Goo.gl/AMFbgA



20 Fun Christmas Party Ideas

Are you tired of attending your typical Christmas dinner party? Want to host a party, but not sure where to start? Here are 20 ideas for the ultimate holiday party that will be sure to wow your guests and keep them entertained.

Goo.gl/b6kpxe



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

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Arthur Linville 405-736-1925

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OFFICE SPACE

LUXURY OFFICE SPACE AVAILABLE - One fully furnished office available for lease in the Esperanza Office Park near NW 150th and May Avenue. The Renegar Building offers a beautiful reception area, conference room, full kitchen, fax, high-speed internet, security, janitorial services, free parking and assistance of our receptionist to greet clients and answer telephone. No deposit required, \$955/month. To view, please contact Gregg Renegar at 405-488-4543 or 405-285-8118.

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

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RICE LAW BUILDING IN DOWNTOWN EDMOND HAS OFFICE SPACE AVAILABLE for 1 to 2 attorneys and staff. Shared conference room, breakroom and common areas. Possible referrals. For more information contact barrytricelaw@gmail.com.

POSITIONS AVAILABLE

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

THE CIVIL DIVISION OF THE TULSA COUNTY DISTRICT ATTORNEY'S OFFICE is seeking applicants for an assistant district attorney with 0-2 years of experience. This full-time position requires excellent research and writing skills over a broad range of legal topics. Qualified applicants must have a J.D. from an accredited school of law and be admitted to the practice of law in the state of Oklahoma. Candidates for the February 2019 bar examination will be considered. Pay commensurate with experience, excellent state benefits. Send cover letter, resume, professional references, transcript and a recent writing sample to gmalone@tulsacounty.org.

THE CIVIL DIVISION OF THE TULSA COUNTY DISTRICT ATTORNEY'S OFFICE is seeking applicants for an assistant district attorney. This full-time position requires excellent research and writing skills across a broad range of legal topics. Qualified applicants must have a J.D. from an accredited school of law and be admitted to the practice of law in the state of Oklahoma. Salary based on qualifications and experience. Send cover letter, resume, professional references and a recent writing sample to gmalone@tulsacounty.org.

WHITWORTH, WILSON & EVANS, A GENERAL CIVIL PRACTICE LAW FIRM with locations in Edmond and Frederick is accepting resumes for an associate attorney with preferably 3-5 years' experience. Job description includes civil litigation, brief-writing and court appearances. Please submit resumes to clint@wwefirm.com.

MEDIUM-SIZED AV-RATED LITIGATION FIRM SEEKING ASSOCIATE ATTORNEY. Experience preferred but not required if research and writing skills are strong and desire to succeed is present. Must have an interest in insurance defense and general civil litigation, and must be unafraid of the courtroom. Salary commensurate with experience. Send replies to "Box MM," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

OUR FIRM IS ONE OF THE PREMIER LEADERS in the state of Texas for filing and prosecuting wrongful foreclosure lawsuits against mortgage lenders. We are creating a nationwide attorney-referral network and are seeking qualified attorneys to whom we can refer cases on a fee-split basis. Please send resumes stating your experience in this area to staffing@viltlawgroup.com.

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

AV-RATED MID-SIZE TULSA FIRM seeking a civil litigation attorney with 1-5 years' experience in legal research, writing, and analysis. Submit resume, cover letter and writing sample to "Box X," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

DOWNTOWN TULSA LAW FIRM accepting resumes for a legal research and writing attorney in civil litigation. Minimum of 2 years' experience required. Please send cover letter, resume and writing sample to tmartinez@richardsconnor.com.

TULSA BASED LITIGATION FIRM SEEKS ASSOCIATE ATTORNEY with 3 to 10 years of experience. Applications kept in strict confidence. Compensation DOE. Excellent benefits. Resume and cover letter to be submitted to lawjobstulsa@gmail.com.

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

TULSA AV-RATED LAW FIRM seeking full-time associate attorney with solid civil litigation experience with excellent writing and presentation skills. Candidate should be selfmotivated, detail oriented, organized and have strong research and communication skills. Salary commensurate with experience. Send resumes to mike.masterson@wilburnmasterson.com.

A Reluctant Giver

By Paul Thomas

T WAS ABOUT 5:30 AND, as usual, I was leaving my office to begin the drive home. I had a twoblock walk to a ground lot where I park my red convertible.

On this particular evening, I walked on auto pilot to the parking lot with a tangle of thoughts ricocheting around in my mind like a pinball. Soon, I found myself opening the door to my car completely unaware that a man was standing right beside me.

He spoke clearly. "Sir, you have a very nice car there." I jumped a bit, but cautiously turned to face him. He was weathered, tall and slender, wore ill-fitting clothes and had a black garbage bag over his shoulder.

I thought – get ready, here it comes ... perhaps a sad story about how he just needed \$3 for the bus ticket to Oklahoma City.

As expected, he asked if I had any spare change, but he offered no story to enhance his request. Just a simple request for help.

I don't carry much cash these days and it is my stock response to say, "I'm sorry, but I don't have any cash on me." The implication is that if I did have some cash on me, I would contribute. I believe that is what I want to think.

Anyway, I considered the request for a second while cuing up my stock response when I remembered the quarters I had been saving for a future car wash. I said, "I have some change I can give you." I had exactly six quarters. I gathered them up and handed them to the man.



He thanked me and said, "You seem worried. What are you worried about?" Not wanting to say much of anything, I shot back, "Oh nothing, just the normal worries of the day ... nothing in particular." He countered, "Well, I suppose you don't have to tell me if you don't want to." He continued, "Would you mind if I prayed for you?"

Before I could answer, his prayer began. I bowed my head and listened. The man gave thanks for the monetary help and asked for relief from my worries. I kept my head down for a moment and when I looked up the man was already gone.

I sat in my car for a moment considering what had just happened. I was confronted with my notions of what it means to be in need and to have plenty – and of who is the actual giver in any particular situation. I discovered that I am a reluctant giver – and a reluctant recipient.

Though I'm not very bright, I am teachable. I have reconsidered my stock approach to giving. And while still uncomfortable with accepting gifts, I am more open and grateful when they come my way.

I did not get a chance to thank the man who prayed for me. So, if you see a tall, slender man in ill-fitting clothes with a black garbage bag over his shoulder, would you thank him for me?

Mr. Thomas is a trial attorney with the Office of the U.S. Trustee in Tulsa.

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MCLE CREDIT 7/2

23 MISTAKES EXPERIENCED DRAFTERS USUALLY MAKE... BUT NOT YOU!

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