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THE OKLAHOMA BAR Journal

Volume 90 — No. 8 — October 2019

A stack of three law books with red and gold covers. A black gavel with a gold band is resting on the top book. The background is a dark, gradient grey.

Appellate
LAW

FRIDAY,
NOVEMBER 15, 2019
9 A.M. - 2:50 P.M.

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Changes to MCLE Hours Proposed

By Charles W. Chesnut

ILEARNED IN BIOLOGY CLASS that living things adapt and evolve, or they cease to exist. The same can be said for businesses and organizations, and even for systems within organizations. One of those systems that has been adapting and evolving over the years within the Oklahoma Bar Association is continuing legal education (CLE).

A primary responsibility of any unified (mandatory) bar association is to assist the Supreme Court in the regulation of the legal profession. Another is to serve its members and the profession as a whole.

In Oklahoma, a portion of the OBA's assigned task to aid the court is fulfilled through the Mandatory Continuing Legal Education (MCLE) Commission, chaired by Mike Mordy of Ardmore. The MCLE administrator

is Beverly Petry Lewis, who has been the supervisor of MCLE for more than 30 years and does a superb job. MCLE Commission rules currently require that each OBA attorney who is actively practicing law must obtain 12 hours of CLE each year with one of those hours consisting of ethics.

The theory is that CLE leads to more knowledgeable, competent and effective lawyers, which improves legal professional standards and leads to increased public confidence in the legal profession.

One of the ways the OBA serves its members is by providing quality

legal education programming. A member survey has revealed that members consider CLE as the most important service the OBA provides. It is vitally important the OBA continues to make quality, affordable programming available to its

members. Since 1986, the OBA has been the market leader in CLE in Oklahoma. While still the market leader, its market share decreases each year. There are over 1,000 CLE providers available to OBA members. A good number of those provide credit hours at no charge or provide programming that is

much less expensive than the OBA. The budget reveals that revenue from CLE, although still one of the OBA's primary revenue sources, has decreased each year since 2015. It has decreased markedly since 2005.

It was because of these and other factors that I felt it was important to undertake a thorough analysis of CLE in Oklahoma. As a result, the Continuing Legal Education Task Force was created to examine all aspects of CLE programming including types of programming, delivery methods and value to members. The real issue was whether the OBA needs to be in the CLE business, and if so, how should it best be structured to produce maximum effectiveness.

(continued on page 81)

After a thorough analysis of CLE in Oklahoma, a task force is making recommendations for changes, which are reflected in a resolution to be considered at the upcoming House of Delegates.



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Interlocutory Appeals in Oklahoma: What, When and How

By Chase McBride

“AN INTERLOCUTORY ORDER IS AN ORDER WHICH IS NOT ‘FINAL,’ does not culminate in a judgment [and] leaves the parties before the tribunal to try the issues on the merits...”¹ An interlocutory appeal is an “appeal of an order in a case that has not reached its conclusion in the trial court.”²

In order for an interlocutory order to qualify for an interlocutory appeal, it must either “(a) fall within a class of interlocutory orders appealable by right or (b) be certified by the trial court for immediate (prejudgment) review because it affects a substantial part of the merits of the controversy.”³ The first type of interlocutory orders are specifically listed in the statutes. The second are up to the discretion of the trial judge to certify but often involve issues of law that may need to be resolved prior to the court determining the outcome of the case. Note: the deadlines of the two types of appeals are different.

TYPE I – ORDERS QUALIFYING FOR AN INTERLOCUTORY APPEAL AS A STATUTORY RIGHT

A party has a statutory right to appeal the following district court interlocutory orders pursuant to Oklahoma Supreme Court Rule 1.60 and 12 O.S. §993:

- Orders granting a new trial or vacating a judgment on any ground,⁴
- An order granting or refusing the discharge, vacation or modification of an attachment,
- An order granting or denying a temporary injunction (except where the injunction was granted via an *ex parte* hearing) or an order that grants or refuses to discharge, vacate, modify or refuses to discharge a temporary injunction,⁵
- An order granting or refusing to discharge, vacate or modify a provisional remedy which affects the substantial rights of a party,⁶
- An order granting or refusing the appointment of a receiver (except where the receiver was appointed at an *ex parte* hearing),
- An order directing, refusing, vacating or refusing to vacate the payment of money during litigation (except where granted at an *ex parte* hearing),
- An order certifying or refusing to certify an action to be maintained as a class action,
- Orders found in section 721 of the probate code (not including final accounting or distribution orders)⁷ and
- Orders made under 12 O.S. §1879 involving Uniform Arbitration Act.⁸

Commencement of Interlocutory Appeals Qualified by Statutory Right

A party must commence the interlocutory appeal by filing a petition in error (along with 14 copies), an entry of appearance and paying the filing fee to the clerk of the Supreme Court within 30 days of the interlocutory order being filed in the trial court.⁹

The petitioner shall use Supreme Court Form No. 5, Petition in Error.¹⁰ If a cross or counter appeal is filed, claimant shall also use Form No. 5.¹¹ Using the Supreme Court Form No. 6, Response to Petition in Error, the appellee shall file their response and entry of appearance

within 10 days of the appellant's petition in error.¹²

The record shall be designated and prepared in the same manner as an appeal from a final order located in Supreme Court Rules 1.28-1.34.¹³ If transcripts are ordered, the notice of completion of record shall be filed within 60 days of the filing of the interlocutory order.¹⁴

The appellant's brief in chief shall be filed within 30 days from the date of the notice of completion of record being filed with the clerk of the Supreme Court.¹⁵ The appellee's brief in chief shall be filed within 20 days after the appellant's brief.¹⁶

In cases involving the trial court's refusal to vacate the appointment of a receiver, the appealing party shall post in the trial court an appeal bond in an amount fixed by the trial court within 10 days from the date of the order being reviewed.¹⁷

All Supreme Court Rules found in Rules 1.1 through 1.39 also apply to interlocutory appeals allowed by statutory right when they are consistent with the rules discussed above inclusively.¹⁸

When to File Interlocutory Appeals Qualified by Statutory Right

A party does not waive their right to have appellate review of a final judgment by not filing an interlocutory appeal at the time the interlocutory order is entered. An aggrieved party may secure review of every preserved prejudicial error committed at *nisi prius* in the course of proceedings which precede an appealable decision.¹⁹

However, if it is an issue that your client wants to attempt to ensure to get an appellate ruling to help address future cases, it is smart to file the interlocutory appeal at the first opportunity. If the interlocutory order is subsumed by another order or the case is dismissed, the Supreme

Court will not review the issue of the interlocutory order as "the order [goes] beyond appellate cognizance."²⁰ Furthermore, it is unlikely that an issue that could have been appealed via an interlocutory appeal will be reviewed until a final judgment is entered by using a collateral attack method such as a writ, therefore failing to make the timely appeal may delay in getting an appeal ruling on the issue if one chooses to further into the litigation.²¹ There is no authority "permitting a party to delay timely review of an appealable interlocutory decision until a time determined more advantageous to its interest."²²

TYPE II – ORDERS CERTIFIED BY THE DISTRICT COURT FOR INTERLOCUTORY APPEAL

Any interlocutory order not appealable by right under the statutes that affects a substantial part of the merits of the case may be appealed when the trial judge certifies that an immediate appeal from the judge's order may materially advance the ultimate termination of the litigation.²³ "The order must affect a substantial part of the merits of controversy and be certified by the trial judge that an immediate appeal may materially advance the ultimate termination of the litigation."²⁴ The Supreme Court has "said the term 'merits' includes the real or substantial grounds of an action or defense, and excludes matters of practice, procedure, and evidence."²⁵ Additionally:

A proceeding to review a certified interlocutory order must comply with the terms of 12 O.S. 1981 §952(b)(3) and Rules 1.50-1.56. The provisions of §952(b)(3) plainly require that an interlocutory order to be certified for [the Supreme Court's] review *affect a substantial part of the merits of the controversy.*

[The Supreme Court's] power to review certified orders clearly is confined to those which deal with *prejudgment issues on the merits* of a controversy. Certification and review of an interlocutory order is impermissible when ... a disposition on the merits had already been effected.²⁶

Even if a district court certifies an order for interlocutory appeal, the Supreme Court may still refuse to hear the appeal.²⁷ "If the Supreme Court assumes jurisdiction of the appeal, it shall indicate in its order whether the action in the trial court shall be stayed or shall continue."²⁸

The Supreme Court may also recast the interlocutory appeal in order to review it if an interlocutory appeal is filed improperly. The court recently recast a certified interlocutory order to a petition to assume original jurisdiction in an appeal dealing with subject matter jurisdiction of a district court in order to issue a ruling.²⁹ The court recast the petition because it determined that issues of subject matter jurisdiction do not typically involve merits of the controversy.³⁰

COMMENCEMENT OF CERTIFIED INTERLOCUTORY ORDERS

When a party has an interlocutory order they believe may qualify for a certified interlocutory appeal, the party should request the district judge to include in their written order proper language that the court certifies that the interlocutory order affects a substantial part of the merits of controversy and that the court certifies the interlocutory appeal. Some cases the request is made orally and written into the proposed order, others it is made through a filed Application to Certify for Immediate Interlocutory Appeal.³¹

For certified interlocutory orders to be appealed, a petition for *certiorari* must be filed within 30 days of the date the certification is filed in the trial court wherein the trial court certifies in writing that an immediate review may materially advance the ultimate termination of the litigation.

An uncertified interlocutory order is not an appealable order, unless it is statutory right.³²

Example model language to include in a certified interlocutory order is: “The court finds that this order affects a substantial part of the merits of this controversy because (fill in the blank with the issue of specific case). Therefore, an immediate appeal from this order will materially advance the ultimate termination of the litigation. It is therefore ordered that pursuant to 12 O.S. 952(b)(3), this order is certified for an immediate appeal.”³³

For certified interlocutory orders to be appealed, a petition for *certiorari* must be filed within 30 days of the date the certification is filed in the trial court wherein the trial court certifies in writing that an immediate review may materially advance the ultimate termination of the litigation.³⁴ This time limit cannot be extended and an opportunity to properly appeal an interlocutory order may be lost.³⁵ The filing of a motion for new trial, reconsideration, re-examination, rehearing or to vacate the interlocutory order shall not extend the 30 days.³⁶ The proceeding for review is regarded

as commenced when the petition is filed and costs are paid.³⁷ Upon the commencement, both the petitioner and respondent shall file entry of appearances.³⁸

Pursuant to Rule 1.301, the petitioner must use the Oklahoma Supreme Court Form No. 7, Petition for Certiorari to Review Certified Interlocutory Order.³⁹ Filing a petition in error instead of a petition for *certiorari* to review certified interlocutory order has resulted in dismissal of an appeal and later prevented a review of the same issue after final judgment.⁴⁰ “Because [the appellant] elected to seek appellate review of the trial court’s [interlocutory] order through the certified interlocutory order procedure, he is bound by that choice and the consequences of failing to properly pursue such relief.”⁴¹

The petition for *certiorari* shall refer to the party seeking review as “petitioner” and to the other parties as “respondents.”⁴² The caption of the petition for *certiorari* shall correspond with the sequence in which the designation of the parties appeared in the trial court case.⁴³ The original and 14 copies of the petition shall be filed.⁴⁴ A concise statement of the pertinent parts

of the record and a statement of the reasons why the order should be reviewed in advance of final judgment signed by the trial court shall be attached to the petition.⁴⁵

Respondent shall have 15 days after the filing of a petition for *certiorari* to file a response.⁴⁶ The respondent shall use Oklahoma Supreme Court Form No. 8, Response to Petition for Certiorari to Review Certified Interlocutory Order.⁴⁷ Like the petition, the original and 14 copies of the response to the petition shall be filed.⁴⁸

The record shall be prepared in the same manner as that prescribed for perfecting an appeal from a final judgment or final order of the district court, except that petitioner for *certiorari* shall file and serve petitioner’s designation of instruments to be included or portions of the evidence to be transcribed, within 10 days after this court grants *certiorari*.⁴⁹ The record shall be ready within 30 days from the *certiorari* is granted unless good cause is shown.⁵⁰

Petitioner shall file a brief in chief within 20 days of the notice of completion of record being filed.⁵¹ The respondent’s answer brief is due within 10 days of the

filing of the petitioner's.⁵² The petitioner may file a reply brief within five days of the answer brief.⁵³

EXAMPLES IN CASES

Orders overruling a motion for summary judgment do not qualify for an interlocutory appeal even if the judge certifies it.⁵⁴ Furthermore, summary judgment of less than all the issues in a cause is beyond the reach of review unless it falls into a class of interlocutory orders that are appealable by right or is certified for an appeal in advance of final judgment.⁵⁵

Courts have discretion over many issues at the district court level. Disagreeing with a court's ruling does not immediately qualify for an interlocutory appeal. A court's refusal to allow a party to amend their pleadings does not fit into any category of interlocutory order appealable by right.⁵⁶ An order appointing a substitute arbitrator and staying further proceedings pending arbitration is not an interlocutory appealable order.⁵⁷

Keep in mind that interlocutory appeals apply to orders that do not resolve all the issues in the case regardless of at what point in the case the order is issued. Post judgment orders may still qualify for an interlocutory appeal if certified by the trial judge and the order does not resolve all the post judgment issues.⁵⁸

Do not attempt to appeal an interlocutory order as a final order. The two appeals have different procedures and the appellate court will make you follow the proper procedure regardless of what the order is titled. This could be costly. Masking or mistaking an interlocutory order as a final order for appeal purposes has failed. The Supreme Court has dismissed appeals brought as a final appeal when all issues before the trial court were not resolved. The court determined that if any issues remain, the order and appeal is interlocutory. The court dismissed

the appeal even after a party tried to fix the issue through an order *nunc pro tunc* and asked the court to recast the appeal.⁵⁹

CONCLUSION

Interlocutory appeals are a method to get an opinion from the appellate court before having to wait until the completion of the case. Recognizing when it is an option and knowing the proper procedure to file each type is key to adding it to your arsenal of litigation strategies.

ABOUT THE AUTHOR

Chase McBride is an attorney at Ritchie, Rock, McBride & Atwood Law Firm with locations in Pryor and Shawnee. He is a general litigation attorney who primarily practices business, property, family and criminal matters. He received his J.D. from the OU College of Law, as well as an MBA and Certificate in Law and Entrepreneurship from OU.

ENDNOTES

1. *State ex rel. Bd. of Regents of the Univ. of Okla. v. Lucas*, 2013 OK 14 at 2.
2. The Wolters Kluwer Bouvier Law Dictionary Desk Edition – "Interlocutory Appeal."
3. *Eason Oil Co. v. Howard Eng'g, Inc.*, 1988 OK 57 at ¶5.
4. *Pryor v. Mid-West Investigations & Process Serving Inc.*, 2000 OK CIV APP 22. An order vacating a judgment is an interlocutory order appealable by right.
5. *Enron Oil & Gas Co. v. Worth*, 1997 OK CIV APP 60. A permit holder, which sought to conduct mineral tests, was entitled to a temporary injunction against surface interest holders to enjoin their interference with the tests because the right to test was a severable interest of a mineral owner; the order first denying the temporary injunction was appealable by right.
6. *Dee v. Horton*, 2012 OK CIV APP 80 at ¶7 – "A 'provisional remedy' is a remedy granted only as ... ancillary or auxiliary to proper equitable relief, that is, such relief is a provisional remedy granted only in connection with an action for some other purpose."
7. *In re Estate of Nation*, 1992 OK 91. An application to share in the assets of a decedent's estate as omitted children was an interlocutory order appealable by right.
8. *Fleming Cos. V. Tru Discount Foods*, 1999 OK CIV APP 18. Appeal of a trial court's order which vacated a previous stay of arbitration order and directed that the action proceed in district court was an interlocutory order that was appealable by right.
9. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.61.
10. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.63(a).
11. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.63(a).

12. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.63(b).
13. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.64.
14. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.64.
15. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.65.
16. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.65.
17. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.66.
18. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.67.
19. *Berryhill v. Rhodes (In re Berry)*, 2014 OK 56, P40 at ¶40.
20. *City of Tulsa v. Raintree Estates I, Inc.*, 2007 OK CIV APP 41 at ¶6.
21. *Halliburton v. Williams*, 1933 OK 637 at ¶10 – "A writ will not be issued on account of the inconvenience, expense, or delay of other remedies, but will be granted where the remedy available is insufficient to prevent immediate injury or hardship to the party complaining, particularly in criminal cases."
22. *City of Tulsa v. Raintree Estates I, Inc.*, 2007 OK CIV APP 41 at ¶6.
23. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.50, see also 12 O.S. §952(b)(3).
24. *Lay v. Ellis*, 2018 OK 83 at ¶122.
25. *Sommer v. Sommer*, 1997 OK 123 at ¶6.
26. *Pierson v. Canupp*, 1988 OK 47 at ¶11.
27. 12 O.S. §952(b)(3).
28. 12 O.S. §952(b)(3).
29. *State ex rel. Bd. of Regents of the Univ. of Okla. v. Lucas*, 2013 OK 14.
30. *State ex rel. Bd. of Regents of the Univ. of Okla. v. Lucas*, 2013 OK 14.
31. Cleveland County CJ-2017-21 entitled *Fox v. Mize et al., Defendant Van Eaton Ready Mix, Inc.'s Application to Certify the Court's July 6, 2017 Summary Order for Immediate Interlocutory Appeal and for Concise Statement by this Court Pursuant to Oklahoma Supreme Court Rule 1.52*.
32. *Panama Timber Co. v. Barsanti*, 1980 OK CIV APP 18; see also *DLB Energy Corp. v. Oklahoma Corp. Com.*, 1991 OK 5.
33. Modeled after the Amended Order Sustaining Cimarex Energy Co.'s Motion to Dismiss and Certification of Interlocutory Appeal filed on June 13, 2016 in Canadian County CJ-2015-569 entitled 'Benedetti v Cactus Drilling et al.'
34. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.51(a).
35. *Id.* See also *City of Tulsa v. Raintree Estates I, Inc.*, 2007 OK CIV APP 41.
36. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.51(b).
37. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.51(c).
38. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.51(c).
39. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.52(a).
40. *Brown v. Brown*, 1994 OK CIV APP 29.
41. *Id.* at ¶6.
42. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.52(a).
43. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.52(a).
44. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.52(a).
45. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.52(b).
46. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.53.
47. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.53.
48. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.53.
49. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.54(a).
50. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.54(c)-(d).
51. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.55.
52. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.55.
53. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.55.
54. 12 Okl. St. Chap. 15, Appx. 1, RULE 1.50.
55. *Reams v. Tulsa Cable Television, Inc.*, 1979 OK 171; See also *First Bank of Okarche v. Lepak*, 1998 OK 46.
56. *Lawson v. Boston Chrysler, Plymouth & Dodge Inc.*, 1981 OK 26.
57. *Ditto v. RE/MAW Preferred Properties*, 1993 OK CIV APP 152.
58. *Sommer v. Sommer*, 1997 OK 123; See also *Willoughby v. City of Okla. City*, 1985 OK 64.
59. *City of Lawton v. Int'l Union, Local 24*, 2002 OK 1.



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Reconsider Your Motion to Reconsider

How Post-Trial Motions Affect Your Civil Appeal

By Bevan Graybill Stockdell and Kimberly Withiam Carlson

AFTER A JUDGMENT, DECREE OR FINAL ORDER IS FILED, the unsuccessful party may appeal that decision to the Supreme Court of Oklahoma and/or seek post-trial relief from the trial court. While a post-trial motion is not a jurisdictional prerequisite for filing an appeal, often the unsuccessful party elects to first or concurrently ask the trial court to review its own appealable order.¹ This article addresses three types of post-trial motions: 1) motions for new trial, 2) motions to vacate or modify, and 3) motions to reconsider and, specifically, how the rules governing these motions may affect your civil appeal.²

MOTIONS FOR NEW TRIAL

Motions for new trial are governed by 12 O.S. §§651-658. A motion for new trial must be upon written grounds filed at the time of making the motion.³ Section 651 sets forth nine grounds upon which a motion for new trial may be based: 1) irregularity in the proceedings which prevented the moving party from having a fair trial; 2) misconduct of the jury or a prevailing party; 3) accident or surprise; 4) excessive or inadequate damages; 5) error in the assessment of the amount of recovery; 6) that the verdict, report, or decision is not sustained by sufficient evidence or is contrary to law; 7) newly discovered material evidence, which could not, with reasonable diligence, have been discovered and produced at trial; 8) error of law occurring at the trial; and 9) when, without fault of the complaining party, it becomes

impossible to prepare a record for an appeal.⁴

A new trial motion must meaningfully apprise the trial court of the reasons for which relief is sought, and lack of specificity in a motion for new trial typically waives the issue for appellate review.⁵ However, lack of specificity in the motion *may* be cured where the record shows that, “at the hearing on that motion, the movant, *without any objection from the opposite party*, precisely identified each point of law which is fairly comprised in the general allegations of the defective motion.”⁶

A motion for new trial must be filed within 10 days of the judgment, decree or appealable order “[u]nless unavoidably prevented[.]”⁷ If more than 10 days have passed since the filing of the final order, a petition for new trial may be filed but only where “the grounds for a new trial could not with reasonable

diligence have been discovered before but are discovered more than ten (10) days after the judgment, decree, or appealable order was filed.”⁸ A party may file an amended motion for new trial asserting new and independent grounds for granting a new trial, but only if the amendment is filed within 10 days of the judgment, decree or appealable order.⁹ In addition, the moving party may not raise allegations of error on appeal that she did not raise in her motion for new trial.¹⁰ In other words, if a party files a motion for new trial, the grounds generally must be asserted within 10 days to warrant consideration of the issues by the trial court and to preserve the issues for appellate review.



MOTIONS TO VACATE OR MODIFY

Motion to Vacate Pursuant to 12 O.S. §1031

Within 30 days of the filing of the judgment, decree or appealable order, a party may file a motion asking the trial court to correct, open, modify or vacate its own decision pursuant to 12 O.S. §1031.¹¹ Section 1031 provides very specific grounds upon which a judgment may be vacated or modified: 1) when a new trial is granted; 2) where the defendant had no actual notice of the action; 3) for mistake, neglect, or omission of the clerk or irregularity in obtaining the judgment or order; 4) for fraud in obtaining the judgment or order; 5) for erroneous proceedings against an infant or person of unsound mind; 6) for the death of a party before judgment; 7) for unavoidable casualty or misfortune

preventing the party from prosecuting or defending; 8) for errors in a judgment against an infant; and 9) for judgment for more than due to plaintiff when defendant was not given notice.¹² When asking the trial court to vacate a judgment based on any of these statutory grounds, the moving party should be clear and specific. The moving party needs to state that the motion to vacate is pursuant to §1031 and the specific subsection.

If the moving party is asking the trial court to vacate a judgment *after 30 days*, “proceedings to vacate or modify the judgment, decree, or appealable order shall be by *petition*.”¹³ Typically, the petition must be verified by affidavit.¹⁴ Proceedings to vacate or modify a judgment, decree or order for the grounds mentioned in §1031(4), (5) or (7) must be commenced within two years.¹⁵ A motion or petition to vacate based on §1031(3)

or (6) must be filed within three years.¹⁶ A motion or petition to vacate based on §1031(9) must be filed within one year.¹⁷ A void judgment, decree or order may be vacated at any time.¹⁸

Term-Time Motion to Vacate Pursuant to 12 O.S. §1031.1

A party may also file a motion to vacate or modify a judgment or order within 30 days pursuant to 12 O.S. §1031.1 and the trial court’s term-time authority to vacate or modify its own decisions.¹⁹ The trial court can vacate or modify the judgment for practically any reason during this 30-day time period.²⁰ If the moving party is invoking this authority, she does not need to identify statutory grounds enumerated in 12 O.S. §1031 to support her motion.²¹

MOTIONS TO RECONSIDER

If a party files a “motion to reconsider” and the order disposing of that motion is appealed, the appellate court will undoubtedly note that “[a] ‘motion to reconsider’ does not technically exist within the statutory nomenclature of Oklahoma practice and procedure.”²² This admonishment has been largely ignored. Post-trial motions titled “motion to reconsider” are routinely filed. Linguistically, a “motion to reconsider” may be an accurate description of the relief sought. Essentially, the moving party wants the trial court to reconsider its own judgment, decree or final order; determine it made an error; vacate that decision; and rule in her favor. But, as discussed below, filing a “motion to reconsider” comes with some risk.

SUBSTANCE AND CONTENT CONTROL

The trial and appellate courts must look to the content and substance of a post-trial motion, rather than the title given to it, to determine how the motion is treated.²³ A “motion to reconsider” will be treated as either a motion for new trial or motion to vacate:

[I]f timely filed, a “motion to reconsider” may be treated as a motion for new trial under 12 O.S. §651 (if filed within ten (10) days of the filing of the judgment, decree, or appealable order), or it may be treated as a motion to modify or to vacate a final order or judgment under the terms of 12 O.S. §§1031 and 1031.1 (if filed after ten (10) days but within thirty (30) days of the filing of the judgment, decree, or appealable order).²⁴

“A motion seeking reconsideration, re-examination, rehearing or vacation of a judgment or final order, which is filed within 10 days of the day such decision was rendered, may be regarded as the functional equivalent of a new trial motion, no matter what its title.”²⁵ However, this rule “is permissive, not mandatory, and applies only if the substance and content of the motion contains indicia of a new trial motion.”²⁶

In other words, by filing a “motion to reconsider” or other mistitled motion,²⁷ the moving party is leaving it to the trial and appellate courts to determine what type of post-trial motion was filed.²⁸ There is no certainty as to how the courts will treat the

motion and the trial court’s treatment of the motion, depending on the correctness of its analysis, may complicate the issues on appeal. Further, although judicial treatment as a motion for new trial and the extended time to appeal seem favorable, a practitioner may unknowingly limit the issues for appeal if she fails to raise issues in a “motion to reconsider” deemed the functional equivalent of a motion for new trial.²⁹

A smarter strategy is to be specific and consistent with the title of the motion and its contents and substance, including the relief sought and the grounds for such relief.³⁰ For example, rather than filing an elusive “motion to reconsider,” the moving party can seek the same relief by filing a motion for new trial, pursuant to 12 O.S. §651(6), or a motion to vacate or modify, pursuant to 12 O.S. §1031 or §1031.1. If counsel is deliberate about what post-trial relief is being sought, she can retain control by knowing the rules that apply and understanding how the post-trial motion affects the appeal.

TIMING ISSUES

An appeal to the Supreme Court of Oklahoma must be commenced by filing a petition in error within 30 days from the date the judgment, decree, or appealable order is filed with the clerk of the trial court.³¹ Generally, the same timing issues arise whether a motion for new trial, motion to vacate, or motion to reconsider is filed. The clock starts ticking for both the time for filing post-trial motions and the time to appeal when the judgment, decree, or final order is filed.³² Title 12 O.S. §990.2 requires close attention.

A smarter strategy is to be specific and consistent with the title of the motion and its contents and substance, including the relief sought and the grounds for such relief.

*Post-trial Motion Filed
Within 10 Days*

Regardless of whether it is a motion for new trial or a motion to vacate, if the motion is filed within 10 days³³ after the judgment, decree or final order is filed, the time to appeal does not start to run until an order disposing of the post-trial motion is filed.³⁴ In other words, the filing of a post-trial motion within 10 days suspends the time to appeal. If a post-trial motion is filed after the trial court announces its decision but before the judgment is filed, the motion will be deemed filed when the judgment is filed and receive the benefit of additional time to appeal.³⁵

If an appeal of the underlying decision has already been commenced when the motion is filed, the appeal becomes premature. The appeal may be dismissed.³⁶ If the trial court disposes of the post-trial motion before the appeal is dismissed, the appeal may be saved by filing a supplemental petition in error.³⁷ If the appeal is dismissed as premature, the appellant may file a new petition in error within 30 days of the decision on the motion.³⁸ If an appeal of the underlying decision is not pending when the motion is filed, an appeal cannot be commenced until an order disposing of the motion is filed.³⁹

If the trial court denies the post-trial motion, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion or from both within 30 days.⁴⁰ It is most efficient to appeal from both by filing one petition in error. However, separate petitions in error are permitted.⁴¹ The moving party/appellant should attach as "Exhibit A" to the petition in error both a certified copy of the underlying judgment, decree, or final order and a certified copy of the order disposing of the motion.⁴² If the trial court grants the post-trial motion,

the nonmoving party may appeal from that order within 30 days.⁴³

*Post-trial motion filed
after 10 days*

The filing of a motion for new trial or motion to vacate after 10 days does *not* suspend the time to appeal from the underlying decision.⁴⁴ If an appeal of the underlying decision has already been commenced and a post-trial motion is filed more than 10 days after the filing of the final order, the appeal is not rendered premature.⁴⁵ The moving party is required to advise the Supreme Court that the motion was filed.⁴⁶ If a post-trial motion is filed first and then later the underlying decision is appealed, the appellant is to advise the Supreme Court that the motion is pending in the petition in error.⁴⁷ The trial court is permitted to rule on the post-trial motion while the appeal is pending.⁴⁸ The trial court's order disposing of the post-trial motion will likely be filed while the appeal is still pending. When the trial court disposes of the motion, the successful party is to then advise the Supreme Court of the trial court's decision.⁴⁹

If the trial court denies the post-trial motion and an appeal of the underlying judgment is pending, the moving party may appeal from that order by filing a new or amended petition in error.⁵⁰ If the moving party did not lodge a timely appeal of the underlying decision and appellate jurisdiction over that decision has been lost, she can still separately appeal from the final order denying the post-trial motion within 30 days.⁵¹ If the trial court grants the post-trial motion and the judgment is vacated or modified, she may appeal from the order disposing of the post-trial motion within 30 days.⁵²

CONCLUSION

Appellate courts will take the path of least resistance to most efficiently decide an appeal. She can do that by dismissing an untimely appeal or narrowing the reviewable issues. By making informed, strategic decisions about post-trial motions and following the applicable rules and procedures, practitioners can secure full appellate review on the merits.

ABOUT THE AUTHORS

Bevan Stockdell and Kimberly Carlson are staff attorneys to Judge E. Bay Mitchell, III on the Oklahoma Court of Civil Appeals. Collectively, they have more than 13 years of experience serving the appellate courts. Ms. Stockdell graduated with honors from the OU College of Law. She serves on the OBA YLD Board of Directors and is chair-elect for ReMerge of Oklahoma County, a female diversion program.

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ENDNOTES

1. See 12 O.S. 2011 §991(a).
2. This article does not address other post-trial motions, including motions for judgment notwithstanding the verdict and motions for attorney fees, costs or interest. The discussion is limited to civil appeals from Oklahoma district court decisions.
3. 12 O.S. 2011 §654(A).
4. 12 O.S. 2011 §651. Motions based on subsections (2), (3), (7), or (9) must be supported by affidavit. 12 O.S. §654(B).
5. See *Horizons, Inc. v. Keo Leasing Co.*, 1984 OK 24, ¶6, 681 P.2d 757, 759 (language challenging judgment as "contrary to the prevailing Oklahoma law as reflected in applicable cases and statutes" deemed insufficient to preserve anything for appeal); see also *Slagell v. Slagell*, 2000 OK 5, ¶¶4, 6, 995 P.2d 114 (motion for new trial stating only that "the decision of the court is not sustained by the evidence, and is contrary to the law of the State of Oklahoma" was insufficient and required dismissal pursuant to *Horizons*).
6. *Horizons*, 1984 OK 24, ¶7, 681 P.2d at 759 (emphasis original).
7. 12 O.S. 2011 §653(A).
8. 12 O.S. 2011 §655; see *id.* §651(7).

9. See *Malicoate v. Standard Life and Acc. Ins. Co.*, 2000 OK CIV APP 37, ¶15, 999 P.2d 1103; see also *Nat'l Educators Life Ins. Co. v. Apache Lanes, Inc.*, 1976 OK 121, ¶8, 555 P.2d 600, 602 (new and independent allegations of error cannot be considered if filed beyond statutory 10-day period for filing new trial motion).

10. See 12 O.S. 2011 §991(b); *Slagell*, 2000 OK 5, ¶18.

11. See 12 O.S. 2011 §1031 and 12 O.S.Supp.2013 §1031.1(B).

12. See 12 O.S. §1031.

13. 12 O.S. §1031.1(C) (emphasis added).

14. See 12 O.S. 2011 §1033.

15. See 12 O.S. 2011 §1038.

16. *Id.*

17. *Id.*

18. *Id.*

19. See 12 O.S. §1031.1(B); *Schepp v. Hess*, 1989 OK 28, ¶¶7-9, 770 P.2d 34, 37-38.

20. See 12 O.S. §1031.1(A); *Schepp*, 1989 OK 28, ¶9, 770 P.2d at 38.

21. See *Schepp*, 1989 OK 28, ¶8, 770 P.2d at 38.

22. *Smith v. City of Stillwater*, 2014 OK 42, ¶10, 328 P.3d 1192.

23. See *Kerr v. Clary*, 2001 OK 90, ¶7, 37 P.3d 841.

24. *Smith*, 2014 OK 42, ¶10, 328 P.3d 1192.

25. *Horizons*, 1984 OK 24, ¶4, 681 P.2d at 758-59.

26. *Reeds v. Walker*, 2006 OK 43, n.4, 157 P.3d 100; see also *Kerr*, 2001 OK 90, ¶¶7-8 (treating a "motion to reconsider" filed within 10 days as a motion to modify where "[i]ts content and substance were not the indicia of a motion for new trial").

27. A post-trial motion filed within 10 days and titled "motion to vacate," may also, depending on the content, be treated as a motion for new trial. See *Bushert v. Hughes*, 1996 OK 21, n.3, 912 P.2d 334, 335 (treating "motion to vacate" filed within 10 days

and rested on grounds available under 12 O.S. §651 as motion for new trial); see also *Horizons*, 1984 OK 24, ¶4, 681 P.2d at 758-59 (same).

28. It should be noted appellate courts have treated "motions to reconsider" filed within 10 days as motions for new trial without providing any discussion of the substance and content of the motion. See, e.g., *Whitaker v. Hill Nursing Home*, 2009 OK CIV APP 41, ¶10, 210 P.3d 877, 881 (treating a "motion for reconsideration" as the legal equivalent of a motion for new trial); *Sien v. Sien*, 1994 OK CIV APP 159, ¶¶3-4, 34, 889 P.2d 1268, 1274-75 (finding 12 O.S. §991(b) applied to "motion to reconsider" filed before the judgment).

29. See 12 O.S. §991(b); *Whitaker*, 2009 OK CIV APP 41, ¶10; *Sien*, 1994 OK CIV APP 159, ¶¶34-5. There is no statutory equivalent for motions to vacate. See *Bohm, Inc. v. Michael*, 2002 OK CIV APP 60, n.2, 46 P.3d 1286 ("[A] party filing a motion to vacate is not specifically limited by statute to raising, on appeal, only the grounds asserted in the motion to vacate, as is the case with new trial motions pursuant to 12 O.S. 1991 §991(b)."); see also *Bank of Am., N.A. v. Morris*, 2014 OK CIV APP 91, ¶5, 338 P.3d 138 (Fischer, J., concurring in result) ("No similar rule limits the issues that may be raised in an appeal from an order granting or denying a motion to vacate."). Accordingly, the practitioner also risks unknowingly waiving issues for appeal if she files a motion to vacate deemed the functional equivalent of a motion for new trial.

30. See *SIT, SL v. Tulsa Turbine Engines & Aircraft, LLC*, 2013 OK CIV APP 97, n.3, 313 P.3d 1035 (rejecting argument "motion to vacate" filed within 10 days should be treated as a motion for new trial because moving party specifically invoked 12 O.S. §1031.1 as grounds for vacating default judgment).

31. See 12 O.S.Supp.2017 §990A(A).

32. While not within the scope of this article, it is critical to know when there is an appealable order. See 12 O.S. 2011 §§696.2-696.3.

33. Holidays, weekends and other days the clerk's office is closed are excluded when calculating the 30 days for appeal. See 12 O.S. 2011 §2006(A).

34. See 12 O.S. 2011 §990.2(A).

35. See 12 O.S. §653(C).

36. See 12 O.S. §990A(F)(1).

37. See *id.*

38. See 12 O.S. §990A(F)(2).

39. See 12 O.S. §990.2(A).

40. *Id.*

41. See Okla. Sup. Ct. R. 1.22(c)(2).

42. Okla. Sup. Ct. R. 1.301, Form No. 5.

43. See 12 O.S. 2011 §952(b)(2); 12

O.S.Supp.2013 §993(A)(8); Okla. Sup. Ct. R. 1.60(a)-(b); Okla. Sup. Ct. R. 1.20(b).

44. See 12 O.S. §990.2(B); Okla. Sup. Ct. R. 1.22(e); see also *Neumann v. Arrowsmith*, 2007 OK 10, ¶¶8-9, 164 P.3d 116 (treating untimely motion for new trial as "functional equivalent" of a motion to vacate pursuant to 12 O.S. §1031.1).

45. See 12 O.S. §990.2(B).

46. *Id.*

47. *Id.*

48. See Okla. Sup. Ct. R. 1.37(a)(3).

49. See 12 O.S. §990.2(B).

50. See 12 O.S. §952(b)(2); 12 O.S. §993(A)(8); Okla. Sup. Ct. R. 1.26(a).

51. See 12 O.S. §952(b)(2); 12 O.S. §993(A)(8). In an appeal from an order granting or denying a post-trial motion, the reviewing court does not look to the original judgment, but rather the correctness of the trial court's response to the post-trial motion. See *Kordis v. Kordis*, 2001 OK 99, ¶16, 37 P.3d 866.

52. See 12 O.S. §952(b)(2); 12 O.S. §993(A)(8); Okla. Sup. Ct. R. 1.60(a)-(b); Okla. Sup. Ct. R. 1.20(b).

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Appealable Orders: Asking the Key Questions

By Ann Hadrava



THE OKLAHOMA SUPREME COURT REVIEWS INCOMING APPEALS for jurisdictional purposes. This is also known as the court's inquiry into its appellate jurisdiction.¹ Whether you are a practitioner who is filing your first appeal or a practitioner who regularly files appeals, you may find it helpful to know how an appeal crosses the court's jurisdictional hurdle. It involves asking the three questions below.

THREE KEY QUESTIONS

While there are different types of appeals, this article focuses on a general civil appeal from a district court order. Obviously, for other appeals you will want to consult the Oklahoma Supreme Court Rules and applicable statutes.² With each general appeal the questions for the court are:

- 1) Is there an order prepared in conformance with 12 O.S. §§696.2 and 696.3? In other words, is the order properly memorialized?³
- 2) Is the appeal timely commenced?
 - 30-day requirement for regular appeals pursuant to 12 O.S. §990A;⁴
 - 20-day requirement for workers' compensation petition for review;⁵
 - 40-day requirement for regular counter-appeals,⁶ and
 - For other types of appeals check the court's rules.⁷

- 3) Does the order fall within one of the four categories of appealable orders?
 - Interlocutory orders certified as immediately appealable by the trial court pursuant to 12 O.S. §952(b)(3);⁸
 - Interlocutory orders appealable by right under 12 O.S. §993(A) and Okla. Sup. Ct. R. 1.60;⁹
 - Orders properly certified as final orders pursuant to 12 O.S. §994(A); and
 - Final orders.¹⁰

First and foremost, the order appealed must be properly memorialized. 12 O.S. §696.2(A) provides that after the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with 12 O.S. §696.3. Section 696.2(D) provides examples of what does *not* constitute an appealable order. The most common order the court sees is the "minute entry" which is not an appealable order.¹¹ Remember

when appealing from the adjudication of a post-trial motion, the order disposing of the motion must also be memorialized in conformance with these statutory requirements.¹²

Secondly, 12 O.S. §990A(A) provides that an appeal must be commenced by filing a petition in error within 30 days of the date the judgment, decree or appealable order prepared in conformance with 12 O.S. §696.3 is filed with the clerk of the trial court. This is a jurisdictional requirement.¹³ Oklahoma Supreme Court Rule 1.21(a) states: "The date of filing of a judgment, decree or appealable order with the clerk of the district court shall be presumed to be the date of the district court clerk's file stamp thereon." This is explored in more detail below.

TIMING AND NOTICE

How Post-trial Motions Filed in District Court Affect Appeal Time
Post-trial motions filed within 10 days of the judgment's filing. 12 O.S. §990.2(A) provides that a

post-trial motion filed within 10 days of the filing of the judgment, decree or final order serves to extend the time to appeal the same beyond the 30-day time period.¹⁴ If a post-trial motion is filed within 10 days of the judgment, §990.2(A) provides that “an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk.” If the decision on the post-trial motion is against the moving party, the moving party may appeal the judgment, the order on the post-trial motion or from both orders within 30 days of the order disposing of the post-trial motion.

Sometimes we see a petition in error filed before the trial court has disposed of a post-trial motion filed within 10 days of the judgment. Under such circumstances, the appeal may be dismissed by the court as premature.¹⁵ (A premature appeal may also occur when an appeal is taken from an order which is not properly memorialized.) However, keep in mind the appellant may cure the initial prematurity of the appeal by timely filing a supplemental petition in error after the filing of the final judgment and before the appeal is dismissed. Under 12 O.S. §990A(F)(1) such an appeal “shall not be dismissed” as premature.

Post-trial motions filed more than 10 days after the judgment’s filing. Conversely, 12 O.S. §990.2(B) provides that if a post-trial motion is filed more than 10 days after the judgment, decree or final order is filed with the clerk of the district court, it *does not* extend the time to appeal the original judgment.¹⁶ Both in substance and for purposes of appeal time, adjudication of a post-trial motion filed more than 10 days after the filing of the judgment “is an independently appealable post judgment event.”¹⁷

It is crucial to remember that a trial court’s *discretionary* extension of time for the filing of a motion

for new trial beyond the 10-day period does not extend the time to appeal from the original judgment.¹⁸ Unfortunately, we see this happen occasionally. If you intend to appeal the original judgment and intend to file a post-trial motion, review your timelines carefully. Determine whether your post-trial motion was (or will be) filed within 10 days. Prepare accordingly. When in doubt, go ahead and timely appeal the original judgment.¹⁹ You can always file a second appeal of the order disposing of the post-trial motion.

How to Calculate the 10-Day Period for Post-trial Motions

12 O.S. §2006(A)(1) applies to time calculations of post-trial motions. Except for a few noted exceptions, §2006(A)(1) provides that when the period of time prescribed or allowed to perform an act is less than 11 days, intermediate legal holidays and weekends “shall be excluded from the computation.” Oklahoma Supreme Court Rule 1.3 prescribes the same method for computation of any time period of less than 11 days. To determine whether a post-trial motion is filed within 10 days of the judgment’s filing, the court will count “working days” as the court reiterated late last year in *Christian v. Christian*.²⁰

Filing of the Judgment, Service Within Three Days, Actual Notice

12 O.S. §990A(A) and 12 O.S. §696.2(B). 12 O.S. §990A(A) requires an appeal to be commenced within 30 days of the filing of a judgment, decree or appealable order. This is straightforward. However, this period may be affected by the three-day mailing requirements. I say, *may be*. Pursuant to the second part of §990A(A):

- 1) if the appellant did not prepare the judgment, decree, or appealable order;

- 2) 12 O.S. §696.2 requires service of the final order on the appellant; and
- 3) court records do not reflect service of the order on appellant within three business days of the filing of the order, the petition in error may be filed within 30 days after the earliest date on which court records show a copy of the order was served.

12 O.S. §696.2(B) requires a file-stamped copy of the judgment to be served by the party (or counsel or judge) who prepared the order no later than three days after its filing. A “certificate of service must be filed with the court clerk.”²¹ Consider these provisions every time you file an appeal. Determine whether your appeal may be affected by these provisions. As discussed below, even without a certificate of service appeal time is triggered by actual notice. If you are unsure, *always* assume your time to appeal is triggered by the filing of the judgment. Misinterpretation can result in an untimely filed appeal.

Fleshing out §990A(A) with Tidemark, Whitehall and Cedars. The court has fleshed out 12 O.S. §990A(A)’s three-day mailing requirements in three key decisions. In 1998, in *Tidemark Exploration, Inc. v. Good*²² the court dismissed the appeal where there was no dispute appellant received actual notice of the appealable event more than 30 days before the filing of the appeal.²³

Fourteen years later in *Whitehall Homeowners, Ass’n v. Appletree Enterprise*,²⁴ the court held that when actual notice occurs *later* than three days after filing of the order, but before the proof of notice is filed, the time to appeal will commence from the date that actual notice of the appealable event occurred. The court in *Whitehall* remarked that there was “an utterly

silent record” as to when the order was served on appellant.²⁵

In 2013, the court decided *State ex rel. Okla. Dep’t of Transp. v. Cedars Group, LLC*.²⁶ As in *Whitehall* there was no certificate of service filed but, as opposed to *Whitehall*, there was no dispute appellant received actual notice of the judgment within three days of its filing. The court held in that instance the date of the filing of the judgment triggers the running of the 30-day time period.²⁷

Get to know these cases. They each have different and nuanced fact patterns which makes the analysis of the court very helpful in sorting out §990A(A)’s mailing provisions. They will guide you in determining whether the 30-day time to appeal may be extended because of defects in service of the order.

Participation in the preparation of the order. The court in *Tidemark* concluded that because the attorney for appellant participated in the preparation of the order the mailing provisions of 12 O.S. §990A(A) did not apply and the filing of the judgment triggered the time to appeal.²⁸ The court has not explicitly defined to what extent “participation in the preparation of the order” will trigger §990A(A)’s mailing requirements. If you are not sure whether

you participated in preparing the order for purposes of the statute, assume the appeal time is triggered by the date the order is filed.

CATEGORIES OF APPEALABLE ORDERS

Certified Interlocutory Orders

A party can appeal an interlocutory order, when not appealable by right, pursuant to 12 O.S. §952(b)(3). The order must affect “a substantial part of the merits of the controversy” and the district court judge must certify “that an immediate appeal may materially advance the ultimate termination of the litigation.” Certified interlocutory orders (CIO) typically present a pure legal question that would affect the *merits of the controversy*.²⁹ The court has defined this term as the real or substantial grounds of action or defense as distinguished from matters of practice, procedure or form.³⁰ The court does not consider jurisdictional issues³¹ and evidentiary rulings³² to fall within the definition of *merits of the controversy*.

Interlocutory Orders Appealable by Right

A party may seek review from a class of interlocutory orders that are appealable by right. These orders are listed in 12 O.S. §993, 12 O.S.

§952(b)(2) and Oklahoma Supreme Court Rule 1.60.³³ An appeal from an interlocutory order appealable by right must be commenced within 30 days of the filing of the memorialized order. However, a party’s failure to appeal from an interlocutory order appealable by right does not prevent the party from asserting error in the order in an appeal from a final judgment in the case.³⁴

Orders Certified as

Final Pursuant to 12 O.S. §994

A judgment as to one but less than all claims or parties in an action is not an appealable final order unless the judgment is certified by the trial court under 12 O.S. §994(A). The order must contain the express determination by the trial court that there is no just reason for delay and direct the order be filed as a final judgment.³⁵ Bear in mind that if an unadjudicated claim arising out of the same transaction or occurrence as the adjudicated claim remains, the trial court lacks the power to enter a final order.³⁶

To determine whether an order is properly certified under §994(A), the court will also look at the interrelationship between the legal and factual issues of the resolved and pending claims and the equities and efficiencies implicated by the requested piecemeal review.³⁷

A judgment as to one but less than all claims or parties in an action is not an appealable final order unless the judgment is certified by the trial court under 12 O.S. §994(A).

Final Orders

A final order is one that affects a substantial right when such order in effect determines the action.³⁸

An interlocutory order, on the other hand, does not preclude a party from proceeding further in the case, nor does such an order “prevent a judgment.”³⁹ The best way to think about this is: subject to certain exceptions, trial court orders which leave issues or claims to be determined or parties in the case are not final unless certified as such by the trial court.⁴⁰

The court has established a helpful two-prong test for finality:

- 1) whether the order conclusively determines the question presented; and
- 2) whether the order prevents the aggrieved party from further proceeding in the action.⁴¹

For instance, an order compelling arbitration and staying further proceedings in the district court is a final, appealable order,⁴² as is an order granting or denying disqualification of counsel.⁴³

Unsure Whether an Order Is Appealable? Go Ahead and Appeal

The law on final and interlocutory orders is too vast and varied to get into more detail in this article. If you are not sure whether an order is appealable, *always* assume that it is and timely commence your appeal. If the appeal is dismissed for lack of an appealable order, you will have the opportunity to bring a subsequent appeal in accordance with the rules.

JURISDICTIONAL QUESTION? DON'T PANIC

The court will seek to resolve jurisdictional questions by asking the appellant to “show cause” why the appeal should not be dismissed for lack of an appealable order, as untimely, as premature or some

other reason. If you find yourself on the receiving end of a show cause order, don't panic. Consider it your opportunity to cure any apparent deficiencies by filing an amended or supplemental petition in error or to provide the legal basis for why the order is appealable.⁴⁴

Author's Note: The referees of the Oklahoma Supreme Court are central staff whose duties include preparing memoranda for the court analyzing the facts and law in the assigned case. These are confidential and not discoverable. This article is derived from a CLE presentation prepared and given by Referee Kyle Rogers and me to the OBA Appellate Practice Section. This article is meant to be a general overview only. Always consult the relevant statutes and appellate rules if you plan to file an appeal.

ABOUT THE AUTHOR

Ann Hadrava is a referee at the Oklahoma Supreme Court. Prior to coming to the court in January 2017, she was in private practice, focusing mostly on appellate work. Ms. Hadrava graduated in 2002 from the OCU School of Law.

ENDNOTES

1. *Stites v. Duit Const. Co., Inc.*, 1995 OK 69, ¶8 & n.10, 903 P.2d 293, 297 (reaffirming court's history of decisions holding inquiries into appellate cognizance may be made *sua sponte* at any stage of the proceedings); *Cate v. Archon Oil Co., Inc.*, 1985 OK 15, ¶10 n.12, 695 P.2d 1352, 1356 n.12 (“This court must inquire into its own jurisdiction as well as to the jurisdiction of the court from which the appeal is taken, regardless of whether it is raised by the litigants.”).

2. For example, see Okla. Sup. Ct. R. 1.85 (appeals from the Corporation Commission), Rule 1.100 (Workers' Compensation Commission), Rule 1.125 (Tax Commission).

3. Minute orders, orders directing one to prepare a journal entry, order sheets and verdicts are not properly memorialized. See *Mansell v. City of Lawton*, 1994 OK 75, 877 P.2d 1120; *Corbit v. Williams*, 1995 OK 53, 897 P.2d 1129; *Aven v. Reeh*, 1994 OK 67, 878 P.2d 1069; *Brown v. Green Country Softball Ass'n*, 1994 OK 124, ¶12, 884 P.2d 851; *Chamberlin v. Chamberlin*, 1986 OK 30, 720 P.2d 721. An order titled *Summary Order* meets the requirements of §696.3 so long as the order is reduced to writing, signed by the judge, contains a proper caption and contains the disposition and relief awarded.

4. See Okla. Sup. Ct. R. 1.21.

5. See Okla. Sup. Ct. R. 1.100.

6. See Okla. Sup. Ct. R. 1.27(a).

7. It is always good to double-check what type of appeal you have because some are governed by specific statutes and appellate rules other than those applicable to those mentioned above.

8. See also Okla. Sup. Ct. R. 1.50 to 1.56.

9. See also Okla. Sup. Ct. R. 1.60 to 1.67.

10. See 12 O.S. §953. See Okla. Sup. Ct. R. 1.20 for examples of final orders.

11. See *supra* note 3.

12. *Corbit v. Williams*, 1995 OK 53, ¶8, 897 P.2d 1129. Though an order might meet all the other requirements of 12 O.S. §696.3, a court minute is not an appealable order or judgment.

13. *Davis v. Martin Marietta Materials Inc.*, 2010 OK 78, ¶1, 246 P.3d 454, 454. Except for the timely filing of the petition in error (including notice to adverse parties) all other steps in perfecting an appeal are not jurisdictional. 12 O.S. §990A(E).

14. *Id.*

15. 12 O.S. §990A(F)(1); Okla. Sup. Ct. R. 1.26(c).

16. *In the Matter of K.S.*, 2017 OK 16, ¶9, 393 P.3d 715, 717; see also Okla. Sup. Ct. R. 1.22 (tracking the language of §990.2).

17. *Central Plastics Co. v. Barton Indust., Inc.*, 1991 OK 103, ¶2, 818 P.2d 900 (order) (citing *Schepp v. Hess*, 1989 OK 28, 770 P.2d 34); *Carr v. Braswell*, 1989 OK 52, ¶9, 772 P.2d 915, 917 (holding that the appeal of original order was untimely, but appeal of denial of motion to vacate was timely); *Yery v. Yery*, 1981 OK 46, ¶9, 629 P.2d 357, 360 (addressing an appeal from an order disposing of a motion to vacate filed more than 10 days after the original judgment and limiting appellate review to issues raised in the motion).

18. See *Davis*, 2010 OK 78, ¶1(3), 246 P.3d at 455.

19. If it turns out your appeal is premature and the appeal is dismissed as premature, under 12 O.S. §990A(F)(2) you may file a new petition in error within 30 days of the filing of the appealable order or within 30 days of the notice of dismissal, whichever date is later.

20. 2018 OK 91, ¶7, 434 P.3d 9 (because the time limit prescribed by 12 O.S. §653(A) is only 10 days, weekends, legal holidays and days when the court clerk is either closed or closes early, must be omitted when computing deadline for filing a motion for new trial); see also *Davis*, 2010 OK 78, ¶1, 246 P.3d at 455 (only post-trial motions filed within 10 “working” days will extend time to appeal the same beyond the 30-day jurisdictional limitation).

21. This statute requires that service be in accordance with the provisions of 12 O.S. §2005; see *Neumann v. Arrowsmith*, 2007 OK 10, ¶4 n.3, 164 P.3d 116, 117 (using three business days as calculation).

22. 1998 OK 67, ¶5, 967 P.2d 1194, 1195-96.

23. The court held the filing of the certificate of service is not the appealable event. The court dismissed the appeal because it was filed more than 30 days after the filing of the order appealed, and more than 30 days after the order was mailed to appellant. The order was mailed to appellant within three days, but there was no certificate of service filed until months later.

24. 2012 OK 34, ¶12, 277 P.3d 1266, 1269.

25. *Id.* at ¶7.

26. 2013 OK 99, ¶8, 320 P.3d 23, 25.

27. *Id.*

28. *Supra* note 23, at ¶6. See also *Cedars*, *supra* note 27, at ¶6 (observing same).

29. See *Martin v. Phillips*, 2018 OK 56 (addressing whether a defendant's Alford plea can establish tort liability for the same acts).

See *State ex rel. Bd. of Regents of University of Oklahoma v. Lucas*, 2013 OK 14, 297 P.3d 378, for a thorough discussion of the CIO standard and what constitutes a claim affecting the “merits” of the controversy. In *Lucas*, the court observed a claim based upon a lack of jurisdiction is usually considered to be a claim *not* affecting the merits of the controversy. To the extent the jurisdictional issue in the case could be construed as intertwined with the merits, the court noted the university’s motion to dismiss should be treated as a motion for summary judgment. Okla. Sup. Ct. R. 1.50 states no CIO will be considered if taken from an order overruling a motion for summary judgment. Hence, the court concluded *certiorari* review was improper. See *id.* at ¶11. See also *Sommer v. Sommer*, 1997 OK 123, ¶6, 947 P.2d 512.

30. *Flick v. Crouch*, 1967 OK 131, ¶15, 434 P.2d 256 (quoting *Providential Development Co. v. U.S. Steel Co.*, 236 F.2d 277, 280 (10th Cir. 1956)).
31. *Id.*

32. *Ellison v. Ellison*, 1996 OK 64, ¶5, 919 P.2d 1.

33. See also 12 O.S. §952(b)(2), which gives the court jurisdiction to review an order which discharges, vacates or modifies or refuses to discharge, vacate or modify a provisional remedy or grants, modifies, vacates or refuses to grant, modify or vacate an injunction, grants or refuses to grant a new trial or vacates or refuses to vacate a final judgment.

34. See 12 O.S. §952(b); Okla. Sup. Ct. R. 1.40(f) and 1.61, but see *Williams v. Mulvihill*, 1993 OK 5, ¶2, 846 P.2d 1097. *Williams* involved a claim

brought against the estate by a third-party. The court found the trial court’s mid-probate order declaring the sale a nullity was a true “judgment” because it resolved issues separate from the main probate action. See Okla. Sup. Ct. R. 1.60(h) (interlocutory probate orders appealable by right). The order in *Williams* was an “end-of-the-line disposition of all issues” between a stranger to the estate who was neither an heir, beneficiary or fiduciary under the will and the estate. Thus, *Williams* stands for the proposition that an order under 58 O.S. §721(10) can be the “final determination of the rights of the parties in an action” which must be immediately appealed.

35. In the absence of such certification, the order “shall not terminate the action,” and the appeal will be dismissed. *Dotson v. Rainbolt*, 1992 OK 101, ¶2, 835 P.2d 870.

36. *Liberty Bank and Trust Co. of Oklahoma City, N.A. v. Rogalin*, 1996 OK 10, ¶10, 912 P.2d 836; *DeLuca v. Mountain States Financial Resources Corp.*, 1992 OK 30, ¶1, 827 P.2d 171.

37. *Oklahoma City Urban Renewal Auth. v. City of Oklahoma City*, 2005 OK 2, ¶17, 110 P.3d 550.

38. 12 O.S. §953; Okla. Sup. Ct. R. 1.20.

39. *DLB Energy Corp. v. Oklahoma Corp. Comm’n*, 1991 OK 5, ¶7, 805 P.2d 657.

40. *Jones v. Tubbs*, 1993 OK 118, ¶6, 860 P.2d 234 (order granting default judgment on actual damages but reserving punitive damages not a final appealable order). This court in *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶15, 396 P.3d 210, reiterated that a motion to reconsider or vacate which challenges an earlier intermediate

order in the case is treated as a request for reconsideration of an intermediate ruling. “A motion to reconsider an interlocutory order anterior to judgment is not a §1031 motion to vacate unless made so by the terms of the statute.” *Id.* at ¶14.

41. *Hammonds v. Osteopathic Hosp. Founders Assn.*, 1996 OK 54, ¶3, 917 P.2d 6. The issue in *Hammonds* was whether the sanctions order against a *nonparty* to the case was a final, appealable order. Because the order in *Hammonds* was an end-of-the-line disposition of matters between the nonparty (Sellers) and Hammonds, ancillary to the main litigation, the order was final under 12 O.S. §953.

42. 12 O.S. §953; *Oklahoma Oncology & Hematology P.C. v. US Oncology, Inc.*, 2007 OK 12, ¶17,160 P.3d 936.

43. *Arkansas Valley State Bank v. Phillips*, 2007 OK 78, ¶8, 171 P.3d 899. See also *Miami Business Serv’s, LLC. v. Davis*, 2013 OK 20, ¶17, 299 P.3d 477 (order denying disqualification of counsel is a final order which is immediately reviewable on appeal).

44. For example, when an appeal appears premature, the court will allow a reasonable period for the appellant to secure a final or otherwise appealable order so the appeal can proceed. If the issue is timeliness, explain the legal bases for why the appeal should proceed. Remember, facts not in the record must be supported by affidavit. This is especially important in sorting out when an order is mailed.

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Proper Practice on *Certiorari*: Avoiding Common Pitfalls and Crafting Better Arguments

By Kyle Rogers and John Holden

PETITIONING THE SUPREME COURT OF OKLAHOMA for *certiorari* review of an opinion of the Court of Civil Appeals is a common part of appellate practice.¹ This article aims to provide litigants and attorneys with some guidance on what they should and should not do as part of the *certiorari* process in order to maximize the chances of obtaining their desired outcome. The article provides a short summary of the Supreme Court's *certiorari* procedure, provides suggestions on how best to comply with the court's *certiorari* rules, sets out common pitfalls to avoid and discusses what to include in a petition for *certiorari*.

A BRIEF NOTE ON PROCEDURE

The Supreme Court will deny your petition for *certiorari*.² Well, maybe not always, but that is perhaps the best way to view your chance of success on *certiorari* before the court. The court's decision to grant *certiorari* to review a Court of Civil Appeals opinion is entirely discretionary.³ It takes five justices agreeing there is a special or important reason why the appeal should be addressed again.⁴ So, how can a litigant or attorney get the attention of the court on *certiorari*? It may first be helpful to understand how the court processes petitions for *certiorari* once filed.

After briefing is completed,⁵ the referee's office will review the petition, response and reply. A referee will draft a memorandum to the court, analyzing the parties' arguments and recommending whether the court should grant or deny *certiorari*. The court then

randomly assigns the petition for *certiorari* to a justice to present in conference. Each justice reviews the *certiorari* briefing and referee's memorandum. The court conferences and votes to grant or deny the petition for *certiorari*; there must be five justices who agree to grant *certiorari*. If the court grants *certiorari*, it will normally issue an order the same day. A justice in the majority voting to grant *certiorari* is assigned to write the opinion. The court's assignment is confidential. Once the justice has completed the opinion, the justice places it back on the court's docket where the justices conference and vote on the opinion. The court normally publishes its opinions on Tuesday.

FOLLOW THE COURT'S RULES ON CERTIORARI

The petition for *certiorari*, answer and reply are governed by Rule 1.179. This rule illustrates

what the court considers important in filings on *certiorari* and what it wishes litigants to avoid. An attorney or litigant should comply with all formatting and form requirements, stress the reason the court should grant *certiorari*, raise all issues the court should consider on *certiorari* and be concise. We touch on each briefly.

Comply With All Formatting and Form Requirements

Rule 1.179 sets out detailed requirements for page limits, size and spacing. All litigants and attorneys should be aware of these requirements and conform to them when drafting and filing petitions, answers and replies on *certiorari*. Font size and line and margin spacing tend to be the requirements parties most often push. The court may strike petitions, answers or replies that do not follow these formatting rules. Additionally,



formatting the petition or answer in smaller font, with smaller margins, or in less than double spacing makes the filing harder to read for its intended recipients – not the best strategy when *certiorari* is entirely discretionary.

*Stress the Reason the Court
Should Grant Certiorari*

Rule 1.178 provides examples of the “special and important reasons” the court may consider in choosing whether to grant *certiorari*.⁶ We examine those reasons in more depth later. While not exclusive, those examples indicate the character of reasons which the court will consider. The reasons justifying the court’s review on *certiorari* should be outlined in accordance with Rule 1.179(a) and should be stated accurately, briefly and clearly.⁷ A litigant or attorney should also tie those special and important reasons into the argument throughout the petition.

*Raise All Issues the Court
Should Consider on Certiorari*

It is important for litigants and attorneys to include all necessary issues they wish the court to consider on *certiorari*. All issues to be considered by the court on *certiorari* must be raised in the petition

if they were decided by the Court of Civil Appeals; issues not raised will not be considered.⁸ However, if the Court of Civil Appeals did not decide all of the properly preserved and briefed issues, the Supreme Court may – should it vacate the opinion of the Court of Civil Appeals – address such undecided matters or may remand the cause to the Court of Civil Appeals for that court to address.⁹

Be Concise

Rule 1.179 uses the term *concise* four separate times.¹⁰ The court appreciates brevity and clarity – so much so that a party’s failure to present the petition with accuracy, brevity and clarity is a sufficient reason to deny the petition.¹¹ Extraneous language and argument should be avoided; hyperbole is frowned upon. As with all legal writing, attorneys and litigants should provide structure to their argument and tie points together in a coherent and succinct fashion.

PITFALLS TO AVOID ON CERTIORARI

The court only grants *certiorari* for appeals when a majority of the justices agree a petition presents special or important reasons. The court has spelled out four of those reasons in Rule 1.178(a) as to why it may grant *certiorari*, but these reasons are neither controlling nor determinative to the court. Here are some notable pitfalls we see in many petitions that attorneys or litigants should avoid altogether.

Seeking a Second Review of the Facts

Do not reargue the facts in the petition. A party is entitled to only one review of the factual findings. *Certiorari* is entirely discretionary, and the Supreme Court rarely entertains a petition because a party contends factual findings are incorrect. While a concise statement of fact containing the

matters material to the questions presented is a requirement in a petition,¹² litigants should avoid extraneous facts and unnecessary citation to the record on appeal. Unless directly relevant to one of the criteria set out in Rule 1.178, *certiorari* filings are not the place to assert the Court of Civil Appeals or the district court incorrectly weighed certain facts or made incorrect factual findings.

Discussing the Merits of the Appeal

Litigants and attorneys should not address the merits of the appeal in filings on *certiorari* but rather should limit their arguments to the reasons in favor of or against the court granting *certiorari* set out in Rule 1.178. Similarly to the court’s distaste for rearguing the facts, a

Copying and Pasting Your Prior Brief

Certiorari is not meant to be a third bite at the proverbial apple. A common mistake in petitions is a party simply repeats all arguments made before the Court of Civil Appeals. Appellate attorneys should avoid this practice as it is not only unnecessary as it does not follow Rule 1.178(a), but the petition includes the opinion from the Court of Civil Appeals. The court can pretty easily deduce those arguments from the opinion.¹³ The Supreme Court does not consider prior appellate briefs, the record on appeal, petitions for rehearing or other motions filed in the appeal when examining a petition for *certiorari*.¹⁴ Litigants or attorneys may be tempted to then reurge failed arguments hoping to find a receptive audience with the



discussion of the merits should be included only as necessary to provide proper context for the reasons for *certiorari* review. While it may prove difficult to ignore the merits, litigants or attorneys should keep in mind the spirit of the rule – an examination for the reason that *certiorari* is appropriate before the Supreme Court.

court. This is a poor strategy and most likely a missed opportunity to engage the court on *certiorari*. Rule 1.178(a) expresses exactly how the court wants to use its discretionary authority to grant *certiorari* – not by re-examining past arguments but considering novel legal issues or conflicts in Court of Civil Appeals’ divisions.

THE CONTENTS OF THE PETITION

Rule 1.178(a) is not an exhaustive list of reasons for *certiorari*,¹⁵ but the rule seeks to impart on litigants or attorneys that *certiorari* should present compelling legal issues worthy of the court's writ of *certiorari*. Parties filing petitions for *certiorari* commonly make two mistakes. The first, ignoring Rule 1.178(a) entirely. Do not do this. It is a disservice to the client and the court. The second, forcing the petition's argument into two or three of the reasons outlined in Rule 1.178(a). This second strategy many times weakens a petition as the reasons in Rule 1.178(a) were not written to build upon each other. A petition that argues the court is faced with a novel legal issue and that the Court of Civil Appeals failed to apply precedent many times creates a contradiction in your arguments. We encourage a party to select one of the reasons in Rule 1.178(a) to make the strongest argument on *certiorari*.¹⁶ Keep in mind the court values brevity in the *certiorari* process.

A Novel Legal Issue

The first special and important reason for *certiorari* is "[w]here the Court of Civil Appeals has decided a question of substance not heretofore determined by this court."¹⁷ More commonly recognized as a question of first impression or novel legal issue.¹⁸ Additionally, in our personal view alone, Rule 1.178(a)(1) can include questions of substance in an area of the law that is changing or has significantly changed but the court has yet to address that change.¹⁹

Failure to Follow Controlling Precedent

The second reason the court lists for *certiorari* is "[w]here the Court of Civil Appeals has decided a question of substance in a way

probably not in accord with applicable decisions of this Court or the Supreme Court of the United States."²⁰ Anecdotally, this is perhaps the most commonly invoked reason for *certiorari* and the most commonly rejected petition. Common examples of petitions invoking the rule that get denied include the argument that the Court of Civil Appeals incorrectly applied the standard of review on summary judgment or that the Court of Civil Appeals applied controlling precedent to a slightly different set of facts. Rule 1.178(a)(2) is not an invitation to make these arguments. Instead, a litigant or attorney should highlight how the Court of Civil Appeals' decision grossly misapplied controlling precedent, how the decision could lead to misapplications down the road and how the controlling precedent cannot (or can) be distinguished from the current appeal.

Conflict Between Divisions of the Court of Civil Appeals

The court's third stated reason for *certiorari* is "[w]here a division of the Court of Civil Appeals has rendered a decision in conflict with the decision of another division of that court."²¹ This reason is fairly self-explanatory, yet many litigants and attorneys simply cite two or three Court of Civil Appeals' decisions without further explanation. If Rule 1.178(a)(3) is the basis for the *certiorari* petition, explain the conflicting opinions in detail. Many times, these lower appellate court decisions differ in key ways and a litigant or attorney fails to highlight the differences or explain why the differences do not matter. A repeated example where the Supreme Court has invoked Rule 1.178(a)(3) is where divisions of the Court of Civil Appeals have issued conflicting opinions interpreting the same statute.²²

The Supreme Court's Supervisory Power

The final reason for *certiorari* is rarely invoked by the court in published opinions, "[w]here the Court of Civil Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a trial court as to call for the exercise of this Court's power of supervision."²³ There are not hard and fast examples in the authors' experience, but the rule's plain language perhaps provides the best example, a blatant misapplication of court procedure or an outcome far outside the normal course of judicial proceedings.

CONCLUSION

The best advice the authors can leave to a litigant or attorney for drafting a petition for *certiorari* is to be concise, accurate and clear and focus on the court's stated reasons for granting *certiorari* in Rule 1.178(a). If a litigant or attorney applies that advice to the petition, he or she will have a better chance at getting the justices' attention and at achieving the desired outcome in the *certiorari* process.

Authors Note: Kyle Rogers and John Holden are referees for the Supreme Court of Oklahoma. They can be reached at 405-556-9354. Procedural questions regarding petitions for certiorari or other appeal-related issues the referee's office handles are welcome. Referees' duties include reviewing petitions for certiorari, requests for stays pending appeal, petitions for certiorari certified interlocutory orders, applications to assume original jurisdiction, including judicial disqualifications, challenges to legislation, initiative petitions and referendums and civil prisoner filings.

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ENDNOTES

1. This article examines petitions for *certiorari* governed by Oklahoma Supreme Court Rules 1.178 to 1.181, not the court's other *certiorari* bases or other constitutional ground for granting *certiorari*. See Okla. Sup. Ct. R. 1.50 to 1.56; Okla. Const. art. VII, §§4 & 5; *Ingram v. Oneok, Inc.*, 1989 OK 82, 775 P.2d 810.

2. Over the last three years, the Supreme Court has granted only 17% of the petitions for *certiorari* filed with the court.

3. Okla. Sup. Ct. R. 1.178(a), 12 O.S. Supp. 2013, app. 1; 20 O.S.2011, §30.1.

4. Okla. Sup. Ct. R. 1.178(a); 20 O.S., §30.1.

5. See Okla. Sup. Ct. R. 1.179(c), 12 O.S. Supp. 2013, app. 1.

6. Okla. Sup. Ct. R. 1.178(a).

7. Okla. Sup. Ct. R. 1.179(b).

8. Okla. Sup. Ct. R. 1.180(b); *Hough v. Leonard*, 1993 OK 112, 867 P.2d 438.

9. Okla. Sup. Ct. R. 1.180(b); *Hough*, 1993 OK 112, 867 P.2d 438; *Yocum v. Greenbriar Nursing Home*, 2005 OK 27, ¶16, 130 P.3d 213, 221.

10. Okla. Sup. Ct. R. 1.179(a) & (c); see also Okla. Sup. Ct. R. 1.179(a)(2) ("An outline of the reasons for review as suggested in Rule 1.178, expressed in the terms and circumstances of the case but without unnecessary detail."); Okla. Supreme Court Rule 1.179(b), 12 O.S. Supp. 2013, app. 1 ("The failure to present with accuracy, brevity and clarity matters essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying a petition.").

11. Okla. Sup. Ct. R. 1.179(b).

12. Okla. Sup. Ct. R. 1.179(a)(3)(a).

13. This may seem obvious, but attach a copy of the Court of Civil Appeals' opinion with the petition for *certiorari*. Okla. Sup. Ct. R. 1.179(a)(5).

14. Okla. Sup. Ct. R. 1.179(d).

15. Rule 1.178(a) provides as follows:

A review of an opinion of the Court of Civil Appeals in the Supreme Court on writ of *certiorari* as provided in 20 O.S. § 30.1 is a matter of sound judicial discretion and will be granted only when there are special and important reasons and a majority of the justices direct that *certiorari* be granted. The following, while neither controlling nor fully measuring the Supreme Court's discretion, indicate the character of reasons which will be considered:

- (1) Where the Court of Civil Appeals has decided a question of substance not heretofore determined by this court;
- (2) Where the Court of Civil Appeals has decided a question of substance in a way probably not in accord with applicable decisions of this Court or the Supreme Court of the United States;
- (3) Where a division of the Court of Civil Appeals has rendered a decision in conflict with the decision of another division of that court;
- (4) Where the Court of Civil Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a trial court as to call for the exercise of this Court's power of supervision.

16. There are times when a Court of Civil Appeals opinion may present two or more reasons for *certiorari*, like the Court of Civil Appeals not applying this court's precedent and other conflicting Court of Civil Appeals' opinions. Different issues on appeal may fall within different reasons for *certiorari*. We encourage a litigant or attorney to focus on the best reason for *certiorari* given the court's emphasis on brevity.

17. Okla. Sup. Ct. R. 1.178(a)(1).

18. See *McDanel v. Lynn Hickey Dodge, Inc.*, 1999 OK 30, ¶1, 979 P.2d 252, 253.

19. For example, in *Wood v. Mercedes-Benz of Okla. City*, 2014 OK 68, 336 P.3d 457, the court granted *certiorari* to address "the tripartite classification system of assessing landowner liability for injuries sustained on the property." *Id.* ¶5, 336 P.3d at 459. In the opinion, the court recognized a now-more commonly recognized exception to the open-and-obvious doctrine where a landowner should foresee possible harm to an invitee as a result of an open-and-obvious condition. See *Martinez v. Angel Exploration, LLC*, 798 F.3d 968, 975-76 (10th Cir. 2015) ("*Wood* appears to represent a significant shift in Oklahoma premises liability law.").

20. Okla. Sup. Ct. R. 1.178(a)(2); see *Harris v. David Stanley Chevrolet, Inc.*, 2012 OK 9, 273 P.3d 877.

21. Okla. Sup. Ct. R. 1.178(a)(3); see *Evans & Assocs. Utility Servs. v. Espinosa*, 2011 OK 81, 264 P.3d 1190 (examining conflicting divisions' opinions on a workers' compensation statute).

22. *Evans & Assocs. Utility Servs.*, 2011 OK 81, ¶0, 264 P.3d 1190, 1192; *Bernal v. Charter Cnty. Mut. Ins. Co.*, 2009 OK 28, ¶4, 209 P.3d 309, 311.

23. Okla. Sup. Ct. R. 1.178(a)(4).

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Practical Tips for Civil Appellate Brief Writing in Oklahoma State Court

By Susan Beaty and Kellie Laughlin

WHEN SUBMITTING AN APPEAL TO THE OKLAHOMA SUPREME COURT, always look first to the Oklahoma Supreme Court Rules.¹ The answers to a large majority of technical questions – when to file, what to include and where to submit – are included in the rules.² Here we offer helpful tips for attorneys submitting appeals from final orders of district courts, with particular emphasis on appellate brief writing. The guidance provided herein is intended only as a “starter kit” for submitting an appeal and is not a comprehensive or exhaustive review of the rules. We include additional advice regarding style and tone in appellate briefs with the intention of providing insight into effective advocacy at the appellate level.³

GETTING STARTED – THE PETITION IN ERROR

Every appeal begins with filing a petition in error.⁴ Rule 1.21 includes the filing deadlines for appeals of various types of cases. Appellants are required to attach three exhibits to the petition in error: 1) a copy of the appealable decision from which they are appealing, 2) a one-page summary of the case; and 3) a list of issues to be raised on appeal.⁵ Appellees are similarly required to attach a one-page summary of the case to the response to the petition in error. The forms for the petition in error and response to petition in error are found in Rule 1.301.⁶

TO BRIEF OR NOT TO BRIEF: ACCELERATED APPEALS UNDER RULE 1.36

Before addressing appellate briefing, we first address a feature of appellate procedure that may cause some to breathe a sigh of relief: briefs are not required for every appeal. In fact, many civil appeals are decided without the aid of extensive written arguments and are instead adjudicated according to the accelerated appeals process enumerated in Rule 1.36.

The accelerated appeals process is available in three categories of appeals: 1) rulings on motions for summary judgment under District Court Rule 13; 2) orders granting dismissal for failure to state a claim; and 3) orders granting dismissal for lack of personal or subject matter jurisdiction.⁷ In

these appeals, written briefs are not permitted unless the appellate court gives leave.⁸

While not having to prepare briefs in accelerated appeals may come as a welcome reprieve to many practitioners, there are instances in which counsel may still wish to submit briefs to the court. The existence of a complicated issue of law might be reason to request leave to file a brief. A party seeking leave of court to file briefs must do so by motion, and no briefs may be attached to the motion.⁹ The Supreme Court maintains discretion in determining whether to grant leave to file briefs in an accelerated appeal. The court clerk will not accept briefs in an accelerated appeal unless the court so permits.¹⁰ In the interest of conserving client and attorney



resources, counsel should not attempt to submit briefs in an accelerated appeal without first seeking and receiving leave of court.

In all appeals not governed by the accelerated procedure, briefs are required.¹¹ However, because briefs are not normally permitted in accelerated appeals, the petition in error is especially important in listing the issues on appeal and presenting a brief overview of the case.¹² In an appeal where briefs are submitted, the exhibits attached to a petition in error serve as only a preliminary overview of the forthcoming briefs. In an accelerated appeal, however, the one-page summary of the case and the list of issues on appeal are the only opportunity for persuasion. Of course, as we will highlight regarding briefs, the summary of the case is never a place for bare legal argument. Still, a prudent attorney will utilize the permitted single page to not only present the facts and procedural history, but also highlight the most important issues of fact and law.

BEFORE YOU BRIEF – DESIGNATING THE RECORD ON APPEAL

Essential to any successful appellate brief is citation to a record supporting your claims of error.¹³ The Oklahoma Supreme Court Rules provide for the record on appeal to be created by the parties filing a designation of record. The appellate court's review is limited to the instruments included in the record on appeal.¹⁴ To be included in the record on appeal, those instruments must be designated by the parties.¹⁵ Indeed, "all parties to an appeal must designate a record."¹⁶ Rule 1.28(a) sets out thorough instructions for how to properly designate your record for appeal.

Your designation of record must be filed in the district court and in the Supreme Court, as



well as mailed to all parties.¹⁷ The appellant's designation of record must be filed with the Supreme Court clerk either at the time the petition in error is filed there or at the time the designation of record is filed in the district court, whichever is later.¹⁸ The designation of record must be mailed to the other parties and filed in the district court either concurrently with or prior to filing the petition in error in the district court. If you have designated any transcripts, you must also give the designation of record, along with the cost of preparing the transcripts, to the court reporter. Within 20 days of the filing of the appellant's designation, the appellee must file a counter-designation of record.¹⁹ The form for the designation and counter-designation is the same: Form 11 in Rule 1.301.²⁰ Where the parties are in agreement as to which instruments should be designated for the record, they may file a single stipulated designation of record within 10 days of filing the petition in error.²¹ Rule 1.33 explains how and when the district court clerk assembles the designated record and files it with the Oklahoma Supreme Court clerk for consideration with your briefed argument.

Rule 1.28(b) gives direction for what items should be designated as well as what items may not be designated, both with an eye toward limiting the record to items relevant to the issues on appeal. First, the rule directs parties to designate only those instruments filed in the case which are pertinent. To reiterate this limitation, the rule states, "[N]o designation of record which generally includes the entire trial court record shall be filed without order of the Chief Justice." Rule 1.28 also allows trial courts to penalize parties who designate excessive or unnecessary portions of transcript.²²

Second, the rule expressly states which items shall not be included in the record:

The record on appeal shall not include the following unless upon order of the trial court or appellate court, or unless the document is specifically drawn in issue by the appeal: subpoenas, summonses, certificates of service, returns and acceptances of service, and procedural motions or orders (e.g., continuances, extensions or time, etc.). Depositions filed but not offered or admitted into evidence must be excluded from the record on

appeal. Materials which were not before the trial court at the time of the decision appealed are not properly part of the record on appeal without order of the trial court of the appellate court.²³

Transcripts of hearings or trial are often designated for the record in order to show alleged errors. Where the parties have not requested a court reporter or paid for a transcript, the rules allow the parties to file a narrative statement in lieu of a transcript.²⁴ That rule provides specific procedures for obtaining the trial court's approval before a narrative statement may be filed with the Supreme Court clerk. If you do not have a transcript, it may be well worth the effort to prepare and file a narrative statement to present a record supporting your claims on appeal.

When deciding which instruments to include in the designation of record, parties should be mindful of the applicable standard of review as well as the issues or errors alleged. Both will help parties determine which pleadings, testimony or exhibits will best support their claims on appeal. A case governed by a clear and convincing standard may well require more of a record than one determined by any competent evidence, although the type of errors alleged also impacts the record necessary to allow review of those errors. In briefs, "[q]uotations from the record must be accurate, in context, and reference the pages in the record where they appear."²⁵ Necessarily you will want to designate any instrument you intend to quote from in your brief.

WRITING THE BRIEF – SUMMARY OF THE RECORD

Once you have your assembled record and are ready to draft your appellate brief, look to Rule 1.11(e) (1) as a guide for drafting the

summary of the record on appeal. The summary of the record is the second section of the brief, following the index:

The brief of the moving party shall contain a Summary of the Record, setting forth the material parts of the pleadings, proceedings, facts and documents upon which the party relies, together with such other statements from the record as are necessary to a full understanding of the questions presented to this Court for decision.²⁶

The summary should be a direct and accurate explanation of the procedural history of the case; in other words, it should explain how the case was initiated and how it got to the appellate court. Statements in the summary of the record must be supported by reference to the record. Where a party intends to assert error in the admission or rejection of evidence or testimony, the testimony shall be set out in the summary of the record with citation to the record. Where a party intends to assert errors in the jury instructions, the challenged instructions must be included in the summary of the record or in an appendix to the brief.

The summary of the record is not the place for argument or contentious language. In the summary of the record, the reviewing court wants a clear and accurate view of what happened. Rule 1.11(f) expressly directs the parties to include separate propositions of error later in the brief, *not* in the summary of the record. Additionally, it is unnecessary to include detailed explanation of parts of the record not relevant to the questions presented on appeal. Where you have diligently limited the record to relevant instruments, however, your summary of the

record will likely include an explanation of each instrument and why it is relevant. The summary of the record prepares the reviewing court to better understand the allegations of error presented later in the brief.

WRITING THE BRIEF – WHAT'S THE ISSUE?

In beginning to draft an appellate brief, one of the most important tasks is also one of the most difficult: identifying the issue(s) on appeal.

As mentioned above, the first place in which an appellant lays out the issues on appeal (also referred to as "allegations of error") is in an exhibit attached to the petition in error, consisting of a bullet-pointed list of issues to be raised.²⁷ Of course, all issues raised before the appellate court must have first been considered and resolved by the trial court below.²⁸ Additionally, though an issue is raised in the petition in error, it is waived if later omitted from the brief.²⁹ Similarly, an issue raised in both the petition in error and the brief, but for which no authority is given in support, may also be waived.³⁰ In the event that you unintentionally omit an issue from the petition in error, however, you may 1) file an amended petition in error, if the brief has not been filed; 2) seek leave to file an amended petition in error, if the brief has already been filed; or 3) simply include the omitted issues in the brief.³¹ The appellant's brief-in-chief will be deemed to amend the petition in error to include any additional issues on appeal, so long as the issues were considered and resolved by the trial court.³² No issue may be raised for the first time in a reply brief.³³

Still, the greatest difficulty arises not in determining *where* to list the issues on appeal, but in determining *what* issues to include. Supreme Court Rule

1.11(f) provides that in appellate briefs, “[t]he main contentions of the parties must be set forth in separate propositions” and authority supporting “each proposition must follow the statement of the proposition.”³⁴ Rule 1.11(f) essentially requires that a brief be well organized and issues be clearly delineated. You should therefore ensure that every proposition is clear and distinct from the other main contentions and that supporting argument and authority properly follow the appropriate assertion.³⁵

Occasionally, for fear that a viable issue might be forfeited on appeal, some attorneys adopt a scorched earth approach in listing and briefing issues on appeal. While it is important to include and support every major contention for which there is merit, it is also your duty to judiciously select and identify the issues raised.³⁶ Though a party might list all possible issues on appeal in the list of issues attached to the petition in error, the brief should represent a more carefully crafted and distilled argument. As feasible, you should seek to present only a few main questions in your brief. Avoid conflating and confusing issues. A more intentional selection and identification of the issues prior to drafting the brief may help avert trouble.

The tone with which an appellate argument is written can be nearly as important as its substance.

FINAL THOUGHTS – PLAY NICE, KEEP IT SIMPLE

The tone with which an appellate argument is written can be nearly as important as its substance. When writing an appellate brief, attorneys must walk the fine line between maintaining persuasive value and sounding overly argumentative. As in trial practice, lawyers in appellate practice can stifle their own effectiveness by communicating in an excessively adversarial manner. Not only does this undermine the general goal of civility in the legal profession, but it also detracts from the overall effectiveness of the brief. A quick rule of thumb would be to generally omit words describing the opposing party or the lower court. With limited space for argument in a brief – only 30 pages³⁷ – it is best to preserve every word in furtherance of your argument.

Finally, when drafting an appellate brief, remember to keep it simple. Though the idea of drafting an argument directed to the highest court in the state may conjure impulses to delve into the nuances of complicated legal inquiries and employ lofty legal jargon, the best briefs are those which capture the arguments as succinctly and simply as possible.³⁸ An effective brief acts as an instruction manual guiding the court in the correct application of the law. As such, there is no need

to muddy the waters with puffery or legalese. Distill it down and keep it straightforward.

CONCLUSION

The appellate court reviewing a trial court decision is bound by the record presented, the applicable standard of review and relevant authority. Focusing on these things in a clear, direct and simple fashion is your best bet. Plainly state how the trial court erred, accurately state where the error is shown in the record, explain why your client is entitled to relief and always use the Oklahoma Supreme Court Rules as your guide.

ABOUT THE AUTHORS

Susan Beaty is a staff attorney for Judge Kenneth L. Buettner of the Oklahoma Court of Civil Appeals. She is a member of the OBA Appellate Practice Section and a member of Oklahoma City Rotary Club 29. She is a graduate of the OU College of Law.

Kellie Laughlin graduated from the OU College of Law in 2018, where she served as an editor of the *Oklahoma Law Review* and competed in moot court. She is currently a staff attorney to Judge Kenneth L. Buettner of the Oklahoma Court of Civil Appeals in Oklahoma City.

ENDNOTES

1. The Oklahoma Supreme Court Rules are found in Appendix 1 to Chapter 15 of Title 12 of the Oklahoma Statutes. 12 O.S. Supp. 2013 Ch. 15 App. 1. We cite to the Oklahoma Supreme Court Rules hereafter by citing simply to the appropriate rule number (e.g. “Rule 1.1”).

2. Special procedures regarding specific types of appeals from orders other than a final order from a district court, such as those from the Corporation Commission, Workers’ Compensation proceedings, Tax Commission, etc., are laid out with particularity in the rules.

3. The opinions expressed herein are the authors’ alone and do not represent the view of any court or member thereof. Judicial and professional opinions may differ regarding the persuasiveness of advocacy tactics addressed herein.

4. Rule 1.23(a)(1).

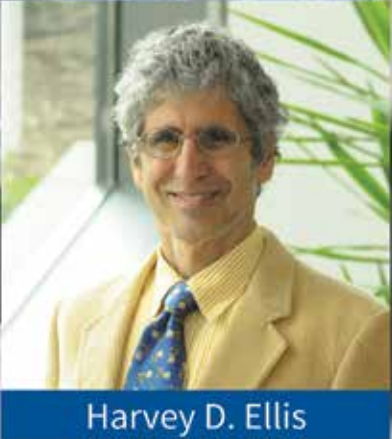
5. Rule 1.301 (Form 5).

6. *Id.*, (Form 5)(form for petition in error), (Form 6) (form for response to petition in error).

7. Rule 1.36.
 8. *Id.*
 9. *Id.*
 10. *Id.*
 11. Rule 1.10(a)(1).
 12. *Choate v. Lawyers Title Ins. Corp.*, 2016 CIV APP 60, ¶154, 385 P.3d 670 (citing *Siemens Fin. Servs., Inc. v. MTG Guarnieri Mfg., Inc.*, 2012 OK CIV APP 1, ¶18, 269 P.3d 36).
 13. *Hamid v. Sew Original*, 1982 OK 46, ¶6, 645 P.2d 496 (“Legal error may not be presumed ... from a silent appellate record.”) (also explaining that, absent a record affirmatively showing error, the appellate court presumes that the trial court did not err).
 14. Rule 1.33(d) (“The record on appeal shall consist only of those portions of ‘the entire trial court record’ properly designated by a party to the appeal or ordered by the appellate court.”).
 15. *Id.*
 16. A notable exception to this rule is in cases governed by the accelerated procedure outlined in Supreme Court Rule 1.36. In those cases, the parties themselves gather and file the record on appeal, rather than designating a record to be prepared by the district court clerk; though the record submitted still must be certified by the district court clerk. Rule 1.36(g).
 Additionally, in the unusual case in which questions of law may be determined without reference to the trial court record, the parties may file a statement in lieu of a record on appeal. See Rule 1.31.
 17. Rule 1.28(b).
 18. *Id.*

19. Rule 1.28(c). Bear in mind that subsections 1, 2 and 3 of Rule 1.28(b) include different deadlines for filing the designation of record in three specific types of appeals.
 20. Rule 1.28(b), (c). The rule notes that a different form will be used when the Oklahoma Uniform Case Management System is in effect. This article does not address procedures under that future scenario.
 21. Rule 1.28(g).
 22. Rule 1.28(b), (g).
 23. Rule 1.28(b).
 24. Rule 1.30.
 25. Rule 1.11(j)(1).
 26. Rule 1.11(e)(1).
 27. Rule 1.301 (Form 5).
 28. Rule 1.26(a); *Dumas v. Conyer*, 1968 OK 165, ¶120, 448 P.2d 835.
 29. Rule 1.11(k)(1); *Mangum Oil & Gas v. Mayabb*, 2016 OK CIV APP 48, ¶15, 378 P.3d 1225 (citing *Peters v. Golden Oil Co.*, 1979 OK 123, ¶3, 600 P.2d 330)(waiving issues raised in petition but omitted from brief).
 30. *Id.*; *Badillo v. Mid Century Ins. Co.*, 2005 OK 48, ¶62 n. 18, 121 P.3d 1080 (citing *State ex rel. Dep’t of Human Servs. v. Baggett*, 1999 OK 68, ¶12 n. 5, 990 P.2d 235) (recognizing an exception to waiver of an issue unsupported by authority where the issue is well taken, but finding that an unsupported issue was not subject to the exception and was therefore waived).
 31. Rule 1.26(a).
 32. Rule 1.26(b) (citing *Jackson v. Okla. Mem’l Hosp.*, 1995 OK 112 ¶15, 909 P.2d 765).
 33. *Id.*

34. Rule 1.11(f).
 35. *Mazzio’s Corp. v. Bright*, 2002 OK CIV APP 45, ¶¶18-19, 46 P.3d 201 (striking and denying consideration of portions of petitioner’s brief for failure to properly enumerate and support issues on appeal).
 36. See *Tenth Circuit’s Practitioner’s Guide* (9th Rev., January 2018), Part VI(C)(2):
 The statement of the issues or questions presented for review requires careful selection and choice of language. The main issue should be stressed and an effort made to present no more than a few questions. The questions selected should be stated clearly and simply. A brief that assigns a dozen errors and treats each as being of equal importance when some are clearly not lessens the stronger arguments. As Justice Frankfurter once said, a bad argument is like the clock striking thirteen, it puts in doubt the others.
 37. Rule 1.11(b).
 38. See Justice Ruth Bader Ginsburg, Gillian Metzger, Abbe Gluck, *A Conversation with Justice Ruth Bader Ginsburg*, 25 Colum. J. of Gender & L. 6 (2013) (“But one thing about writing a brief. You have to keep it simple. You have to remember that judges are overwhelmed with reading cases briefs ... [N]ever write a sentence that has to be read again to be understood.”).



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Building a Better Brief

Using Each Section of Your Appellate Brief to Make Your Case

By Jennifer M. Warren

THE ABILITY TO WRITE PERSUASIVELY IS THE APPELLATE PRACTITIONER'S most important skill, particularly given that most appeals are decided without oral argument. In an Oklahoma civil appeal, you only have 30 pages to make your case,¹ so it is imperative that you incorporate persuasive writing strategies into each section of your brief. Below are several suggestions for ensuring that your appellate brief is built to persuade.

THE INTRODUCTION

The best appellate briefs not only present compelling legal arguments, they also tell compelling stories. Your arguments will be more memorable, more powerful and more convincing if the reader is engaged by a captivating story that helps them appreciate the significance of the case and understand the roles of the parties. Although it is not required by the Oklahoma Supreme Court Rules,² you should always consider opening your appellate brief with a compelling introductory section that presents the story of your case. Some cases more easily lend themselves to captivating story-telling than others, yet even the driest or most technical case can be made interesting with the right presentation. Take, for example, this excerpt from a brief written by experienced U.S. Supreme Court advocate Deepak Gupta, which manages to generate a compelling narrative out of a case concerning preemption and statutory interpretation:

Claiming that its arbitration agreement is more “consumer friendly” than others despite its class-action ban, AT&T seeks to transform a factbound state-law question of unconscionability into a question of federal preemption. But the question whether a contractual provision offends generally applicable state law is a matter that the Federal Arbitration Act (FAA) leaves to the States, so long as state law does not discriminate against arbitration ... The California courts, like many others, have applied general contract law to hold that class-action bans in adhesion contracts that effectively exculpate defendants from liability are unenforceable, without regard to whether the bans are part of arbitration agreements. Because the applicable state law does not treat arbitration agreements “in a manner different from that in which it otherwise construes nonarbitration

agreements,” *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987), the FAA does not preempt it.

From reading AT&T's brief, one might think California had struck out on its own in its approach to the enforceability of class-action bans. In fact, courts applying the general contract law of at least twenty States have held that provisions purporting to bar consumers or employees from pursuing classwide relief in any forum may be unenforceable. If California's highest court has distorted its own common law, as AT&T contends, then so have the highest courts of Alabama, Illinois, Massachusetts, Missouri, New Jersey, New Mexico, North Carolina, South Carolina, West Virginia, and Washington. So too have courts applying the law of Arizona, Delaware, Florida, Georgia, Michigan, Ohio, Oregon, Pennsylvania, and Wisconsin. Even if the fidelity of these courts to state common-law



principles were relevant to the issue of FAA preemption, it would be an unprecedented incursion on State sovereignty for this Court to conclude that so many States have been untrue to their own law.³

By using punchy language and providing context, the brief conveys a sense of urgency and righteousness that transforms an otherwise dull topic into an interesting case.

Like Mr. Gupta does above, your introduction should present the relevant facts and convey the theme of your case in a way that is persuasive, yet accurate and balanced. Moreover, by providing context, highlighting choice facts and framing your legal argument in a compelling way, the introduction can also start to counteract any assumptions the reader may harbor.

THE SUMMARY OF THE RECORD

Oklahoma Supreme Court Rule 1.11(e) requires each civil appeal to

contain a Summary of the Record “setting forth the material parts of the pleadings, proceedings, facts and documents upon which the party relies, together with such other statements from the record as are necessary to a full understanding of the questions presented.”⁴ Of course, all facts stated “must be supported by citation to the record.”⁵

The summary of the record sets out the facts, and the facts must be accurate but that does not mean they have to be boring. Treat the summary of the record as an opportunity to expound on the compelling story you set up in the introduction. The key here is to present the relevant facts, while at the same time highlighting the facts (or absence of facts) that support your theme of the case and your legal arguments.⁶ Remember, however, that while you should strive to present the facts in a way that is persuasive and compelling, accuracy and completeness are the most crucial components. Taking liberties when summarizing the

record will not go unnoticed by the court. Balance is important here – if the statement of facts is too argumentative or misleading in any way, your otherwise valid legal arguments may be discounted.⁷

You should also strive for clarity when summarizing the record, particularly for cases that involve complex factual situations or technical terminology. Unlike the attorney who is intimately familiar with every nuance of the lawsuit, the appellate court is approaching the case with a fresh set of eyes. Thus, it is necessary to lay out the facts of the case in a way that is clear and easy to follow. To do so, make liberal use of headings, incorporate visual diagrams such as timelines or maps when appropriate and use the real name of the client rather than the generic “appellant” or “appellee.” Stylistically, avoid legalese, excessive acronyms, clumsy sentence structure and wordiness. In one of his more well-known opinions, Chief Justice John Roberts

demonstrates how using short, clear sentences and direct language provides a compelling yet clear summation of the facts:

North Philly, May 4, 2001. Officer Sean Devlin, Narcotics Strike Force, was working the morning shift. Undercover surveillance. The neighborhood? Tough as a three-dollar steak. Devlin knew. Five years on the beat, nine months with the Strike Force. He'd made fifteen, twenty drug busts in the neighborhood.

Devlin spotted him: a lone man on the corner. Another approached. Quick exchange of words. Cash handed over; small objects handed back. Each man then quickly on his own way. Devlin knew the guy wasn't buying bus tokens. He radioed a description and Officer Stein picked up the buyer. Sure enough: three bags of crack in the guy's pocket. Head downtown and book him. Just another day at the office.⁸

While you may not want to be quite as cinematic as Chief Justice Roberts in your summary of the record, you should nevertheless strive for the same level of clarity and directness.

THE STANDARD OF REVIEW

A strong appellate brief will not only recite the standard of review, it will also be used to persuade. The "standard of review provides the degree of deference the decision under review should receive," and that deference should be used to your advantage whenever possible.⁹ If the standard of review is favorable to your position, emphasize it throughout your arguments. If the standard of review is not favorable, confront it head on and explain why it is not fatal to your case.¹⁰ In either situation, avoid

including nothing more than a bare recitation of the standard of review. Instead, explain how the standard of review functions and then show the court throughout your arguments section that you have satisfied it.¹¹

THE ARGUMENT

It is axiomatic that an effective argument section must be well-written, accurate when characterizing the law, fair in its treatment of the facts and respectful of the lower court's ruling. The best appellate briefs will also be concise and focused. Resist the temptation to include every conceivable argument that could be made, otherwise you risk overshadowing a winning argument.¹² Instead, select your arguments carefully, organize them in a logical manner and ensure that each is meticulously supported by citation to authority.¹³

In presenting your arguments, pay particularly close attention to how you craft your headings. In addition to being required by the Oklahoma Supreme Court Rules,¹⁴ setting out your arguments in separate propositions provides you with another opportunity to advocate for your client. Headings and subheadings grab the reader's attention and set the tone for the remainder of the section, so they must do more than simply introduce an abstract legal topic. Each heading should provide a persuasive summary of the main arguments. In crafting your main headings, best practices usually dictate that you should state the conclusion you want the court to reach and relate the key facts and reasoning supporting that conclusion.

Finally, do not discount the importance of proper spelling, grammar, citation and formatting. Poor writing or improper formatting will distract the reader and undermine the persuasive force of

your legal argument. An appellate brief should always comply with the court's rules and represent your best very work.

THE CONCLUSION

Every appellate brief should include a pithy and powerful conclusion. This is your last opportunity to present your case to the court, so be bold! Reiterate the story of your case in the most memorable and compelling way possible and confidently (but succinctly) reassert your main arguments.

Every section of an appellate brief is an opportunity to educate and persuade the court regarding your case. Take no section for granted and use every opportunity to make your case.

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ENDNOTES

1. See Okla. Sup. Ct. R. 1.11(b).
2. See Okla. Sup. Ct. R. 1.11.
3. Brief for Respondents at 1-2, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), No. 09-893, 2010 WL 4411292 at *1-2.
4. See Okla. Sup. Ct. R. 1.11(e).
5. *Id.*
6. Judge Stephen J. Dwyer, Leonard J. Feldman, Ryan P. McBride, "How to Write, Edit, and Review Persuasive Briefs: Seven Guidelines from One Judge and Two Lawyers," 31 *Seattle U. L. Rev.* 417, 418 (2008).
7. *Id.*
8. *Pennsylvania v. Dunlap*, 555 U.S. 964 (2008).
9. *Fields v. Saunders*, 2012 OK 17, 278 P.3d 577, 581.
10. Joi T. Montiel, "Your Appellate Brief: An Obstacle Course for the Court or A Clear Pathway to Your Conclusion," 73 *Ala. Law.* 344, 346 (2012).
11. Dwyer, *supra* at 420.
12. Alex Kozinski, "The Wrong Stuff," 1992 *B.Y.U. L. Rev.* 325, 327 (1992).
13. See Okla. Sup. Ct. R. 1.11(k).
14. See Okla. Sup. Ct. R. 1.11(f).

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JUSTICE

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Trials and Tribulations From the Appellate Vantage Point

By Judge Jane P. Wiseman

I WAS AMAZED WHEN I FIRST BECAME AN APPELLATE JUDGE to discover how little I knew from my trial judge experience about how to avoid getting reversed on appeal. As a trial judge, I got opinions stating: “This is an appeal from a decision by Judge Jane Wiseman – other grounds for reversal include...” Now I suppose it may depend, from your vantage point as a lawyer, on whether you want to keep the trial judge from committing reversible error or you want to introduce some to have something on appeal if your case is going south. I can’t say I’ve ever seen the latter situation, but I’m sure it’s not unheard of.

So now, as an appellate judge, I commend the following 11 precepts to your attention.

DO NOT NEGLECT THE STANDARD OF REVIEW

Not infrequently, we see briefs without any mention of the Standard of Review (SOR). Please don’t pick the one you think will help you the most. Every appellate opinion that I’ve ever seen has a reference to the applicable SOR, so you might as well show us that you’re on the same page as we are on that subject. I guess an interesting question would be whether there might be times in the trial court when mentioning how the trial court’s ruling on a given question might be reviewed on appeal. “You have great discretion on this issue, Judge, so don’t abuse it.” Or, “The law on this point is clear, Judge, and as a question of law, this will be reviewed *de novo* on appeal so we’ll have another shot at getting it right.” Clearly designed

to endear you to the judge, I’m sure, but nevertheless an interesting question. I’m not sure how it would be received, but I certainly wish I’d been more cognizant of how my decision would be reviewed when I was on the trial bench.

MAKE SURE YOU HAVE AN APPEALABLE ORDER

When we give you a chance to keep your appeal alive and tell you in detail how to do it (by actually getting a final/appealable order), I would suggest that it’s not the most advisable practice to argue with us about who has jurisdiction and then make us dismiss your appeal so you can spend another \$200 to refile. Chances are, if you get a show cause order, it’s something you need to go back to the trial court for in order to assuage our concerns about our appellate jurisdiction.

KEEP IN MIND: ‘MATTERS NOT FIRST PRESENTED TO THE TRIAL COURT ARE GENERALLY EXCLUDED FROM CONSIDERATION BY AN APPELLATE FORUM’¹

“An issue not presented to the trial court for decision will not be considered for the first time on appeal.”² We will refuse to address propositions of error on appeal that have not been decided by the trial court, which of course makes our job easier. This principle does not apply to grounds raised by an appellee to affirm the trial court because an appellee may obtain affirmation of the order appealed on any basis, whether argued to the district court or not, the appellate court not being bound by the trial court’s reasoning, and the appellate court may affirm on any proper legal theory.³ Which, I may add, is another reason not to haggle too much over the form of the order or judgment,

i.e., whether it contains the trial court's reasoning or basis for its decision. If it's right, it's right for whatever reason, and if it's wrong, we might appreciate the trial court's reasoning, but it will still be reversed.

BE ALERT TO THE CONCEPT OF 'INVITED ERROR'

We have recently had several cases raising this specter of "invited error:"

Parties to an action on appeal are not permitted to secure a reversal of a judgment upon error which they have invited, acquiesced or tacitly conceded in, or to assume an inconsistent position from that taken in the trial court. As we recognized in *Union Texas Petroleum v. Corp. Comm'n*, this is a well-settled rule which emanates from the very heart of the purpose served by an appeal. "To allow such a traverse in theory at the appellate level thwarts the very basis of the appellate process."⁴

So, if you object to a witness sponsoring an exhibit or offering an opinion and the objection is overruled, how far can you go, in cross-examining the witness, before it becomes invited error if you venture into territory not



I cannot stress enough the much-neglected importance of the pretrial order on appeal.

covered on direct? I won't say this issue comes up frequently, but I just alert you to it as a potential pitfall.

RECORD ON APPEAL

The next is a very specific recommendation pertaining to the record on appeal. In cases involving lengthy transcripts or multi-volume transcripts – divorce cases with numerous or complicated property division issues being foremost in mind – please have the court reporter include a word index. We spend a lot of time searching the record for every mention of a specific subject or topic, and the word index would be an invaluable time saver. If we had the new uniform case management system (still in the works), it would change some of that with online searchable documents, but, as you can well imagine, reading hundreds of pages of briefs and transcripts, whether in hard copy or online, is physically challenging, if not downright debilitating. If you make our review of your case easier by showing us, or at least making it possible for us to find all the places in the record where the contested issue or subject is mentioned, you increase your chances of success.

MOTIONS FOR NEW TRIAL

It would be interesting to know your views on the advisability

of employing post-trial motions, particularly 12 O.S. §651 motions for new trial. Aren't you concerned that you'll inadvertently leave out an applicable ground and be precluded from raising it on appeal pursuant to 12 O.S. §991(b)? This states, "If a motion for a new trial be filed and a new trial denied, the movant may not, on the appeal, raise allegations of error that were available to him at the time of the filing of his motion for a new trial but were not therein asserted." Make sure you cover all the ground needed.

MOTIONS TO VACATE UNDER 12 O.S. §1031.1

We have had a rash of recent cases involving the trial court's refusal to grant motions to vacate default judgments pursuant to O.S. §1031.1. Perhaps this is the wrong audience to address this to, but if you are urging such a motion, I think it's worth pointing out to the trial court that, with abuse of discretion being the SOR on such issues and the court's discretion being so broad and wide-ranging under §1031.1, it is much easier to abuse one's discretion in denying such a motion to vacate than it is by granting it. I'm not sure why we are having such an outbreak of these denials – maybe it's due to illness and fatigue – the trial courts are just sick and tired of putting up with defaulting parties – but it seems easier to

me to allow such parties another chance, particularly when they have not had their day in court on the merits. Anyway, that's "Wiseman on 1031.1" for what it's worth.

PRETRIAL ORDERS

I cannot stress enough the much-neglected importance of the pretrial order on appeal. This is the script that the parties and the trial court should be following at trial. We shouldn't have to guess whether a certain issue, theory of recovery, witness or exhibit constitutes a surprise on which reversal is sought. Sloppiness in the preparation of the pretrial order can have unpleasant consequences on appeal, for instance if we have to guess whether the exhibit listed by plaintiff is the same one defendant now seeks to have admitted under the all-encompassing categorical listing on defendant's pretrial exhibit list, "All of plaintiff's exhibits."

JURY INSTRUCTIONS

Ignore these at your peril. If you don't actually designate the instructions you contend are erroneous or if you fail to ensure they are included in the record, it can be fatal to this portion of your appeal. We have had some recently in which we could not determine whether there had been error in the giving or denying of certain instructions because the

record was silent on their content. Make sure a written copy of your requested instructions that were denied is *filed* in the case, the trial court has *marked* them “denied” and you’ve made your record in the instruction conference with the court.

ATTORNEY FEES AND COSTS ON APPEAL

Although several years ago a change was instituted to the appellate rules regarding requests for costs and attorney fees (Rule 1.14) – they must now always be by separate motion – this is still violated with astonishing frequency. The change to a separate filing makes it easier to ensure that these applications are addressed and not overlooked, which they could easily be when raised in only one sentence in an appellate brief. If they are not requested by separate motion, they will either be denied or refused consideration as not in compliance with Rule 1.14.

REFERENCES TO THE TRIAL JUDGE

My final note is to be kind to the trial court – professionalism is also paramount at the appellate level. It serves no purpose to berate the trial court for its perceived shortcomings – your points should be made using the record and your brilliant legal arguments. Those former trial judges now on the appellate bench can read between the lines, and we can remember being excoriated in appellate print by unhappy attorneys on the losing end at trial. So, at least soften the tone and avoid adjectives in describing the judge’s conduct – let it speak for itself and use compelling precedent to show the error complained of.

CONCLUSION

I’ll end with a quote from Judge Alex Sanders, formerly the chief judge of the South Carolina Court of Appeals, who said, “More simply put, appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” I hope this has been helpful both at the trial and appellate levels. Thank you for wading through this!

Author’s Note: This article was written as continuing legal education material presented at the 2019 OBA Solo & Small Firm Conference.

ABOUT THE AUTHOR

Jane P. Wiseman is a judge of the Court of Civil Appeals in Tulsa. She received her J.D. from the TU College of Law. In 1977, she was appointed a special judge for Tulsa County. In 1981, the governor appointed her a district judge where she was assigned to the Family Division and then to the Civil Division. As a trial judge, she tried close to 1,000 jury trials. In March 2005, she was appointed to her current position by Gov. Brad Henry.

ENDNOTES

1. *Jernigan v. Jernigan*, 2006 OK 22, ¶26.
2. *Northwest Datsun v. Okla. Motor Vehicle Comm’n*, 1987 OK 31, ¶16.
3. *McMinn v. City of Oklahoma City*, 1997 OK 154, ¶11.
4. *Samedan Oil Corp. v. Corporation Comm’n*, 1988 OK 56, ¶7.

LAW | ALUMNI

2019 Law Reunion

October 25-26

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Alumni Awards Luncheon

Wednesday, November 6

12:00 - 1:30 p.m.

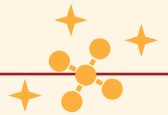
OKC Cox Convention Center, \$45

Register by October 30 at

okbar.org/annualmeeting



HIGHLIGHTS



SPEAKERS AND CLE

CLE: Cannabis Potpourri

Join a host of experts on Wednesday for a pre-Annual Meeting CLE program. Sarah Lee Gossett Parrish has put together an excellent program taught by a diverse group of experts from both the local and national arena. Topics include the stages of legal marijuana enterprise, medical marijuana use at work, defending criminal charges, intellectual property and more. (7 MCLE credit hours)

CLE: The Malpractice of Hunches, The Future is Now and Cyber Ethics

Start Thursday morning with luncheon keynote speaker Ed Walters, CEO and co-founder of Fastcase, who will present “The Malpractice of Hunches – Data Analytics to Serve Clients and Run a Successful Firm” followed by a discussion panel “The Future is Now – What You Need to Know,” with OU College of Law Director of Technology Innovation Kenton Brice, OBA Management Assistance Program Director Jim Calloway, author and lecturer Mark Robertson and Ed Walters. The morning program will conclude with OBA General Counsel Gina Hendryx and Jim Calloway discussing “Cyber Ethics – Legal Ethics in a Digital Age.” Annual Meeting registrants receive an additional discount on this program. (3 MCLE credit hours including 1 hour of ethics)

Delegates Breakfast

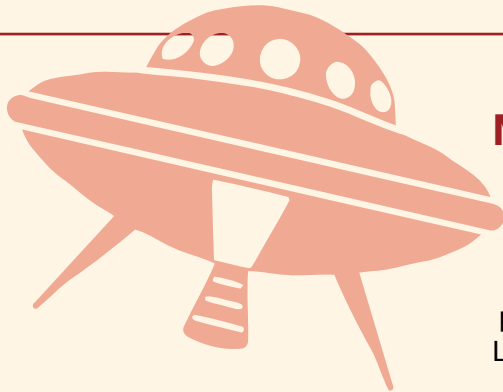
Kick off the last day of the Annual Meeting with a generous breakfast and a presentation by retired NFL referee Walt Coleman. Like most judges and lawyers, as a referee for more than two decades, Mr. Coleman has been no stranger to unpopular decisions. As “one of the most maligned yet anonymous men in the world,” he will present a humorous view of “Turning Boos into Cheers: How Effective Are You?” The breakfast will be a ticketed event, free for delegates or only \$30 for nondelegates.

SOCIAL EVENTS

President’s Reception

Join President Chuck Chesnut on Wednesday evening to catch up with friends from around the state at the President’s Reception. The event is free with Annual Meeting registration and complimentary buffet and drink tickets will be provided.





Midtown Pub Crawl

After the President's Reception, join your friends and colleagues for a fun trip up to Midtown on the Oklahoma City streetcar! The event is free with Annual Meeting registration and participants will be provided an all-day streetcar pass good through midnight Wednesday and a map of pubs providing specials and discounts for the event. Co-hosted by the Young Lawyers Division and the Oklahoma Bar Association. Sponsored by LawPay.

Out of This World Party

Join your peers for an Out of This World party Thursday night. Set your dance moves to stun and unwind in a ballroom far, far away from a day of meetings and presentations. Not into dancing? Enjoy lounge seating and a knockout view of downtown Oklahoma City at sunset, plus capture fun memories with your friends and colleagues in the far-out photo booth. A complimentary buffet and drink tickets will be provided. Co-hosted by the Oklahoma Bar Association and Oklahoma Bar Foundation.

BAR BUSINESS AND MORE

Committee and Section Meetings

Many committees and sections will hold important meetings in conjunction with the Annual Meeting. For a full list of times and locations of all meetings and events, see the schedule page at www.okbar.org/annualmeeting.

Annual Luncheon

On Thursday, hear CEO and co-founder of Fastcase Ed Walters present "Real Intelligence About Artificial Intelligence" and learn about practical applications of automation and legal tech. Plus, OBA Award recipients will be honored at the event. Annual Meeting registrants receive a discount. Sponsored by the OBA Family Law Section.

General Assembly and House of Delegates

The most important association business of the year takes place Friday morning – OBA award presentations, updates from judicial and OBA leaders, recognition of new leadership and consideration of resolutions. Resolutions in bill format must be received by Executive Director John Morris Williams by Oct. 15.

ANNUAL MEETING
**MIDTOWN
PUB CRAWL**



ON THE
**OKLAHOMA CITY
STREETCAR**

WEDNESDAY, NOV. 6 / 8 P.M.
**CO-HOSTED BY THE OKLAHOMA BAR ASSOCIATION
AND OBA YOUNG LAWYERS DIVISION**

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EVENTS

All events will be held at the Renaissance Oklahoma City Convention Center Hotel unless otherwise specified.

WEDNESDAY, NOV. 6

CLE: Cannabis Potpourri
Oklahoma Law School
Alumni Luncheons
Committee and Section
Meetings
President's Reception
Midtown Pub Crawl
Hospitality Suites



THURSDAY, NOV. 7

CLE: The Future is Now –
What You Need to
Know and Cyber
Ethics – Legal Ethics
in a Digital Age
Committee and Section
Meetings
Annual Luncheon
Out of This World Party
Past Presidents Dinner
Hospitality Suites

FRIDAY, NOV. 8

Delegates Breakfast
General Assembly
House of Delegates



NOTICE OF MEETINGS

Committees listed below will meet at the times specified for each on Thursday, Nov. 7, in Room 6 (street level) of the Convention Center, 1 Myriad Gardens, Oklahoma City, Oklahoma, in conjunction with the 115th Annual Meeting.

CREDENTIALS COMMITTEE | 9-9:30 A.M.

Committee members are:
Chairperson Luke Gaither, Henryetta;
Kimberly K. Moore, Tulsa; Emma
Payne, Tulsa; and Jeffery D. Trevillion,
Oklahoma City.

RULES & BYLAWS COMMITTEE | 10-10:30 A.M.

Committee members are:
Chairperson Judge Richard A.
Woolery, Sapulpa; Roy D. Tucker,
Muskogee; Billy Coyle IV, Oklahoma
City; Nathan Richter, Mustang; and
Ron Gore, Tulsa.

RESOLUTIONS COMMITTEE | 10:45-11:45 A.M.

Committee members are: Chairperson
Molly A. Aspan, Tulsa; Kendall A. Sykes,
Oklahoma City; Peggy Stockwell,
Norman; Clayton Baker, Jay;
M. Courtney Briggs, Oklahoma City;
and Mark E. Fields, McAlester.



2019 HOUSE OF DELEGATES



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

COUNTY	DELEGATE	ALTERNATE
Adair Co.	Joe D. Adair	
Alfalfa Co.		
Atoka Co.		
Beaver Co.	Todd Trippet.....	Abby Cash
Beckham Co.	Avery “Chip” Eeds	Brian Henderson
Blaine Co.	Daniel G. Webber.....	Vicki Williams
Bryan Co.	Chris D. Jones.....	Pat Phelps
Caddo Co.	Jason Glidewell.....	Kyle Eastwood
Canadian Co.	Austin Walters.....	Ashton Handley
	Rene’e Little.....	Judge Khristan Strubhar
	Jennifer Bridgforth	Michael Denton
	Nathan Richter	Justin Holliday
Carter Co.	Michael C. Mordy	
Cherokee Co.	Grant Lloyd	
	Jerry Moore	
Choctaw Co.	J. Frank Wolf III	Jon Ed Brown
Cimarron Co.	Judge Ronald L. Kincannon	Judge Christine Larson
Cleveland Co.	Holly Lantagne.....	Amy Pepper
	Julia Mill Mettry	Judge Lori Walkley
	Christopher Lind.....	Don Pope
	Peggy Stockwell.....	Jama Pecore
	Rebekah Taylor.....	Cindy Allen
	Alissa Hutter.....	Kristi Gundy
	Rod Ring	Betsy Brown
	Judge Thad Balkman	David Swank
	Kristina Bell	Andy Hutter
	Jan Meadows.....	Evan Taylor
	Gary Rife	Rick Sitzman
	Micheal Salem.....	Dave Stockwell
	Donna M. Compton.....	Blake Virgin
	Judge Michael Tupper.....	Greg Dixon
	Richard Vreeland.....	Lucas West
	Jeanne Snider	Judge Scott Brockman
	Judge Steven	BonnerBeth Stanley
	Emily Virgin.....	Tyson Stanek
	Judge Jeff Virgin	Tina Peot

COUNTY**DELEGATE****ALTERNATE**

	Rick Knighton.....	John H. Sparks
	Holly Iker	Catherine Butler
	Ben Odom.....	Dave Batton
Coal Co.		
Comanche Co.	Dietmar Caudle	Christine Galbraith
	Robin Rochelle.....	Julie Alsbrook
	Tyler Johnson	
Cotton Co.		
Craig Co.	Kent Ryals	Leonard Logan
Creek Co.	Judge Richard A. Woolery.....	Sheri Eastham
	Carla R. Stinnett.....	Sean Downes
Custer Co.	Dana J. Hada	LynnLawrence Housley
Delaware Co.	Clayton M. Baker	Christianna Wright
Dewey Co.	Celo Harrel	Rick Bozarth
Ellis Co.	Judge Laurie E. Hays.....	Joe L. Jackson
Garfield Co.	Russell Singleton	Tim DeClerck
	Philip Outhier	
	Patrick Anderson	
Garvin Co.		
Grady Co.		
Grant Co.	Judge Jack D. Hammontree	Steven A. Young
Greer Co.		
Harmon Co.	David L. Cummins.....	Judge W. Mike Warren
Harper Co.		
Haskell Co.		
Hughes Co.		
Jackson Co.		
Jefferson Co.		
Johnston Co.		
Kay Co.	John R. Andrew	Michael R. Vanderburg
	Alex Mustain	Brian Hermanson
Kingfisher Co.	Matthew R. Oppel.....	Andrew E. Karim
Kiowa Co.		
Latimer Co.	F. Nils Raunikar	David K. Hale
LeFlore Co.	Amanda V. Grant.....	Nicholas E. Grant
Lincoln Co.		
Logan Co.		
Love Co.	Kenneth L. Delashaw	Richard A. Cochran
Major Co.		

COUNTY	DELEGATE	ALTERNATE
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McCurtain Co.	Judge Kenneth Farley	Emily Maxwell Herron
McIntosh Co.	Cindy M. Dawson	Caleb A. Harlin
Murray Co.	Mark Melton	Rebecca Johnson
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	Matthew C. Beese.....	Larry Vickers
Noble Co.		
Nowata Co.		
Okfuskee Co.	Judge Maxey Reilly	
Oklahoma Co.	Michael W. Brewer	Ray Zschiesche
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	Judge Don Andrews.....	Bob Jackson
	Judge Trevor Pemberton.....	Curtis Thomas
	John Coyle III.....	W. Brett Willis
	David Cheek	Coree Stevenson
	T. Luke Abel.....	Cynthia Goble
	Judge Ken Stoner	Zane Anderson
	Angela Ailles Bahm	Bradley Davenport
	Jeff Curran	C. Scott Jones
	Will Hoch	Veronica Laizure
	Monica Ybarra.....	Benjamin Grubb
	Kelli Stump	Amber Martin
	Judge Philippa James.....	Kristin Meloni
	Daniel G. Couch	Susan Carns Curtiss
	David Dobson.....	Tracey Mullins
	Kristie Scivally	Peter Scimeca
	Thomas F. Mullen	Daniel G. Webber Jr.
	Cody J. Cooper	Justin Meek
	Mariano Acuna	M. Courtney Briggs
	Richard Rose.....	Lorenzo Banks
	Judge Barbara Swinton	Travis N. Weedn
	Judge Richard Ogden	Gary W. Wood
	Mack Martin	Rachel Morris
	Timothy J. Bomhoff.....	Hailey Hopper
	Lauren Barghols Hanna	David McKenzie
	Edward M. Blau	Ronald Shinn
	Chris Deaton	Miles Pringle
	John Heatly	Kendall Sykes
	Samuel Fulkerson.....	Matthew B. Wade
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Osage Co.		
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Pawnee Co.	Jeff Jones.....	Carl Birkhead
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	Amanda Lilley	
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	T. Walter Newmaster	
Pottawatomie Co.	Brandi Nowakowski.....	Kevin Lewis
	Pamela Snider	Michele Freeman
Pushmataha Co.	Judge Jana K. Wallace.....	Charlie Rowland

COUNTY	DELEGATE	ALTERNATE
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Seminole Co.	Bill Huser	Jack Mattingly Jr.
Sequoyah Co.		
Stephens Co.	Carl Buckholts.....	E.J. Buckholts II
Texas Co.	Douglas Dale.....	Cory Hicks
Tillman Co.		
Tulsa Co.	Judge Martha Rupp Carter (Ret. Judge) Millie Otey Molly Aspan..... James c. Milton James R. Gotwals Judge Linda Morrissey..... James R. Hicks D. Faith Orłowski Gerald L. Hilsher Julie A. Evans D. Kenyon Williams..... Matt Farris Linda Van Arkel Greubel..... Kenneth L. Brune Amber Peckio Garrett Kara Pratt Natalie Sears..... Kimberly K. Moore Stefanie S. Sinclair Jack L. Brown Kara M. Vincent..... Tamera A. Childers..... Megan Beck..... Eric L. Clark..... Sean McKee..... Sabah Khalaf..... Ashley R. Webb..... Justin B. Munn J. Christopher Davis Karen K. Wilkens	Trisha L. Archer Bruce McKenna Melissa Taylor David A. Tracy Richard White Philip D. Hixon Deborah A. Reed Jim Proszek Taylor A. Burke C. Austin Birnie Michael P. Taubman Scott V. Morgan John D. Clayman Michael Esmond Trevor Hughes Clint T. Swanson Georgenia A. Van Tuyl Cassia Carr Ryan Fulda Jill Walker-Abdoveis Brenna N. Wiebe Grant A. Carpenter Lizzie Stafford Johnathan Rogers Matt Matheson Kim Schultz Aaron C. Tifft Ephraim Alajaji
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Washita Co.	Judge Christopher S. Kelly	S. Brooke Gatlin
Woods Co.	Jeremy Bays.....	Jesse Kline
Woodward Co.	Erin Kirksey	Kyle Domnick

COUNTY	DELEGATE	ALTERNATE
Oklahoma Judicial Conference.....	Dist. Judge Justin P. Eilers Assoc. Dist. Judge Thomas K. Baldwin ... Special Judge Lydia Y. Green	Dist. Judge Shawn S. Taylor Assoc. Dist. Judge David R. Bandy Special Judge Sheila Stinson



2020 OBA BOARD OF GOVERNORS VACANCIES



Nominating Petition deadline was 5 p.m. Friday, Sept. 6, 2019

OFFICERS

President-Elect

Current: Susan B. Shields,
Oklahoma City
Ms. Shields automatically becomes
OBA president Jan. 1, 2020
(One-year term: 2020)
Nominee: **Michael C. Mordy,**
Ardmore

Vice President

Current: Lane R. Neal, Oklahoma City
(One-year term: 2020)
Nominee: **Brandi N.**
Nowakowski, Shawnee

BOARD OF GOVERNORS

Supreme Court Judicial

District Two

Current: Mark E. Fields, McAlester
Atoka, Bryan, Choctaw, Haskell,
Johnston, Latimer, LeFlore,
McCurtain, McIntosh, Marshall,
Pittsburg, Pushmataha and
Sequoyah counties
(Three-year term: 2020-2022)
Nominee: **Michael J. Davis,**
Durant

Supreme Court Judicial

District Eight

Current: Jimmy D. Oliver, Stillwater
Coal, Hughes, Lincoln, Logan,
Noble, Okfuskee, Payne, Pontotoc,
Pottawatomie and Seminole counties
(Three-year term: 2020-2022)
Nominee: **Joshua A. Edwards, Ada**

Supreme Court Judicial

District Nine

Current: Bryon J. Will, Yukon
Caddo, Canadian, Comanche,
Cotton, Greer, Harmon, Jackson,
Kiowa and Tillman counties
(Three-year term: 2020-2022)
Nominee: **Robin L. Rochelle,**
Lawton

Member At Large

Current: James R. Hicks, Tulsa
Statewide
(Three-year term: 2020-2022)
Nominee: **Amber Peckio Garrett,**
Tulsa

NOTICE

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

Terms of the present OBA
officers and governors will
terminate Dec. 31, 2019.

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS

President-Elect

Michael C. Mordy, Ardmore

Nominating Petitions have been filed nominating Michael C. Mordy for President-Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2020.

A total of 389 signatures appear on the petitions.

Vice President

Brandi N. Nowakowski, Shawnee

Nominating Petitions have been filed nominating Brandi N. Nowakowski for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2020.

A total of 59 signatures appear on the petitions.

BOARD OF GOVERNORS

Supreme Court Judicial District No. 2

Michael J. Davis, Durant

A Nominating Resolution from Bryan County has been filed nominating Michael J. Davis for election of Supreme Court Judicial District No. 2 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2020.

Supreme Court Judicial District No. 8

Joshua A. Edwards, Ada

Nominating Petitions have been filed nominating Joshua A. Edwards for election of Supreme Court Judicial District No. 8 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2020.

A total of 36 signatures appear on the petitions.

Supreme Court Judicial District No. 9

Robin L. Rochelle, Lawton

Nominating Petitions have been filed nominating Robin L. Rochelle for election of Supreme Court Judicial District No. 9 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2020.

A total of 27 signatures appear on the petitions.

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

Member at Large

Amber Peckio Garrett, Tulsa

Nominating Petitions have been filed nominating Amber Peckio Garrett for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2020.

A total of 53 signatures appear on the petitions.





2019 TRANSITIONS



2019 President

Charles W. Chesnut, Miami

Charles W. "Chuck"

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

administration in 1974. He graduated from the OU College of Law in 1977. His main areas of practice are real estate, probate and estate planning.

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

He is active in his community having served as a member of the Miami Board of Education for 17 years and as its president for a number of those years. He is a member of and past president of the Miami Chamber of Commerce.

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



2020 President

Susan B. Shields,

Oklahoma City

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

Ms. Shields was born in Bartlesville and earned

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

She is a member of the Oklahoma County, California and American bar associations. From 2009-2012, Ms. Shields served on the OBA Board of Governors. In 2014, she served as vice president of the OBA. She served as Oklahoma Bar Foundation (OBF) president in 2013 and as an OBF Trustee from 2007-2014. She is a former OBA Estate Planning, Probate and Trust Section chair, chair of the Board of Governors Budget Committee and a former member of numerous OBA committees.

In 2005, 2010 and 2015, Ms. Shields was a finalist for *The Journal Record's* Woman of the Year Award. She has received numerous awards including the Outstanding Pro Bono Lawyer Award from Legal Aid of Western Oklahoma, OBA Earl Sneed Award and Mona Salyer Lambird Spotlight Award.

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

2020 NEWLY ELECTED BOARD OF GOVERNORS

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



President-Elect

Michael C. Mordy, Ardmore

Michael C. Mordy is a fourth-generation attorney who practices law in Ardmore with the firm of Mordy, Mordy, Pfrehm & Wilson PC. He graduated with a BBA from OU in 1977, with a J.D. from the OCU School of Law in 1980 and that same year was admitted to the Oklahoma Bar Association. He began his legal career as an assistant district attorney at the Oklahoma County District Attorney's Office and from there went to work for an oil and gas firm in Oklahoma City. He has practiced law in Ardmore since 1985, where his current practice focuses on commercial and banking litigation, oil and gas law and *ad valorem* tax litigation. He is a member of the United States District Courts for the Eastern, Western and Northern districts of Oklahoma and the U.S. Court of Appeals for the 10th Circuit.

Mr. Mordy is the current chairman of the Oklahoma Judicial Nominating Commission, of which he has been a member since 2013. He serves on the MCLE Commission and is a past member of the Clients' Security Fund Committee and a past Trustee of the Oklahoma Bar Foundation. He served on the OBA Board of Governors from 2004 to 2006 and was vice president of the board in 2008.

He is involved in his community where he is an active member of the First United Methodist Church. Mr. Mordy serves on the Board of Directors of the Ardmore Habitat for Humanities, Dornick Hills Golf & Country Club, is a Trustee of the Southern Oklahoma Memorial Foundation and was a long-time member of the Ardmore YMCA Board of Directors.



Vice President

*Brandi N. Nowakowski,
Shawnee*

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

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

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

and the Credentials Committee for the OBA House of Delegates from 2012-2018. Additionally, she served on the Clients' Security Fund Task Force and the OBA Budget Committee.



Supreme Court Judicial District Two

Michael J. Davis, Durant

Michael J. Davis is an assistant professor of criminal justice at Southeastern Oklahoma State University. With a decade of experience in higher education compliance, Title IX and employment law, he has conducted internal investi-

gations across the state to assist colleges and universities in their compliance with disability access laws, Title IX regulations and employment related matters. He received his J.D. from the OU College of Law in 2010 and was awarded the OBA Maurice Merrill Golden Quill Award for his 2018 article "Disability Accommodation in Higher Education." He has served as a past president of the Durant Rotary Club and is an active member of the National Association of College and University Attorneys.



Supreme Court Judicial District Eight

Joshua A. Edwards, Ada

Joshua A. Edwards is an attorney in private practice with James "Rob" Neal. He practices in the areas of criminal defense and family law. He grew up in the small community of Weleetka and attended OU for both his undergraduate and law

school. He received his B.A. in criminology in 2007 and obtained his J.D. in 2010.

Following law school, Mr. Edwards and his wife, Amanda, moved to Ada where he began his career as an attorney. He is a member of the Pontotoc County, Chickasaw Nation and Seminole Nation bar associations. He is a past president of the Pontotoc County Bar Association and is active in the Ada Lions Club, where he serves as vice president.

Mr. Edwards is currently an associate examiner for the Oklahoma Board of Bar Examiners, and he has volunteered as a scoring panelist for the OBA High School Mock Trial Program for the past five years. He

has presented CLEs on the topics of guardianship law and appellate procedure in tribal courts. His articles have been published in the *American Indian Law Review* and the *Oklahoma Bar Journal*.



Supreme Court Judicial District Nine

Robin L. Rochelle, Lawton

Robin Rochelle is a sole practitioner performing family and criminal law services in southwest Oklahoma, residing in Apache. He is a graduate of San Diego School of Law in 1988 and obtained his accounting degree from OU in 1984.

He interned in Washington, D.C., with U.S. Sen. David Boren in 1985. After practicing nearly 20 years in southern California, he returned to Oklahoma to be near family. He is a past president and vice president of the Comanche County Bar Association, a member of the Chickasaw Nation Bar Association and former member of the U.S. Air Force. He is a frequent speaker for U.S. Law Shield on gun rights. He is also a board member of Childcare Inc., a nonprofit that provides a safe and educational environment for all children. He is married and has three grown children who are pursuing their continuing education in college or graduate school.



Member At Large

Amber Peckio Garrett, Tulsa

Amber Peckio Garrett is a solo practitioner with Amber Law Group in Tulsa. Ms. Peckio Garrett has 16 years' experience in personal injury, civil litigation and family law. She received dual bachelor's degrees in economics and political science from Southeastern

Oklahoma State University. She received her J.D. from the TU College of Law in 2003 where she currently serves as a member of the alumni board.

Ms. Peckio Garrett is admitted to practice in all courts in the state of Oklahoma and before the U.S. District Court for the Eastern, Northern and Western districts of Oklahoma and the U.S. 10th Circuit Court of Appeals. She is an active member of the American Bar Association, American Association of Justice, Oklahoma Association for Justice and the Tulsa County Bar Association.

Ms. Peckio Garrett is a current Trustee of the Oklahoma Bar Foundation where she serves on the Grants and Awards Committee. In addition, she currently serves as the chairperson of the Law-Related Education Committee. Ms. Peckio Garrett has served the OBA as the youngest ever chairperson of the Women in Law Committee, as a Lawyer Advertising Task Force member, Young Lawyers Division Board of Directors member for Tulsa, Professionalism Committee member, Solo and Small Firm Conference Planning Committee member and on the MCLE Commission. She is a graduate of the inaugural 2008-2009 OBA Leadership Academy.

Ms. Peckio Garrett is a frequent moderator and presenter of continuing legal education for the OBA and other professional organizations. In addition to her work with the OBA, she also serves on the pro bono attorney panel for Legal Aid Services of Oklahoma for Tulsa and surrounding counties working with at-risk women and families.

Ms. Peckio Garrett lives in Tulsa with her fiancé C. Alex Stodghill and their beloved pugs, Woody and Bulliet. She is a sustaining member of the Junior League of Tulsa.

for Diversity Center of Oklahoma Inc. and Rebuilding Together, OKC.

He graduated from the OCU School of Law in 2013 where he received the 2013 Dean's Service Award from Dean Valerie K. Couch. He is also a 2005 graduate of Texas Christian University where he received his B.S. in news-editorial journalism from the Bob Schieffer College of Communication.

Mr. Haygood resides in Oklahoma City with his partner, Marty, and their pug, Carlos. When they aren't catching some rays at Lake Eufaula, they can be found spending time with family and friends, exploring the OKC food scene or traveling.



OBA YLD Chair

*Jordan Haygood,
Oklahoma City*

Jordan Haygood has been a member of the OBA Young Lawyers Division board for five years and is currently the co-chair of the OBA YLD Membership Committee, the OBA YLD liaison to the OBA Disaster Response and Relief

Committee and OBA Law Schools Committee and a member of the OBA Health Law Section. He is currently serving young lawyers on a national scale for Oklahoma as a voting member for the American Bar Association YLD House of Delegates.

Mr. Haygood is currently an in-house attorney for SSM Health – Oklahoma where he is responsible for assisting the regional general counsel in overseeing and managing legal affairs for SSM Health St. Anthony Hospital – Oklahoma City, Shawnee and its operating entities.

Mr. Haygood is admitted to practice in the United States District Court for the Western District of Oklahoma and certified to practice in the United States Bankruptcy Court for the Western District of Oklahoma. He currently serves as a board member



2019 OBA AWARD PRESENTATIONS



Wednesday, Nov. 6 Law School Luncheons

Outstanding Senior Law School Student Award

OCU – Laurie Schweinle, Holdenville
OU – Taylor J. Freeman Peshehonoff, Ada
TU – Vic Wiener, Santa Fe, New Mexico

Thursday, Nov. 7 Annual Luncheon

Award of Judicial Excellence

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

Retired Judge Patricia G. Parrish, Oklahoma City

Liberty Bell Award

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

Karen Keith, Tulsa

Golden Gavel Award

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

OBA Legislative Monitoring Committee

Joe Stamper Distinguished Service Award

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

William H. Hoch III, Oklahoma City

Alma Wilson Award

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

Eugenia “Genie” Baumann, Edmond

Neil E. Bogan Professionalism Award

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

Judge Dana L. Rasure, Tulsa

John E. Shipp Award for Ethics

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

Ed Abel, Oklahoma City

Friday, Nov. 8
General Assembly

Outstanding County Bar Association Award

for meritorious efforts and activities

Kay County Bar Association
Oklahoma County Bar Association

Hicks Epton Law Day Award

for individuals or organizations for noteworthy Law Day activities

Ray Vaughn, Mounds

Earl Sneed Award

for outstanding continuing legal education contributions

Kathryn McClure, Lawton

Outstanding Young Lawyer Award

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

Nathan Richter, Mustang

Outstanding Service to the Public Award

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

Oklahoma County Bar Association Young Lawyers Division

Award for Outstanding Pro Bono Service

by an OBA member or bar-related entity

Corry S. Kendall, Altus

Maurice Merrill Golden Quill Award

best Oklahoma Bar Journal article

John Holden, Oklahoma City
Cody Brooke Jones, Edmond
Ashley Ray, Newcastle
Kyle Rogers, Oklahoma City



Oklahoma Bar Association

ANNUAL LUNCHEON

Thursday, Nov. 7 | Noon

REAL INTELLIGENCE ABOUT ARTIFICIAL INTELLIGENCE

LEARN HOW TO USE ARTIFICIAL INTELLIGENCE TO RUN A SMARTER PRACTICE

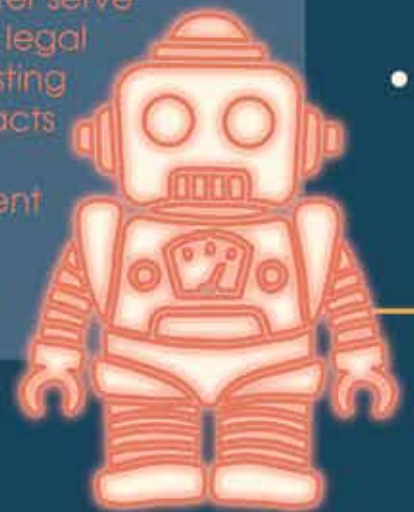
PRESENTED BY

ED WALTERS

CEO & CO-FOUNDER OF FASTCASE



Demystify law firm tech tools used to better serve clients, including legal research, suggesting clauses in contracts and reducing tedious document review and repetitive tasks.



Sponsored by the Family Law Section | www.okbar.org/annualmeeting



REGISTRATION



Shoot for the moon with your law practice this year! Join your peers for great speakers, great events and good times with great friends at this year's Annual Meeting. See what's included with your Annual Meeting registration below. Plus, choose from optional CLE courses with nationally recognized speakers and add-on luncheons.

What's included in your Annual Meeting registration:

- Conference gift: *On Legal AI* by Joshua Walker, a book that looks at how to leverage practical legal automation and how to avoid falling prey to its dangers
- Wednesday President's Reception and Midtown Pub Crawl events, including an Oklahoma City Streetcar all-day pass for Wednesday
- Thursday evening social event
- OBA continental breakfast and hospitality refreshments daily
- Discount on registrants' Annual Luncheon ticket and Thursday's CLE

HOW TO REGISTER



Online

Register online at www.okbar.org/annualmeeting



Mail

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



Phone

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



Fax/Email

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

DETAILS

Location

Activities will take place at Renaissance Oklahoma City Convention Center Hotel (10 N Broadway Ave) or Cox Convention Center (1 Myriad Gardens) unless otherwise specified.

Parking

Parking will be available in several lots and garages at or near Annual Meeting activities. See a map at www.okbar.org/annualmeeting.

Hotel

Fees do not include hotel accommodations. For reservations at the Renaissance Oklahoma City Convention Center Hotel, call 405-228-8000 (toll-free: 800-468-3571) and reference the OBA, or go to www.okbar.org/annualmeeting. A discount is available on reservations made on or before Oct. 15.

Cancellation

Full refunds will be given through Nov. 1. No refunds will be issued after that date.

CLE Materials

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

Special Needs

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

Name _____

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

Email _____

Address _____

City _____ State _____ Zip _____ Phone _____

Name of nonlawyer guest _____

Check all that apply: Judiciary Delegate Alternate

Meeting Registration

Check the box next to your choice.

*New members sworn in this year

On or before Oct. 15

Member

\$75

New Member*

\$0

Oct. 16 or after

Member

\$100

New member*

\$25

MEETING REGISTRATION SUBTOTAL \$ _____

CLE

Check the box(es) next to your choice(s).

Wednesday

Cannabis Potpourri

7-hour program covering stages of legal marijuana enterprise, medical marijuana use at work, defending criminal charges, intellectual property and more.

On or before Nov. 1

\$150

Nov. 2 or after

\$175

Thursday

The Future is Now – What You Need to Know and Cyber Ethics – Legal Ethics in a Digital Age

3-hour program, includes 1 hour ethics

On or before Oct. 15

with Annual Meeting registration

\$50

without Annual Meeting registration

\$100

Oct. 16 or after

with Annual Meeting registration

\$75

without Annual Meeting registration

\$125

CLE SUBTOTAL \$ _____

EVENTS & LUNCHEONS

Midtown Pub Crawl with Wednesday OKC Streetcar Pass

Only available to Annual Meeting registrants and their guest (check all who are attending) Lawyer Guest

OU College of Law Luncheon _____ # of tickets at \$45 \$ _____

TU College of Law Luncheon _____ # of tickets at \$45 \$ _____

OCU School of Law Luncheon _____ *OCU luncheon registration is available by calling 405-208-7100.*

Annual Luncheon with meeting registration _____ # of tickets at \$50 \$ _____

Annual Luncheon without meeting registration _____ # of tickets at \$60 \$ _____

Delegates Breakfast for nondelegates and alternates _____ # of tickets at \$30 \$ _____

Delegates Breakfast for delegates (no charge) _____ *(check if attending as a delegate)*

EVENTS & LUNCHEONS SUBTOTAL \$ _____

PAYMENT

Check enclosed: Payable to *Oklahoma Bar Association*

TOTAL COST \$ _____

Credit Card: Visa Mastercard American Express Discover

Card #: _____ CVV# _____ Exp. Date _____

Authorized Signature _____



**OUT OF THIS
WORLD
PARTY**

THURSDAY, NOV. 7 / 5:30 P.M.

PART OF THE OBA ANNUAL MEETING - OPEN TO ALL!

Co-hosted by



OKLAHOMA BAR
FOUNDATION

LAW. EDUCATION. JUSTICE.

www.okbar.org/annualmeeting

Oklahoma Bar Association

DELEGATES BREAKFAST

Friday, Nov. 8 | 8:30 am

TURNING BOOS INTO CHEERS

HOW EFFECTIVE ARE YOU?

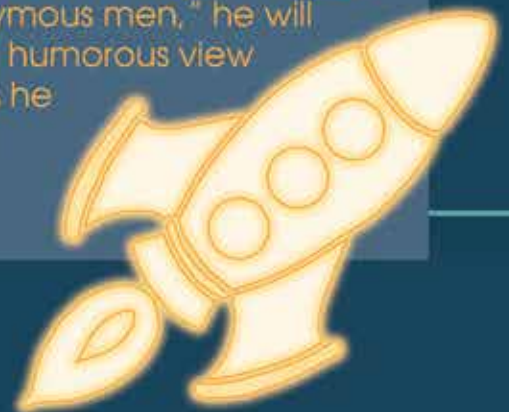
PRESENTED BY

WALT COLEMAN

RETIRED NFL REFEREE



Like most judges and lawyers, as a referee for more than two decades, he has been no stranger to unpopular decisions. As one of Earth's "most maligned yet anonymous men," he will present a humorous view of lessons he learned.



www.okbar.org/annualmeeting

OBA Diversity Award Winners Announced

By Telana McCullough

THE OBA DIVERSITY Committee is set to host its Ada Lois Sipuel Fisher Diversity Awards Dinner Oct. 17 in Oklahoma City. The event will feature a keynote address from OCU School of Law Dean Jim Roth.



Dean Roth is the 13th dean of the OCU School of Law. He is an alumnus of the OCU School of Law, earning his J.D. in 1994. He also holds graduate certificates from Harvard University's Kennedy School of Government, the United States Air War College's National Security Forum at Maxwell Air Force Base and the Institute of Public Utilities at Michigan State University.

Previously, Dean Roth was a director at the Oklahoma City office of Phillips Murrah law firm, where he provided leadership to the firm's Natural Resources Department and chaired the Clean Energy Practice Group. In addition, Dean Roth serves as president of A New Energy, LLC, an energy consultancy focusing on energy policy and energy developments throughout the region and the United States, representing regional and national energy companies and foundations.

He served as an Oklahoma corporation commissioner, by appointment of Gov. Brad Henry and prior to that appointment was elected to consecutive four-year terms as Oklahoma County commissioner. He is a member of the Oklahoma, Kansas and American Bar Associations and is a past president of the National Association of Civil County Attorneys.

The theme of this year's dinner is *An Emphasis on Inclusion: Why Diversity Should Not Stand Alone*. During the dinner, six individuals and organizations will be honored with the Ada Lois Sipuel Fisher Diversity Award in recognition of their efforts in promoting diversity and inclusion in Oklahoma.

AWARD RECIPIENTS

Member of the Judiciary



Judge Philippa C. James

Judge Philippa C. James has been exceedingly instrumental in revising the Oklahoma

City Municipal Court System, and as a result, created a more readily available procedural process to better comply with the law. This process expansion fosters not only an opportunity for a judicial hearing for all persons alleging their inability to pay their fines, fees and court costs, but also, it allows the court to better serve the

THE 2019 ADA LOIS SIPUEL FISHER DIVERSITY AWARDS DINNER

Thursday, Oct. 17
6-8 p.m.

The Oklahoma Judicial Center
2100 N. Lincoln Blvd., Oklahoma City

Featuring a keynote presentation from the OCU School Law Dean Jim Roth. Tickets available for \$40 at tinyurl.com/alsfdiversity.

community and make a difference in the lives of those in extreme need.

Judge James presides over many of the Rule 8-Indigency hearings which presently totals 32 per month. In April, May and June 2019, the Rule 8-Indigency hearings conducted by the court resulted in 3,678 cases being presented by impoverished defendants and \$882,486 in fines and court costs being suspended.

Customer service coupled with the ability to work with and serve people up and down the socio-economic ladder is becoming a significant aspect of the court's business. Accordingly, Judge James works closely with the municipal court's community relations coordinators, the Municipal Counselor's Office (Criminal Justice Division) and the Oklahoma County district judges to resolve cases in a timely manner. Judge James' collaboration, foresight and diligence has been instrumental in advancing and broadening the criminal justice reform efforts implemented within the Oklahoma City Municipal Court.

Judge James also serves as a member of the Oklahoma County Criminal Justice Advisory Council. She works closely with other key stakeholders to fashion a more fluid and seamless justice system. Successes thus far not only include the aforementioned Rule 8-Indigency hearings but also work with the OCPD led to a reduction in Oklahoma City's daily inmate population and improved the court's jail booking and release process. This produced substantial resources and monetary savings for the stakeholders as well as increased the safety of jail staff and inmates. Other improvements include an enhanced website, new court records management system, customer service surveys and a variety of brochures and critical court forms that have been translated

from English to Spanish and Vietnamese to better serve the public.

Attorneys



Ruseal E. Brewer

Ruseal E. Brewer is an assistant attorney general with the Oklahoma Attorney General's

Office. She is assigned to the Civil Rights Unit. Prior to joining the Office of the Attorney General, she worked as an assistant general counsel with the Oklahoma Department of Agriculture.

Ms. Brewer is also a judge advocate currently serving as a defense counsel for the 245th Trial Defense Services team. She is a major in the Oklahoma Army National Guard and has been awarded the Army Commendation Medal, Army Reserve Component Achievement Medal, The National Defense Service Medal and The Army Service Ribbon.

Ms. Brewer earned her Bachelor of Science in chemical science from Xavier University in Cincinnati. She received her J.D. from the OCU School of Law in 2003, where she graduated with honors, *magna cum laude*. Ms. Brewer is a member of Alpha Kappa Alpha Sorority Inc. Ms. Brewer is also a member of the OBA Environmental Law Section and Access to Justice and Diversity committees. Lastly, she is an active member of the Oklahoma Women Lawyers' networking events. During her spare time, she also assists others in the community pro bono with a variety of legal issues including immigration and fair housing issues.

Ms. Brewer is a mother to two amazing boys, one currently

works as a video producer/editor for Fox News and the other is a junior business major at OU.



Tiece I. Dempsey

Tiece Dempsey serves as the Criminal Justice Act (CJA) resource counsel for the Office of

the Federal Public Defender in the Western District of Oklahoma. In this role, she appoints and assists the Federal Public Defender's Office and CJA (court-appointed) attorneys in their representation of indigent defendants. Prior to her current position, Ms. Dempsey worked as a policy analyst with the Oklahoma Policy Institute before accepting a judicial law clerk position with Judge Vicki Miles-LaGrange, former chief and senior judge of the United States District Court in the Western District of Oklahoma.

Ms. Dempsey earned a B.S. in general business from OSU and a master's in health administration from the OU Health Sciences Center. She also graduated from the OCU School of Law and is admitted to practice law in Oklahoma.

In addition to her professional work, Ms. Dempsey is actively involved in several professional, civic and social organizations. She is the current president of the Oklahoma City Association of Black Lawyers and Alpha Kappa Alpha Sorority Inc. Sigma Sigma Omega Chapter. Further, she is the immediate past chair of the OBA Diversity Committee and served two terms as the National Bar Association Region X director. She also serves as a Trustee for the Oklahoma Bar Foundation and participated in the OBA 6th

Leadership Academy. In 2017, she was honored with the OBA Outstanding Young Lawyer Award.



Sheryl S. Sullivan

Sheryl S. Sullivan has practiced law in Oklahoma City for over 40 years. Focusing her legal practice

on dissolution of marriage, guardianship, probate and estate planning matters, she has also served as a mediator and a collaborative law practitioner. During her legal career, she has been active in the Family Law Section of the OBA and Oklahoma County Bar Association (OCBA), the OCBA Lawyers Against Domestic Abuse and the Oklahoma Academy of Collaborative Professionals.

As an Oklahoma City native, her volunteer experience has been primarily in the areas of public education, women's and children's issues and advocacy, domestic abuse and sexual assault education and prevention and interfaith and intercultural dialogue. A co-founder of the Women's Interfaith Group in Central Oklahoma, she is secretary of the Interfaith Alliance Foundation of Oklahoma, on the Advisory Board of the Dialogue Institute Oklahoma City and initiated the annual Diversi-Tea, providing a forum for participants of many cultures to interact in a social setting. An active member of St. Paul's Episcopal Cathedral and the Episcopal Diocese of Oklahoma, she is currently president of the diocesan Episcopal Church Women.

She is a graduate of Vassar College and the OU College of Law and is married to Dr. C. Blue Clark, who currently teaches at the OCU School of Law. They have one adult son, Sanger Clark.

Organizations



Ogletree Deakins

Ogletree Deakins is a labor and employment

law firm with 56 offices throughout North America and Europe. Ogletree opened its Oklahoma City office in January 2017. The firm currently has nine attorneys located in Oklahoma City, with plans to continue expanding in this market.

Professional development opportunities abound at Ogletree Deakins and are integrated seamlessly with their approach to diversity – diversity of gender, learning style, race, background, thought and more contribute to a vibrant and inclusive environment where attorneys can thrive professionally. Ogletree Deakins' Professional Development and Inclusion Department sponsors national diversity and inclusion events and memberships across the U.S. to benefit the firm and all of its practicing attorneys. Sponsorships include organizations such as American Bar Association (ABA) Commission on Women in the Profession, Hispanic National Bar Association (HNBA), National Association of Women Business Owners (NAWBO) and Human Right's Campaign.

Ogletree also has six business resource groups (BRGs) that support the firm's recruitment efforts as well as the professional development, retention and advancement of the attorneys who participate. BRGs also serve as informal networking and business development units for the firm. The six groups are: ODAlliance (supporting LGBT attorneys), ODA3 (the Asian-American business resource group), ODAdeleante (the Hispanic/Latino business resource group), ODFamily

(supporting parents and families), ODWIN (women's initiative) and ODBAR (the African American business resource group).

In 2018, Ogletree cultivated relationships with numerous organizations committed to improving diversity in the legal profession, including forming a new relationship with the ACC Foundation, which provided diverse attorneys with opportunities to network with in-house counsel. Ogletree completed 31 diversity and inclusion surveys, responded to over 30 client requests for proposals requiring diversity metrics and/or initiatives and won diversity and inclusion awards/recognition for their efforts, including earning Gold Standard Certification from the Women in Law Empowerment Forum (WILEF).

Recognizing the increasing requests by clients to advise them on diversity and inclusion best practices, Ogletree Deakins championed the creation of a new practice group, the Diversity and Inclusion Practice Group. The group supports clients in designing, implementing and enhancing their own diversity and inclusion initiatives and provides a range of services from advice and counsel to legal compliance work and engagement surveys.



Save Black Boys

Save Black Boys (SBB) OKC was designed to raise awareness

and consciousness about the state of black children in the Oklahoma City area. The statistics about the rampant murders and recidivism in black communities are well-known facts, but rarely do people actually attempt to proactively impact change like SBB OKC. This powerful organization

seeks to rebuild the minds of black children and young men. The ultimate goal is to restore black boys in the area and help them find and focus on their greatness.

SBB OKC has hosted several free, successful programs. SBB OKC has hosted college and career preparation, anti-bullying initiatives, sex education, driver's education, negativity detox seminars, single mother awareness readiness training, gang intervention and prevention, community service in OKC, career trainings and tutoring.

SBB OKC is a program that focuses on creating an environment for young black boys to be

themselves without judgement or explanation. It dedicates time to educate and implement standards, accountability and goals. All the while, SBB OKC gives back to its community with the boys in the program to help foster a sense of community within the area.

SBB looks to make a tangible impact while promoting real change in the OKC community.

ABOUT THE AUTHOR

Telana McCullough chairs the OBA Diversity Committee and is a staff attorney at the Oklahoma Department of Education in Oklahoma City.

Don't let distance keep
you from getting involved



Attend section and committee meetings remotely via BlueJeans.

Use a mobile device, phone or computer. Visit www.okbar.org/bluejeans.

New Lawyers Admitted to the Bar

BOARD OF BAR EXAMINERS

Chairperson Thomas M. Wright announced that 231 applicants who took the Oklahoma Bar Examination on July 30-31 were admitted to the Oklahoma Bar Association on Tuesday, Sept. 24, or by proxy at a later date. Oklahoma Supreme Court Chief Justice Noma Gurich administered the Oath of Attorney to the candidates at a swearing-in ceremony at the OCU Henry J. Freede Wellness Center & Abe Lemons Arena in Oklahoma City. A total of 307 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Juan Garcia, Clinton; Robert Black, Oklahoma City; Monte Brown, McAlester; Tommy R. Dyer Jr., Jay; Nathan Lockhart, Norman; Bryan Morris, Ada; Loretta F. Radford, Tulsa; and Roger Rinehart, El Reno.

The new admittees are:

Maryam Adamu
 Delia Addo-Yobo
 Alexandra Grace Adkins
 Dana Marie Whitlock Ashcraft
 Darren Wiley Barr
 Justin Gregory Bates
 Tyler James Bean
 Jordan Lynn Berkhouse
 Thomas David Bernstein
 Shea Alexander Bielby
 Gregory Allen Bissonnette
 Amanda Rae Blackwood
 Joshua Paul Blair
 Seth Ryan Blanton

Sean-Michael O. Brady
 Danielle LouAnn Brand
 Wynne Elizabeth Brantlinger
 Leslie Kathleen Briggs
 Connor Evan Brittingham
 Amanda Renique Broussard
 Rachal Alexandria Brown
 Taylor Nicole Brown
 Abby Sue Broyles
 Rebecca Ann Bryan
 Isaiah Nathaniel Brydie
 Brian Tyler Burkhardt
 Adam Riley Burnett
 Sarah Katherine Capps
 Frank Danilo Cardoza
 Kimberly Savannah Carris
 Cordal Lee Cephas
 Jacqueline Humphrey Chafin

Philip Malcolm Chandler
 Bryan Gregg Cleveland
 John Thomas Cleveland
 Molly Kester Clinkscales
 Braxton Ayn Coil
 Katherine Rose Colclazier
 Bradley Evan Congdon
 Leslie Catherine Corbly
 Stephanie Leigh Coulter
 Casey Anne Crook
 Lauren Elizabeth Crudup
 Jose Dan Cruz Guajardo
 Joshua Cooper Davis
 William Hunter Dodson
 Brenda Lyda Doroteo
 Alexandra Jordan Dossman
 Collin Aaron Duel
 Gabriel David Dunbar



New admittees hear from bar leadership during the swearing-in ceremony.

Emily Joyce Dunn
Sarah Elise Ebright
David Dwayne English
Christine Ann Evans
Emily Jane Evans
Madeline Nicole Farris
Ashley Dawn Fetter
Emily Jill Fry
Emma Grace Foster Gandhi
Hardik Gandhi
Angela Willow Ganote
George Edward Gibbs
Donald Eugene Gies
Randi Nicole Gill
Alyssa Marie Gillette
Christopher Joe Gnaedig
Matthew Paul Gomez
David Bryan Goodpasture
Elizabeth Elyn Govig
Larry Alan Grizzle
Emily Elizabeth Grossnicklaus
Trent Daniel Guleserian
Brody Park Gustafson
Alexander McCay Hall
Myrenda Ralene Hancock
Jacob Arneal Hansen
Benjamin Jerome Hartman
Alison Rebecca Hausner
Jessie Kathleen Heidlage
Jonathon Wesley Herndon
Chantelle Lynette Hickman-Ladd
Meghan Luanne Hilborn
Benjamin Rogers Hilfiger
Alexander Elias Hilton

Braden Mark Hoffmann
Lindon Thomas Hogner
Bailey Paul Hollabaugh
Mychelle Martin Holliday
Mitchell Thomas Holliman
Dillon James Hollingsworth
Joe Dawson Houk
Peyton Storm Howell
Elaine Kramer Hsieh
Tamara Erin Hurd
Dereck James Hurt
Joshua Dale Hutchins
James Christopher Irwin
Austin Tyler Jackson
Aubrey Erin Jaffe-DeClercq
Kristen Nicole James
Caitlyn Suzanne Jennings
Chasse William Alexander Jerson
Amanda Christine Jespersen
Jim Varughese John
Kyle Drew Chance Johnson
Victoria Anne Johnson
Dallas Lee Jones
Meilani Camille Kaaihue
John Ramsey Kalka
Greg Stephen Keogh
Deni Shane Ketterman
Lina Khalaf
Lauren Elizabeth Kiefner
Katelyn Michelle King
Prescott Edgerly Kiplinger
Cheyenne Janea Konarik
Eric Thomas Krampf
Gerald Sinclair Lalli

Garrett Sean Lam
Lauren Margaret Langford
Alyssa Neil Lankford
Melissa Ann Lantz
Kara Kathleen Laster
Casey Robert Lawson
Katherine Paige Leach
Amber Noel Leal
Taylor Laurence Ledford
Shelby Nicole Limburg
James Edward Littlefield
Alan Justin Looney
Connor Jordan Mace
Ashley Elena Maguire
Micah Gabrielle-Joye Mahdi
Michael Scott Major
Mackenzie Anne Malone
Matthew Daniel Mangru
Garrett Lane Marshall
Adrienne Marie Martinez
Allison Joanne Martuch
Scott Allen May
Collin Norman McCarthy
Maecey Jae McClain
Calandra Skye McCool
Ashley Nicole McCord
Heather Anne McFarlain
Sarah Ann McManes
Peter Eamon McVary
Cheyenne Michelle Meckle
Morgan Lee Medders
Zachary Taylor Megee
Allison Nicole Meinders
Kelly Michelle Middleman



YLD Chair Brandi Nowakowski addresses new admittees.



New lawyers take the Oath of Attorney.

Dane Harrison Miller
 Andrea Lynne Mills
 Joshua Caleb Mills
 Garrad Duane Mitchell
 Phoebe Bess Mitchell
 Garrett Logan Molinsky
 Madison Claire Mosier
 Chandler Meshele Moxley
 Ann Marie Mudd
 Maegan Christine Murdock
 Bryan Adam Myers
 Hayley Blair Myers
 Robert Chad Nelson
 Sydney Lee Nelson
 Robert William Norton
 John Maxwell Nowakowski
 Slate Wayne Olmstead
 Brandon Thomas Orr
 Stephan Alexander Aaron Owings
 Hayley Nichole Kathryn Parker
 Christopher Salvador Pena
 Lashandra Annette
 Peoples-Johnson
 Nicholas James Pierson
 Amber Dee Plumlee
 Robert Anthony Pomeroy
 Montrel Dominique Preston

Alexander Matthew Price
 Clinton Bryce Privett
 Haley Marie Nix Proctor
 William Kyle Puckett
 Lacy Beth Pulliam
 Sohail Punjwani
 Kassidy Taylor Quinten
 Ashley Morgan Ray
 James Brian Rayment
 Cassity Beatrice Reed
 Shelby Lynn Rice
 Reann Elizabeth Richards
 Brandon Douglas Roberts
 JulieAnn Michelle Robison
 Kayla Marie Rochelle
 Taylor Frances Rogers
 Thomas Edward Rogers
 Stephanie Rhiannon Rush
 Joya Christiania Nicole Rutland
 Lezel Brianna Safi
 Ani Sargsyan
 Mandy Jo Schroeder
 Khaki Alaine Scrivner
 Jacob Dakota Scroggins
 Margaret Mary Sine
 Ashlyn Miller Smith
 Collen Loren Steffen

Robert Earl Stevens
 Natalie Elizabeth Stewart
 Caleb Robert Stiles
 Elissa Rae Stiles
 Marshall Leavy Stone
 Taylor Alexandra Stovall
 Megan Kathleen Szukala
 Stephanie Rene Timmermeyer
 Claudia Blake Toellner
 Paul Anthony Tortorici
 Cole Jordan Trippet
 Dillon McCaleb Turner
 Sonja Lea Rae Turner
 Justin Tyler Valentine
 Scott Rachal Verplank
 Daniel Martin Vigilius
 John Lawrence Wagener
 Austin Lee Watford
 Taylor Kaye Weder
 Sarah Rose Weitekamp
 Kaimbri Blayne White
 Cameron Martin Williams
 Sandra Grace Williams
 Zachary Eaton Williams-Kupec
 Chase Andrew Winterberg
 Aaron William Wright

Mona Salyer Lambird Spotlight Award Recipients to be Honored

THE SPOTLIGHT AWARDS

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

This is the 23rd year for the awards to be presented by the OBA Women in Law Committee. Award winners will be honored Oct. 25 at the Women in Law Conference in Oklahoma City.



Teresa Meinders Burkett

Teresa Meinders Burkett has been a health care lawyer in Tulsa for 28 years. She is a partner in the Healthcare Practice Group of Conner & Winters LLP, which she founded when she moved her practice from a litigation boutique in 2007. She earned her undergraduate nursing degree from OU in 1982 and worked as a cardiac care registered nurse through law school. She received her J.D. with honors from the OU College of Law in 1985. A recent highlight of her

health law career was writing the amicus brief on behalf of many Oklahoma health care organizations and associations to allow Medicaid expansion to be put to a vote of the people in 2020.

She is a founding member and past president of the Oklahoma Health Lawyers Association and has also served as chairman of the OBA Health Law Section multiple times. She is serving as the City of Tulsa Parks Board chairman and on the Board of Trustees for Gilcrease Museum. She also serves on the boards of The Oklahoma Academy, Community Service Council, Tulsa Animal Welfare Commission and the Advisory Board for the Tulsa Chamber of Commerce. She serves as a Trustee for the Potts Family Foundation and the Tulsa Community College Foundation. A member of Leadership Oklahoma, Class XVIII, Ms. Burkett has served in numerous leadership roles with that organization.

In 2015, she was recognized with Leadership Tulsa's Paragon Award. She is a recipient of the Tulsa County Bar Association's Golden Rule Award and the OBA's Golden Quill Award. For the past two years, she has been an honoree as one of Oklahoma's Women of the Year, a prestigious honor recognizing women making a significant impact professionally and in their communities on behalf of the state of Oklahoma.

She and her husband Robert enjoy hiking in the Ozarks with their two dogs, wine tasting trips to California and paddling down the Buffalo River in their Wenonah canoe.



Brita Haugland-Cantrell

Brita Haugland-Cantrell is a trial lawyer who practices primarily in products

liability defense and family law litigation. She represents clients in all aspects of family law, including divorce, complex business valuations and asset and debt apportionment, division of retirement and pension plan assets, custody, visitation, child support, alimony, guardianship and Hague Convention matters. She also frequently handles pro bono litigation, has been a volunteer advocate for Legal Aid Services of Oklahoma and has served by court appointment as guardian *ad litem*.

Upon graduating from law school in 1987, she worked as an associate with a Tulsa-based law firm for two years before transitioning her practice and serving as assistant attorney general for the state of Oklahoma from 1989 to 1994. As the state's lead environmental attorney, she practiced

in environmental law litigation in administrative proceedings, state courts and federal appellate matters. In one particularly high-profile case, *Arkansas et al. v. Oklahoma*, 503 U.S. 91, 16 (1992), she represented the state first on appeal to the U.S. 10th Circuit Court of Appeals from a decision of the Environmental Protection Agency and subsequently on appeal to the U.S. Supreme Court as counsel with Attorney General Susan Loving and Assistant Attorney General Robert Butkin.

Her prior career experience also includes serving as executive director of the Oklahoma chapter of The Nature Conservancy from 1994 to 2000. In 2000, she

returned to private practice with the law firm of Eldridge Cooper Steichen & Leach and then joined McAfee & Taft when the two firms combined in 2011. She is a graduate of the National Institute of Trial Advocacy (NITA) and the founding chairman of the OBA Environmental Law Section. She is currently serving her second five-year term as a member of the Oklahoma Department of Environmental Quality board. During this tenure, she has been elected twice as chairman of the board.



Doneen Douglas Jones

Doneen Douglas Jones is a partner at Fellers Snider where she started in 1979 as a legal

intern. Her practice focuses primarily on business litigation, lender liability defense, representation of creditors in bankruptcy cases and loan documentation. She obtained her Bachelor of Arts from OU and received her J.D. from the OU College of Law. She is the co-chairperson of the Oklahoma County Bar Association Law-Related Education Committee and loves presenting programs to elementary and junior high school students.

She is an active member of the Ruth Bader Ginsburg American Inn of Court, where she is a past president and attributes the inn of court experience with enriching her professional career and creating lasting friendships. One of the highlights of her legal career was meeting Justice Ginsburg. She has been honored with the *Journal Record* Leadership in Law Award and the Ruth Bader Ginsburg American Inn of Court John Shipp Award for Professionalism. She sponsors a table at the YWCA's Women Who Care Share and is an active member of her church where she teaches religious education to seventh- through ninth-grade

2019 WOMEN IN LAW CONFERENCE

Friday, Oct. 25

9 a.m. – 4 p.m.

Renaissance Waterford OKC Hotel
6300 Waterford Blvd., Oklahoma City

Featuring a keynote address by Marcia Coyle, chief Washington correspondent for *The National Law Journal*, programming includes sessions on LGBT rights under Title VII, nonprofit board service and a panel of judges hosted by Supreme Court Chief Justice Noma Gurich. A total of 6 credit hours, 1 of which may be applied toward ethics requirements.

The early bird registration deadline is Oct. 20 and costs \$150 for the full conference. Register online at tinyurl.com/womeninlaw2019.

students and serves on the Finance Committee. She loves to travel and enjoys skiing. She is married to Glenn Jones and they have two sons, Bryan and Josh, and two grandsons, Grady and Oliver.



Suzanne Mitchell

Suzanne Mitchell has served as a U.S. magistrate judge in the Western District of Oklahoma

since February 2013. She chairs the district's Criminal Justice Act Panel Selection Committee. She also serves on the Court Assisted Recovery Court, a federal re-entry court that provides an intensive, treatment-focused program to assist recently released nonviolent offenders to reintegrate into society. She also chairs the Administrative Office of the U.S. Court's Magistrate Judge Advisory Group. Her professional experience includes serving as an appellate practitioner at the U.S. Attorney's Office in the Western District of Oklahoma, as senior law clerk for former U.S. 10th Circuit Judge Robert H. Henry and as a corporate and securities attorney at McAfee & Taft.

Judge Mitchell served as president of the Oklahoma City chapter of the Federal Bar Association for 2017-18 and currently serves as vice president for the Tenth Circuit for the FBA nationally. She received the Outstanding Chapter Leadership Award for her service. She has been named a master of the William J. Holloway American Inn of Court and served as the inn's president for 2018-19. She also serves as an Oklahoma County Bar Association board member. She sits on Rotary Club 29's Board

of Directors and chairs the club's service projects groups.

A graduate from Georgetown University's School of Foreign Service, she studied at the London School of Economics. She earned her J.D. with high honors from George Washington University, where she was awarded Order of the Coif, served as an editor on its law review and a member of the Moot Court board.

She is a member of Leadership Oklahoma City, Class XIV and former chair of the Oklahoma Visual Arts Coalition. She and her husband, Sam, have four children.



Z. Faye Martin Morton

Z. Faye Martin Morton has practiced law on behalf of the Oklahoma Department of Securities for 35 years and

now serves as general counsel. During her tenure with the department, she has been involved in all areas of securities regulation, including civil and administrative enforcement activities, registration and exemption of securities and licensing of securities professionals. She also has been involved in the areas of business opportunities, investor education, subdivided land sales and takeover offers. She participated in drafting the proposals submitted to the Oklahoma Legislature that resulted in the Oklahoma Uniform Securities Act of 2004 (OUSA), was instrumental in drafting the rules to implement OUSA and co-authored an article published in the *Consumer Finance Law Quarterly Report* concerning OUSA. She also served as counsel in the establishment of the department's investor education outreach, Invest Ed[®], to include the Students

Tracking and Researching the Stock Market (STARS) program.

She graduated from OSU and taught at Red Rock Public Schools for four years prior to attending law school, where she was co-director of the Title VII ESEA project. She received her J.D. from the OU College of Law in 1981. At OU, she was selected as a member of the *Oklahoma Law Review*.

Before coming to the Securities Department, she was in private practice for four years. She is an active member of the Oklahoma County Bar Association, serving on the CLE committee and participating in the Law-Related Education Committee. She is a member of the OBA Government and Administrative Law Practice Section and has participated in planning its CLE programs. She was privileged to be involved in reviving the Judge Arthur Lory Rakestraw luncheons, now known as the OK Lawyer luncheons. She is an active participant in the General Counsel Forum of Oklahoma state government.

Married to Jim Morton for over 40 years, she is the proud mother of Jake and grandmother to Max, Connor and Lucy. She is an active member of the Ridgecrest Church of Christ and has taught in its children and ladies' programs.

OBA Committee Membership – Please Join Us!

NOW IS THE TIME TO JOIN one or more of the OBA standing committees as a part of your membership in the OBA. Committees cover a wide range of subject matter and topics.

Why join a committee? Being a committee member, along with section membership, is one of the best ways to get more involved with the OBA. Committee membership provides ways to get to know lawyers and judges who may have very different backgrounds, interests and experiences from you and offers an opportunity to make friends, get known in the legal community and

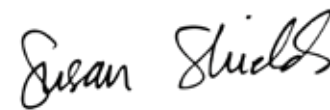
develop referral and mentoring relationships with lawyers from all across the state.

Most committees allow meeting attendance by conference call, so your geographical location does not matter in terms of participation if you are not able to make each meeting in person. In addition, some OBA committees are devoted to service to the community in which we live and practice, which in turn helps enhance the image of our profession within the community.

I have served on many OBA committees over the years and

it has provided me with many benefits to my law practice, for which I am grateful. It is also a wonderful way to give back to our legal profession. Even if you have only a little time to spare, we can use your help. Please join us.

Joining a committee is easy. Go to www.okbar.org/committees and click “Committee Sign Up.” I will be making appointments soon.



Susan B. Shields,
President-Elect

To sign up or for more information, visit www.okbar.org/committees.

- **Access to Justice**
Works to increase public access to legal resources
- **Awards**
Solicits nominations for and identifies selection of OBA Award recipients
- **Bar Association Technology**
Monitors bar center technology to ensure it meets each department's needs
- **Bar Center Facilities**
Provides direction to the executive director regarding the bar center, grounds and facilities
- **Bench and Bar**
Among other objectives, aims to foster good relations between the judiciary and all bar members
- **Communications**
Facilitates communication initiatives to serve media, public and bar members
- **Disaster Response and Relief**
Responds to and prepares bar members to assist with disaster victims' legal needs
- **Diversity**
Identifies and fosters advances in diversity in the practice of law
- **Group Insurance**
Reviews group and other insurance proposals for sponsorship
- **Law Day**
Plans and coordinates all aspects of Oklahoma's Law Day celebration
- **Law Schools**
Acts as liaison among law schools and the Supreme Court
- **Lawyers Helping Lawyers Assistance Program**
Facilitates programs to assist lawyers in need of mental health services
- **Legal Internship**
Liaisons with law schools and monitors and evaluates the legal internship program
- **Legislative Monitoring**
Monitors legislative actions and reports on bills of interest to bar members
- **Member Services**
Identifies and reviews member benefits
- **Military Assistance**
Facilitates programs to assist service members with legal needs
- **Professionalism**
Among other objectives, promotes and fosters professionalism and civility of lawyers
- **Rules of Professional Conduct**
Proposes amendments to the ORPC
- **Solo and Small Firm Conference Planning**
Plans and coordinates all aspects of the annual conference
- **Strategic Planning**
Develops, revises, refines and updates the OBA's Long Range Plan and related studies
- **Women in Law**
Fosters advancement and support of women in the practice of law

Another Dog Movie

By John Morris Williams

THE ART OF RACING IN *the Rain* is in theaters now. I could not make myself go see it. I read the book. It ends like all dog movies, sort of. I won't ruin it for you if you have an interest. The twist is that it is narrated by the dog. There is even legal stuff. Not pleasant legal stuff. Actually, some evil, nasty kind of legal stuff. Again, I will leave it to you to see the movie or read the book.

Often times I have said I divide the world between people who cried when old Yeller died and those who did not. Family lore has it that at about age 3 I had to be hauled out of the theater unconsolably sobbing. We must have gone to the equivalent of the dollar movies since the movie came out a year before I was born. To this day I still can't watch it.

The twist on the narration in *The Art of Racing in the Rain* made for an entertaining read. While reading the book, I prayed a bit that my dogs would never write a book. I think I'd probably come off as a bit silly and at times strict. We don't sit on the furniture or get on the beds. They would report they get called variations of their names and that for a while Duke (the hyperactive dachshund) was in danger of having his last name changed to "you little...(expletive)." Since then one of us has mellowed, and it wasn't him.

So why am I writing about dog movies and even my own pack. A recent study reveals that having a

pet, especially a dog, will prolong one's life and improve quality of life. The Nov. 17, 2017, edition of *Time* magazine even suggested that dogs may provide some immune-boosting benefits for adults. Of course, if mine narrated a book, life expectancy here might go down a bit. Not saying whose, just saying.

We as a profession are being forced to look deep into our

wellness issues. Having a dog is not the answer for everyone. Although they promote exercise, reduce stress and bring some great moments of joy with unconditional love, not everyone can have a dog. You must have the time and space to give them a good life as well. But, with or without a pet, one must also give oneself the time and the space to have a good life.



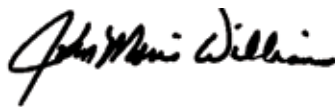
Wallis and Duke

Too many studies have concluded that as a profession we have too much stress and abuse substances and suffer mental illness at rates significantly greater than the general public. None of us are above becoming one of the statistics. The loss of a job or a major economic set back, a change in relationship status, the illness or death of a close family member are things that unexpectedly happen to many people. Add that to the stresses the “winner/loser” environment of practicing law and it can have disastrous consequences on lawyers and their practice – a spiral that is often hard to come out of.

Statistically, white males over 50 are most prone to depression and suicide. That fact alone should make us take pause since that demographic also represents the majority of lawyers in America. Just another reason why diversity is a good thing. Being around a bunch of other depressed people doesn't seem like a good thing either. So, I suggest broadening one's social and work circles to include people who at least statistically are less prone to depression might be helpful. (No science that I know of. Just seems like a good idea.) In fact, I purposely set out to include nonlawyers in my circle of close friends. The effort was well worth it. Even a couple of close doctor friends aren't too bad to have to put up with.

Getting a pet is a personal decision. Not taking care of yourself is also a personal decision. The latter potentially can affect a lot of people and have some unfortunate public consequences. Whether the narrative is written by your pet or by you, be sure to include some lines that you did things to protect your wellbeing for yourself, the people that love you and the clients that depend upon you.

Duke and Wallis say, “Hey.”



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

Safe in the Clouds

By Jim Calloway

“SAFE IN THE CLOUDS” sounds peaceful and dreamy, unless of course you have a fear of falling.

Lawyers, for better and for worse, are trained to examine everything with an eye toward fear of falling, or more accurately, fear of failing. This starts in law school with the high-pressure Socratic method, high-stakes single exams and class ranking. In law practice, there is an important need for critical examination skills, whether it is “Could that oddly drafted contract provision harm my client?” or “Are they trying to gain an advantage with that ambiguous phrase?”

Among the most frequently asked questions I receive from Oklahoma lawyers are questions about cloud computing. This has been true for several years. Lawyers are concerned about the risks of using cloud computing because these data security risks seem hard to appreciate and quantify for those untrained in information technology.

Is my data safe in the cloud? Can other people see my data in the cloud? Is it safe to keep my clients’ data in the cloud? Are there legal ethics concerns about keeping client data in the cloud?

The answers to these are clear, as far as I am concerned. Your digital data is safer in the cloud.

Safer.

Digital data on any device you own connected to the internet in any way cannot be deemed “100%

safe” because of the possibility of a user making a mistake or falling for a scam. The device might fail or there might be a breach from an outsider. This lack of 100% certainty of safety applies to data on all of your connected devices, including computers, tablets and phones.

The Oklahoma Rules of Professional Conduct (ORPC) recognize this as do the ABA Model Rules of Professional Conduct. ORPC Rule 1.6 (c) states that “a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” Comment 16 to that rule provides, in part:

The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the

lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).

So, the lawyer who wants to use cloud computing tools is guided by the determination of whether the tool is reasonable. It is always good lawyerly advice to read the Terms of Service, particularly as to under what circumstances, if at all, your data can be accessed by the provider.¹

However, for the lawyer who doesn’t want to use cloud computing tools, my response is that these tools are safer – and why wouldn’t you want to use safer?

I should note that there are unsafe ways to implement any technology tool, including those in the cloud. If done correctly, cloud computing can be viewed as outsourcing your data security needs to someone more qualified while also making accessing your data quicker and more convenient.

OUTSOURCING YOUR DATA SECURITY

Today we are at a time where the major cloud service providers can essentially guarantee an impenetrable vault.² A service like Amazon Web Services (AWS), Microsoft Azure or Google Cloud Platform can provide this for you – a data “fortress” which is not going to be breached by a hacker. (Most cloud computing providers lease space from one of those



primary hosts.) The challenge is you oversee the drawbridge and the gate – along with everyone and everything that you allow access.

In other words, you are as secure as your most careless user and, if you have other online services connected to your vault, you are depending on them to be secure as well.

The challenge is training that most careless user—the one who keeps the passwords on Post-its near the workstation, takes the company laptop home and lets the kids play on it or clicks on attachments or links in emails from everyone, known or unknown. That person is your greatest vulnerability. A few lawyers might even admit it is them.

Recently, one cloud hosting company was itself a victim. Insynq was the target of a ransomware and malware attack in July 2019. Insynq specializes in providing cloud-based QuickBooks accounting software and services, so many accounting firms found themselves offline for time ranging from hours to days. Apparently some Insynq

employee made errors allowing the attack. This is newsworthy because it is so rare. If your office network is crippled by ransomware or malware, the attack is generally not going to make the leap to encrypt your data in the cloud.

So, what about *not* keeping your data in the cloud?

The careless user is still your security risk, but the consequences from that person's mistakes are arguably worse. Click on an infected file or bad link and the office network may be encrypted with ransomware or just destroyed with some other malware. There is an increasingly smaller chance you can pay the ransom and recover your data. Normally the best outcome is being down for a few days, paying an outside consultant and only losing the data created after your last backup was saved. A firm that isn't doing regular backups may experience more catastrophic damage.

Other dangers of not using cloud computing are risks we can all easily understand: the office (and equipment) catches fire or

is destroyed by natural disaster along with the backups you have been methodically creating and storing in your office, burglary or a hard drive or server dying unexpectedly.

Another set of risks associated with not using the cloud is that the lawyers and others employed by the law firm are in charge of digital security. If you have full-time IT staff, that's one thing, but if you are doing it yourself or have a local contractor who comes to the office only when you call with a problem or you need new hardware, you likely have a less qualified security officer than the engineers and security experts on the staff of a cloud provider around the clock. You won't be aware if some new threat emerges while you are asleep or during a two-day jury trial. It's up to you to select and keep updated your firewall, anti-virus and other security tools. Keeping software updated is often automatic. However, if your credit card is compromised and the card's number changed, mistaking a security provider's renewal

Taking reasonable steps to protect your clients' confidential information is your ethical obligation, but keeping the law firm operational is important for the law firm's interests as well as the clients.

"bounce" notice for an advertisement could expose your law firm to the risk of out-dated protections.

LAW FIRM DOWN TIME

Let's discuss "down time." Taking reasonable steps to protect your clients' confidential information is your ethical obligation, but keeping the law firm operational is important for the law firm's interests as well as the clients.

In August in Oklahoma City, we had what some called an "inland hurricane" with straight-line winds recorded at 95 mph. In the aftermath, some were without electrical power for several days. A law firm without power is challenged. To reach cloud-based tools, one only has to locate power *anywhere*, along with internet access. I've heard of law firms temporarily without electricity sending people home to work remotely or opening up shop in a partner's home. If all of your data and tools are powerless in the office, that approach is much less effective.

Even though the cloud is safer, a law firm should still do data backups. You keep data in the cloud, but not all of your software. A backup can restore a workstation to operating order.

CONSENT

Do you have to inform your clients of data stored in the cloud and obtain their consent? All of the jurisdictions that have issued ethics opinions on the issue of lawyers using cloud computing have found it to be ethical, as long as law firms take "reasonable care" when implementing a cloud service. Only a few states have opinions discussing obtaining client consent and those do say it is not routinely necessary but could be in certain sensitive situations. There's no direct authority on point in Oklahoma. My advice is including a reference to cloud data storage in your attorney-client engagement agreement and always make certain new clients read that agreement before signing. If clients have any concerns or questions, they can be addressed at that time.

It is also noteworthy that Comment 16 to Rule 1.6 also provides: "A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule."

CONCLUSION

Cloud computing is a critical part of most law firm operations now. In the future, more law firms will make use of cloud-based automation tools and virtual assistant services in their practice workflows and operations. Even lawyers who consider themselves low tech often use cloud-based email services like Gmail. Some Office 365 tools require online access. So, it will be increasingly difficult to avoid the cloud. This is not to say one cannot decide to keep your copies of completed clients' estate plans in offline storage or that handling a divorce case where the opposing party regularly attends hacker conventions might not require special measures. However, all business tools will increasingly be cloud-based going forward.

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 or jimc@okbar.org. It's a free member benefit!

ENDNOTES

1. Some believe the best plan is an encryption scheme where only the law firm has access and if the login credentials are forgotten or lost, all data will be irretrievably lost. Others believe there ought to be some way a lawyer can retrieve a lost password or a judge could order that an appropriate individual be allowed access to a deceased lawyer's files.

2. For readability, I am using some absolute terms in this column but the "not 100%" rule applies to all of them. Even for the ones that actually are 100% today, there might be a new development tomorrow.

FROM THE PRESIDENT

(continued from page 4)

Jack Brown of Tulsa served as task force chair and President-Elect Susan Shields of Oklahoma City served as co-chair. Task force membership was comprised of a blue ribbon representation of lawyers from across the state, in addition to many OBA staff members.

This year the task force met monthly from January to June with the June meeting conducted jointly with the MCLE Commission. The task force discussed a wide range of topics involving CLE.

As a result of its meetings, and in an effort to have CLE in Oklahoma continue to evolve to best serve its members, the task force recommended action on the following matters:

- Targeted CLE programs for new lawyers
- Greater coordination with sections and committees on CLE programs
- An increase in the number of mandatory legal *ethics* credits. (Don't get excited. The total number of CLE hours required will remain the same.)

There was lengthy discussion on increasing the overall number of required CLE credits that continued over several meetings.

Information was submitted on the credits required in other states and different methods of obtaining credit. Although the task force did not reach a consensus on increasing the total number of credits, it did note that several states require more credits and allow credit to be earned by self-study and other delivery methods. (Last year, the Oklahoma Supreme Court amended the MCLE rules to allow all 12 hours to be obtained online.)

The task force ultimately decided to leave the total number of required credits at 12 per year. However, it did decide to recommend the adoption of a new definition of legal ethics and to increase the requirement of one hour to two hours of legal ethics credits per year.

There is a resolution before the House of Delegates this year that provides effective Jan. 1, 2021, of the 12 required instructional hours of CLE each year, at least two hours must be for programming on legal ethics and professionalism. **Of the two required hours of continuing education on legal ethics and professionalism, one hour each year may be for programming on either legal ethics and professionalism, legal malpractice prevention, and/or mental health and substance use disorders.**

Legal ethics and professionalism CLE programs will address the Code of Professional Conduct and tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, fairness, competence, ethical conduct, public service and respect for the rule of law, the courts, clients, other lawyers, witnesses and unrepresented parties.

Mental health and substance use disorders programs will address issues such as attorney wellness and the prevention, detection and/or treatment of mental health disorders and/or substance use disorders which can affect a lawyer's ability to provide competent and ethical legal services.

BOARD ACTION

At its August meeting, the Board of Governors voted to recommend passage of the joint resolution going to the House of Delegates to amend the MCLE ethics requirements, expand the definition of legal ethics under the existing MCLE regulations and require an additional legal ethics credit each year. If passed, this will give OBA members greater opportunity for educational programs that address serious issues that impact the legal profession and the public. This resolution will be presented to the House of Delegates at its Annual Meeting and upon its passage will be submitted to the Supreme Court for approval.

A copy of the Continuing Legal Education Task Force report, along with the Executive Summary, is available online at www.okbar.org. If you would like to be better informed about the work undertaken by the task force, the scope of its discussions and the results reached by it, go online and review the report. It is well worth your time.

The task force ultimately decided to leave the total number of required credits at 12 per year. However, it did decide to recommend the adoption of a new definition of legal ethics and to increase the requirement of one hour to two hours of legal ethics credits per year.

Final Thoughts

By Joe Balkenbush

AS I REFLECT UPON MY tenure as ethics counsel at the Oklahoma Bar Association for the last few years, my first thought was regarding how much I have learned about the Rules of Professional Conduct and how much I didn't know when I took the position. I have spoken to thousands of lawyers and given them advice regarding their ethical conduct and provided them with a legal basis for that advice.

LAWYER WELL-BEING

While considering what topics to present in this final article, the single most important topic I have encountered is lawyer well-being. Lawyer well-being has reached the level of a crisis. We have had at least four Oklahoma lawyers take their own life in the last few months. Those are just the ones we know about. There have been other lawyer deaths, but the cause of death was not provided.

Being a lawyer isn't easy. It never has been. There are so

many responsibilities that must be coordinated and that doesn't include our responsibilities at home. It is imperative that we make time to ensure we are physically, mentally, emotionally and spiritually healthy. Sometimes a seemingly insignificant event can send us to a place no one wants to go.

The incidence of mental health and addiction issues, along with the simple fact that so many lawyers are overwhelmed by the combination of personal and career responsibilities, have



Richard Stevens

NEW ETHICS COUNSEL

Norman attorney Richard Stevens has joined the OBA as its new ethics counsel. Most recently he was a solo practitioner following his retirement from the District 21 District Attorney's Office in 2016 after 33 years as a prosecutor. He received both his B.A. (1978) and J.D. (1982) from OU. He is a member of the OBA Criminal Law Section and the Rules of Professional Conduct Committee. Mr. Stevens served on the Professional Responsibility Commission and as an at-large governor on the OBA Board of Governors from 2013-2015. He is an active member of the Cleveland County Bar Association, having served on its Executive Committee from 2010-2012. He has been active with both the OBA and the Cleveland County Disaster Response and Relief committees and the OBA Lawyers for America's Heroes Program.

Have an ethics question? It's a member benefit, and all inquiries are confidential. Contact him at richards@okbar.org or 405-416-7055; 800-522-8065. Find ethics information at www.okbar.org/ec.

reached the level of becoming an epidemic. We must not only take care of ourselves, but we must, as a profession, take care of each other. If you see a friend or colleague who you think might be having problems, have the courage to talk to them about it. So often the simple act of reaching out to someone can actually save a life. *If you see something, say something.*

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM COMMITTEE

The OBA LHL Committee was created decades ago. There are literally hundreds of OBA members who volunteer their time to help other lawyers in need. LHL is not just for alcoholics or drug addicts. The program provides services to any OBA member who is experiencing physical, mental, emotional, psychological and/or financial issues. As an OBA member benefit, the services provided are free and are confidential per Rule 8.3 of the Oklahoma Rules of Professional Conduct.¹

The hotline number for LHL answered 24/7 is 800-364-7886. Additional information regarding LHL can be found on the LHL webpage at www.okbar.org/LHL or by contacting the OBA Office of Ethics Counsel at 405-416-7055.

Salute! (a gesture of respect)

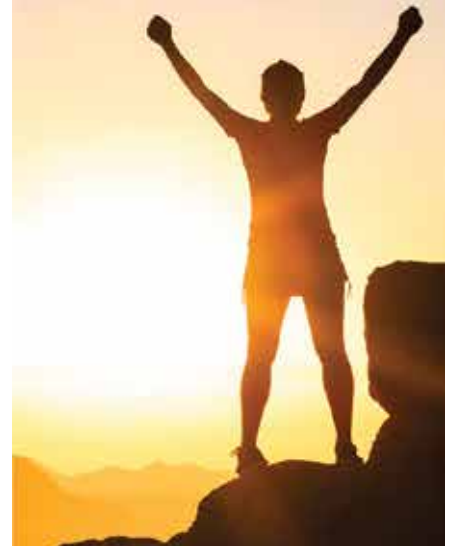
On a personal note, I have very much enjoyed serving as your ethics counsel for the past few years, but the time has come for me to pass the responsibility of helping fellow lawyers to someone else. Richard Stevens is a seasoned practitioner who is very familiar with our ethical rules and is available to give you excellent advice.

Mr. Balkenbush served as OBA ethics counsel from March 2015 – September 2019.

ENDNOTE

1. Oklahoma Rules of Professional Conduct, tinyurl.com/profconduct.

CONQUER YOUR MOUNTAIN



FREE 24-HOUR CONFIDENTIAL ASSISTANCE

800-364-7886 www.okbar.org/LHL



Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Committee

Meeting Summaries

The Oklahoma Bar Association Board of Governors met Friday, July 19, via telephone conferencing.

EXECUTIVE SESSION

The board voted to go into executive session to discuss pending legislation. They met and voted to come out of executive session.

REPORT OF THE PRESIDENT

President Chesnut reported he attended and gave the welcome at the OBA Solo & Small Firm Conference in addition to working on Annual Meeting details.

REPORT OF THE VICE PRESIDENT

Vice President Neal, unable to attend, reported via email he attended the Solo & Small Firm Conference.

REPORT OF THE PRESIDENT-ELECT

President-Elect Shields reported she attended the Oklahoma Bar Foundation Lip Sync Battle fundraising event, attended and presented a CLE program at the Solo & Small Firm Conference and continued work on planning for next year.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Solo & Small Firm Conference, monthly staff celebration and YLD board meeting. He drafted the CLE Task Force Report and hosted a judicial delegation from the Republic of North Macedonia.

REPORT OF THE PAST PRESIDENT

Past President Hays reported she attended the Solo & Small Firm Conference, OBA Family Law Section monthly meeting and received the report from the Women in Law Committee.

BOARD MEMBER REPORTS

Governor Beese reported he presented at the Oklahoma Municipal League Medical Marijuana Workshop and attended the OBA Solo & Small Firm Conference and Muskogee County Bar Association meeting. **Governor DeClerck** reported he attended the Solo & Small Firm Conference and received reports from the very busy Disaster Response and Relief Committee, which responded to help Oklahomans who were victims of the extensive flooding that occurred recently. **Governor Hermanson** reported he took part in the District Attorneys Council Executive Board meeting and presided at both the District Attorneys Council board meeting and Oklahoma District Attorney Association board meeting. He attended the Solo & Small Firm Conference, Kay County Bar Association dinner meeting, Oklahoma District Attorney Association summer conference and ODAA annual banquet, at which he passed the gavel and officially become past chair of the DAC and past president of the ODAA. **Governor Hicks** reported he attended the Solo & Small Firm

Conference and Tulsa County Bar Foundation meeting. **Governor McKenzie** reported he taught a one-hour CLE course on criminal jury trials and has been involved in the organization and formation of the Oklahoma Association of Criminal Defense Trial Lawyers. **Governor Morton** reported he attended the Solo & Small Firm Conference and Legislative Monitoring Committee meeting. He presented a CLE program and attended the Oklahoma Criminal Defense Lawyers Association Criminal Defense Institute. **Governor Pringle** reported he presented CLE and attended the Solo & Small Firm Conference. He also attended the July Legislative Monitoring Committee meeting and a Financial Institution and Commercial Law Section social event. **Governor Will** reported he, together with Governor Nowakowski and past YLD Chair Nathan Richter, competed in the Oklahoma Bar Foundation Rock the Foundation Lip Sync Contest. **Governor Williams** reported he attended the Solo & Small Firm Conference, OBA Professional Responsibility Tribunal annual meeting and Tulsa County Bar Foundation Board of Trustees meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Nowakowski reported she attended the Solo & Small Firm Conference, conducted the YLD Midyear Meeting and participated in the OBF Rock the

Foundation event. She said the YLD board will meet tomorrow to assemble bar exam survival kits, and YLD representatives will attend the upcoming national meeting in San Francisco. She reported a Wills for Heroes event in Vinita is tentatively set for mid-September.

BOARD LIAISON REPORTS

Governor Fields said the **Bar Association Technology Committee** met at the Solo & Small Firm Conference. Governor DeClerck talked to **Disaster Response and Relief Committee** Chair Molly Aspan about the influx of requests for legal advice as a result of the flooding. A total of 43 requests for legal advice were received with 17 of those requests handled. He said more volunteer lawyers are needed. Governor Beese volunteered to recruit volunteers to handle any Muskogee County needs. Executive Director Williams said he will contact Ms. Aspan. Governor DeClerck said the **Communications Committee** will meet July 29 to review the consumer brochures being printed and to develop a procedure for their annual review. Governor Williams said the **Diversity Committee** offered a CLE seminar yesterday. He encouraged board members to submit nominations for the committee's Ada Lois Sipuel Fisher Diversity Awards, which are due July 31. Governor Beese said the **Legal Internship Committee** is putting forth proposals to be on the board agenda

next month. Governor Pringle said the **Legislative Monitoring Committee** will hold its Legislative Debrief on Aug. 22 at 2 p.m. at the bar center. Topics and speakers are all confirmed, but they are still working on the legislative panel. Jari Askins will moderate. Governor Morton was asked to assume liaison responsibilities for Governor Hutter. Past President Hays said the **Women in Law Committee** will hold a mixer Aug. 13 in Tulsa and Oklahoma City.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported a written report of PRC actions and OBA disciplinary matters from May 31 to July 12 was submitted to the board for its review.

JUDICIAL NOMINATING COMMISSION ELECTION RESULTS

Executive Director Williams reported James Bland of McAlester ran unopposed for the District 3 position, and David L. Butler of Lawton won the election for the District 4 position. Their terms will expire 10/1/2025.

CLE TASK FORCE REPORT

Executive Director Williams reported the MCLE Commission has approved the task force's recommendation, which was circulated to board members via email. The recommendation will be on the board agenda for the August meeting.

The Oklahoma Bar Association Board of Governors met Friday, Aug. 23, at the Oklahoma Bar Center in Oklahoma City.

REPORT OF THE PRESIDENT

President Chesnut reported he attended the Southern Conference of Bar Presidents, National Conference of Bar Presidents, ABA House of Delegates and delegates dinner held in connection with the ABA Annual Meeting in San Francisco. He also attended the OBA Bar Facilities Committee meeting, OBA Disaster Response and Relief Committee meeting and Tulsa County Bar Association annual luncheon. He made appointments to various committees.

REPORT OF THE VICE PRESIDENT

Vice President Neal reported he attended the OBA Legislative Debrief.

REPORT OF THE PRESIDENT-ELECT

President-Elect Shields reported she attended the SCBP, NCBP and ABA delegates meetings held in San Francisco, OBA Legislative Monitoring Committee Legislative Debrief and July Oklahoma Bar Foundation Board of Trustees meeting. She met with Dean Roth and [rofessors Couch and Blitz at the OCU School of Law and attended a luncheon for OCU law students during the bar exam. She also worked on committee appointments and other planning for next year.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the National Association of Bar Executives meeting, SCBP and NCBP meetings in San Francisco, staff budget meeting, Legislative Monitoring Committee meeting, Audit Committee meeting, Bar Center Facilities Committee meeting, Legislative Debrief, Allen Smallwood's annual bench and bar event and YLD board meeting. He conducted interviews for ethics counsel and heroes program coordinator, participated in the Disaster Response and Relief Committee conference call, worked on Annual Meeting preparations with LawPay on its streetcar event sponsorship and worked on litigation.

REPORT OF THE PAST PRESIDENT

Past President Hays reported she attended the OBA Awards Committee meeting, OBA Women in Law Committee meeting, OBA Audit Committee meeting, OBA Family Law Section monthly meeting, OBA Family Law Section Annual Meeting planning meeting and Tulsa County Bar Association annual luncheon. In San Francisco she attended the ABA Annual Meeting, SCBP, NCBP and OBA Oklahoma delegates dinner. She coordinated the Mona Salyer Lambird Spotlight Award nominations, voting and awards.

BOARD MEMBER REPORTS

Governor Beese reported he attended the OBA Audit Committee meeting and Muskogee County Bar Association meeting. **Governor DeClerck** reported he coordinated with the Garfield County Bar Association president to host a Lawyers Helping Lawyers presentation to the county bar association, reviewed OBA Communications Committee

minutes, visited with Chair Dick Pryor about the committee's work and future considerations and participated in a conference call with Disaster Response and Relief Committee Chair Molly Aspan, Executive Director Williams and President Chesnut. **Governor Fields** reported he attended the OBA Audit Committee meeting. **Governor Hicks** reported he attended the National Conference of Bar Foundations in San Francisco, OBA Audit Committee meeting, Tulsa County Bar Association meeting and TCBA annual luncheon. **Governor Morton** reported he attended the Legislative Monitoring Committee meeting, Bench and Bar Committee meeting and OBA Legislative Debrief. **Governor Oliver** reported he attended the OBA Audit Committee meeting and Payne County Bar Association monthly meeting. **Governor Pringle** reported he attended the Oklahoma County Bar Association's *Briefcase* Committee meeting, OCBA Striking Out Hunger fundraiser, OBA Audit Committee meeting and OBA Legislative Committee Legislative Debrief. **Governor Will** reported he chaired the OBA Bar Center Facilities Committee meeting and attended the OBA Audit Committee meeting. **Governor Williams**, unable to attend the meeting, reported via email he attended the OBA Diversity Committee meeting. With Judge Martha Rupp Carter, he co-authored the Gary C. Clark Award article for the Tulsa County Bar Association's annual awards luncheon and the *Tulsa Lawyer* magazine. As a TCBF Trustee, he inspected progress of repairs and the restoration of the TCBF bar building.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Nowakowski reported last month YLD board members assembled survival kits

that were appreciated by those taking the exam. YLD board members will meet Saturday, Sept. 14, in Vinita in conjunction with a Wills for Heroes event. She described how lawyers work individually with veterans and first responders to prepare wills and other legal documents as a community service. She attended the OBA Awards Committee meeting in addition to the ABA YLD Assembly, ABA House of Delegates and Oklahoma delegate dinner in San Francisco.

BOARD LIAISON REPORTS

Governor Morton said the **Bench and Bar Committee** formed a subcommittee to create guidelines for social media utilization. Governor DeClerck said the **Disaster Response and Relief Committee** volunteers had difficulties reaching disaster survivors, but all people who requested legal advice from the OBA have been helped. He said the Communications Committee is reviewing four consumer information brochures and will implement a plan for annual review of all brochures. Governor Pringle said the **Legislative Monitoring Committee** held its Legislative Debrief yesterday with about 120 people attending. He said those participating on the legislative panel did an excellent job. Past President Hays said the **Professionalism Committee** met and is working on a CLE seminar. She reported the **Women in Law Committee** held a mixer in August and a clothing drive in both Oklahoma City and Tulsa. She oversaw voting for Mona Salyer Lambird Spotlight Award winners, and she announced the winners who will receive their awards at the upcoming conference.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported on a case recently filed in the U.S. District Court for New Jersey wherein the OBA is a named defendant, and she shared details. A written report of PRC actions and OBA disciplinary matters from July 12 to Aug. 16 was submitted to the board for its review.

LICENSED LEGAL INTERNSHIP COMMITTEE ANNUAL REPORT

Committee Chairperson Terrell Monks said previous Supreme Court Justice Combs asked the committee to look over rules and regulations that would allow interns to be more involved in law school legal clinics in support of access to justice efforts. There are issues with some states not providing background reports as required by Oklahoma rules. Also, an addition to Rule 2.1A is being requested to allow any member of the Oklahoma judiciary, not just Oklahoma Supreme Court justices, to swear in academic interns. Questions were asked. The board approved the report that will be submitted to the Supreme Court.

AMENDMENTS TO RULE 2.1A AND REGULATION 7 OF THE RULES OF THE SUPREME COURT ON LICENSED LEGAL INTERNSHIP

Committee Chairperson Monks called the board's attention to the redlined changes that are being requested. An amendment to Regulation 7 would require fingerprint-based and name-based criminal history, sex offender and violent offender searches from the Oklahoma State Bureau of Investigation and remove the requirement for background reports for each state in which the student has resided for a period of one month or longer. The board

approved the proposed amendments. The proposed amendments will be published in the *Oklahoma Bar Journal*, eNews and on www.okbar.org with a 60-day comment period before being submitted to the Supreme Court for its approval.

AWARDS COMMITTEE RECOMMENDATIONS

Committee Chairperson Kara Smith reviewed the committee's recommendations for OBA Awards to be presented at the OBA Annual Meeting. No award recipients were recommended for the Fern Holland Courageous Service Award and Trailblazer Award. The board approved the committee's recommendations.

CLE TASK FORCE FINAL REPORT

Task Force Chairperson Jack Brown praised task force members who were presented with statistics and disciplinary information that relates to education as part of the research they reviewed. He said task force recommendations include programs targeted to new lawyers and noted delivery methods of CLE have changed from primarily live seminars to increased online utilization. Revenue continues to drop as a result of competition – with a major competitor

being the OBA's sections. The MCLE Commission looked at other states that include mental health and wellness in CLE program curriculum. Mr. Brown said the task force recommends a rule change to expand the definition of legal ethics to include legal malpractice prevention and mental health and substance use disorders. The task force also recommends increasing from one to two hours for programming on legal ethics and professionalism. The guidelines for programming were described.

RESOLUTION NO. ONE

CLE Task Force Chairperson Jack Brown reviewed the joint resolution submitted to the OBA House of Delegates by the CLE Task Force and Mandatory Continuing Legal Education Commission to amend MCLE ethics requirements. A question was raised about the redlined text, which was resolved. The board approved the resolution with a do pass recommendation for it to be adopted.

Mr. Brown said the task force recommends a rule change to expand the definition of legal ethics to include legal malpractice prevention and mental health and substance use disorders.

AMENDMENT TO COMMITTEE & SECTION GUIDE, APPENDIX 2 CO-SPONSORSHIP OF SEMINARS

CLE Task Force Chairperson Jack Brown said a change in section co-sponsorship policy is being recommended that would strongly encourage sections to co-sponsor a CLE program with the OBA every two years. Sections not co-sponsoring with OBA CLE would be required to coordinate with the department. More details to expand options for the sections and to share revenue were added. The board approved the policy amendment effective immediately. Mr. Brown was thanked for his work.

AUDIT COMMITTEE REPORT AND APPROVAL OF 2018 AUDIT REPORT BY SMITH CARNEY

Auditor Leah Logan reviewed two changes to the report: 1) addition of statements showing total expenses with and without donor restrictions and 2) addition of a footnote on liquidity and availability. She reviewed the controls used and said it is an unqualified report, which reflects no problems. She said the report was given to the Audit Committee last week. As Audit Committee chairperson, Governor Oliver said the committee reviewed the report and voted to submit it as presented. The board approved the report.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM COMMITTEE PROPOSAL

President Chesnut summarized the program and explained its current funding. He said the resources they have are insufficient. The ABA Commission on Lawyer Assistance Programs conducted a study of Oklahoma's program and has made recommendations. Peggy Stockwell,

LHL Foundation treasurer and committee member, introduced Committee Co-Chairperson Jeanne Snider and committee member Ben Rogers. Ms. Snider said bar members are not taking advantage of the free services and LHL Foundation grants. Committee participation has dwindled because of a lack of activity in requests for mentors. After reviewing the ABA recommendations, the committee prepared a proposal that includes 1) establishing a more formal structure for the lawyer assistance program, 2) increasing funding and 3) hiring a full-time director. President-Elect Shields said one of her priorities next year will be the Lawyers Helping Lawyers Assistance Program incorporating wellness. It was noted the Budget Committee will meet soon, and it was the consensus that funding needs to be a long-term commitment. It was determined a dues increase was not an option. Discussion followed about funding options, and it was decided a suggested donation of \$20 for the program should be included in the donation line item on annual dues statements. Problems with poor service from the current assistance program vendor that staffs the hotline were shared that have occurred since the vendor was acquired by another entity headquartered in Chicago. Options were discussed. It was decided the best strategy is to form a subcommittee and meet with Executive Director Williams to plan the next step.

APPROVAL OF OUT-OF-STATE TRAVEL

Executive Director Williams said policy requires board approval for OBA Practice Management Advisor Julie Bays to attend the October 2019 ABA Law Practice Division fall meeting in Portland, Oregon. The board approved the travel request.

APPOINTMENT OF COMMISSION TO ACT UPON GRIEVANCE AGAINST PRC MEMBER

President Chesnut recommended the appointment of Deborah A. Reheard, Eufaula; William R. Grimm, Tulsa; and Stephen D. Beam, Weatherford, to a commission to act upon a grievance against a Professional Responsibility Tribunal member. The board approved the appointment.

OKLAHOMA INDIAN LEGAL SERVICES APPOINTMENT

President Chesnut recommended the appointment of Christine C. Pappas, Ada, to complete the unexpired term of G. Blake Jackson expiring 12/31/2019. The board approved the appointment.

EXECUTIVE SESSION

The board voted to go into executive session, met and voted to come out of executive session.

NEXT MEETING

The Board of Governors met in September, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, Oct. 18, in McAlester.

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WAYS TO SUPPORT THE OKLAHOMA BAR FOUNDATION



Fellows Program

An annual giving program for individuals



Community Fellows Program

An annual giving program for law firms, businesses and organizations



Memorials & Tributes

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



Unclaimed Trust Funds

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



Cy Pres Awards

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



Interest on Lawyer Trust Accounts

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

**BancFirst • Bank of Oklahoma • Bank of Cherokee County • Blue Sky
Citizens Bank of Ada • City National • First Oklahoma Bank • First State Anadarko
First State Noble • Grand Savings Bank • Great Plains Bank • Herring Bank Altus
McClain Bank • McCurtain County National Bank • Security Bank
Stockmans Bank • The First State Bank • Valliance**



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Scholarship & Award Highlights

MAURICE H. MERRILL AWARD



Ashley Ray

Hometown: Newcastle

Law School: OU College of Law

Graduation Date: 2019

What field of law are you studying: Estate Planning, Real Estate, Corporations

Undergraduate: OU

Undergrad Major: Finance, *summa cum laude* with distinction

Graduation Date: 2016

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

My short-term professional goals are likely the same as most rising 3Ls. I wish to secure a job, graduate and pass the bar. My short-term personal goal is that I would love to take a trip somewhere tropical after graduation. My professional and personal long-term goals are relatively the same. I want to stay happy, learning and moving forward.

What made you decide to attend law school?

In high school, I had a few teachers tell me that law school was something I should keep in mind. I heeded their advice, and in college I began paying attention to what a career in law could look like. Ultimately, I decided a law degree can open many doors career-wise and provides an opportunity to serve others.

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

I am a little perplexed by the third-party doctrine in criminal procedure. Essentially, if one turns over information to a third party, then he or she no longer has a reasonable expectation of privacy of that information. This doctrine was first created in 1976, so it will be interesting to see how or if it changes in the context of our digital world where it may be impossible to socially navigate without sharing information with third parties.

What historical figure inspires you and why?

I am inspired by the life and achievements of Abraham Lincoln. His integrity and humility are key traits I aspire to reflect in my personal and professional life.

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

I have learned the importance of a quote from one of my favorite movies, which is to “have courage and be kind.”

W.B. CLARK SCHOLARSHIP RECIPIENT



Andrew Kirby

Hometown: Ponca City

Law School: OU College of Law

Graduation Date: 2020

What field of law are you studying: Intellectual Property

Undergraduate: University of Central Oklahoma

Undergrad Major: Biology

Graduation Date: 2006

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

I look forward to leveraging my skills in science, business and the law to protect the ideas of America's best and brightest minds and strengthen the economy of our nation. I also look forward to expanding my art collection!

What made you decide to attend law school?

My career has been focused on helping others, and a law degree will enable me to do that at a higher level. I also admire the tangible, results-driven nature of the profession.

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

It still amazes me that a federal "right to try" bill was met with so much resistance. Thankfully, it was signed into law.

What historical figure inspires you and why?

Theodore Roosevelt – I'm inspired by his character and accomplishments.

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

Law school has given me a new appreciation for the role that lawyers have played in shaping the history of our nation.

Pumpkin Spice and Everything Nice

By Brandi Nowakowski

IT'S FALL, Y'ALL! That means football, pumpkins and sweater weather. Despite cooler temperatures, the YLD has been busy heating up. For instance, in August the YLD Executive Committee attended the American Bar Association Annual Meeting in San Francisco where we represented Oklahoma at the ABA YLD Assembly. It was a great opportunity for us to connect with our counterparts from across the country. The ABA and these young lawyer leaders provide an invaluable source of advice and ideas in law practice, professional involvement and community service.

WILLS FOR HEROES

For example, our successful Wills for Heroes service event originated with the ABA YLD. This worthwhile community service project provides basic estate planning to first responders such as police, fire and EMS. On Sept. 14, the OBA YLD once again provided this service, volunteering both our time and expertise to the first responders in Vinita. Several members of the YLD board, along with a few other generous lawyers, headed to northeast Oklahoma to prepare basic wills and powers of attorney for these very deserving men and women. We were also

joined by the members of the Lee Coats Law Firm who graciously hosted us. I am so grateful to everyone who made this event a success and especially to all of those brave men and women who put their lives on the line, serving others day in and day out.

NEW MEMBERS

Next, we welcomed our newest colleagues at the swearing-in ceremony for the new admittees to the Oklahoma Bar Association. After the swearing in, the YLD hosted a reception for all of the newly admitted lawyers, their families and friends.

ANNUAL MEETING

With that, we set our sights on the biggest event of the fall: OBA Annual Meeting! The 2019 Annual Meeting will take place Nov. 6-8 in Oklahoma City at the Renaissance Oklahoma City Convention Center Hotel and Cox Convention Center. This event is packed with CLE and networking opportunities for everyone! In addition to the business portion of the conference, evenings at Annual Meeting offer a relaxed atmosphere to kick back and socialize with fellow lawyers.

This year, Wednesday evening will offer the President's Reception followed by a Midtown Pub Crawl complete with streetcar rides. We'll cap the night off



Join the YLD for a pub crawl via OKC Streetcar as part of the OBA Annual Meeting. Photo credit: EMBARK



Attending the ABA Annual Meeting in San Francisco are (from left) Dylan Erwin, April Moaning, Brandi Nowakowski and Jordan Haygood.

with hospitality suites including our very own YLD-hosted suite. Thursday will feature the Out of This World Party and another night of hospitality suites, including the ever-popular suite of the YLD. Those of you who have attended know what a great time Annual Meeting can be. Those who haven't attended simply don't know what you're missing out on! Anytime I ask friends or colleagues why they have never attended, I hear the same excuses: they don't know anyone, they aren't in bar leadership, it's only for "tall building lawyers," etc. Rest assured, in the YLD suite, there are no strangers – just food, drink, music, friends and fun! It's a great opportunity to meet people, build relationships and reconnect with friends from across the state. Like so many things,

Annual Meeting is what you make it. Come, make the most of Annual Meeting and YOUR bar association! We hope that you'll join us and can't wait to see you!

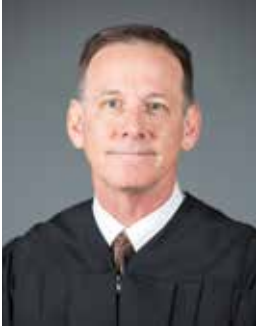
ELECTIONS

Last but certainly not least, taking place at Annual Meeting is the November YLD meeting and announcement of the YLD election results! Electronic ballots went out on Oct. 1 and the deadline to vote is 5 p.m. Friday, Oct. 25. All candidates and open positions were highlighted in last month's *Oklahoma Bar Journal* and are online at www.okbar.org/yld/elections. Please check out the elections for your district and at-large representatives and don't forget to cast your vote! We look forward to seeing you at Annual Meeting!

Ms. Nowakowski practices in Shawnee and serves as the YLD chairperson. She may be contacted at brandi@stuartclover.com. Keep up with the YLD at www.facebook.com/obayld.

FOR YOUR INFORMATION

JUDGE JOHN KANE APPOINTED TO OKLAHOMA SUPREME COURT



John Kane

Gov. J. Kevin Stitt has appointed Judge John Kane IV of Pawhuska to the Oklahoma Supreme Court. He will fill the vacancy for District 1 which was created when Justice John F. Reif retired.

Judge Kane served as district judge for the 10th Judicial District in Osage County since 2005, presiding over tens of thousands of cases.

“Judge Kane’s extensive record serving the 10th Judicial District and his broad support in the community, and from across the state, speak toward his qualifications to join the highest court in Oklahoma,” Gov. Stitt said. “He is an accomplished

judge with a reputation for fairness and a passion to ensure the legal system is serving the needs of the people.”

Judge Kane has served in many capacities throughout his career, including president of the Oklahoma Judicial Conference, from 2013-2014, presiding judge-elect of the Northeastern Judicial Administrative District in 2019 and as presiding judge of the Oklahoma Court on the Judiciary in 2019.

He received his J.D. from the OU College of Law in 1987 and began his career as an attorney at Kane, Kane & Kane Law Offices PC, a law firm founded by his father and grandfather in Pawhuska.

2020 PROPOSED BUDGET HEARING

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association, Susan Shields, president-elect and Budget Committee chairperson, has set a public hearing on the 2020 Oklahoma Bar Association budget for Thursday, Oct. 17, at 10 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., in Oklahoma City. Budget details will be published in the Oct. 12 *Oklahoma Bar Journal* court issue.

LHL DISCUSSION GROUP HOSTS NOVEMBER MEETING

“Reasonable Expectations at the Holidays” will be the topic of the Nov. 7 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.



IMPORTANT UPCOMING DATES

Don’t forget the Oklahoma Bar Center will be closed Monday, Nov. 11, in observance of Veterans Day. The bar center will also be closed Thursday and Friday, Nov. 28-29, for Thanksgiving. Remember to register and join us for the OBA Annual Meeting to be held in Oklahoma City Nov. 6-8.

OBA MEMBER RESIGNATIONS

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

Dochele Burnett
OBA No. 10749
P.O. Box 30603
Midwest City, OK 73140-3603

Jean Elizabeth Giles
OBA No. 22811
5327 Washington Blvd.
Indianapolis, IN 46220



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.

ON THE MOVE

Joshua K. Hefner has joined the firm of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC as an associate and **Gerard F. Pignato** has joined the firm as of counsel. Mr. Hefner received his J.D. from the OU College of Law in 2011 and will practice in the area of general insurance defense. Mr. Pignato received his J.D. from the OU College of Law in 1984 and practices in the area of complex insurance litigation.

Matthew R. Rison, Aaron F. W. Meek and **Kevin T. O'Shields** have formed Rison, Meek & O'Shields PLLC. The office is located at 428 NW 5th St., Ste. B, Oklahoma City, 73102. They will focus on oil and gas title examination on lands in Oklahoma and other states and can be reached at 405-724-7444.

Steven K. Balman has joined the firm of Shook & Johnson PLLC. Mr. Balman received his J.D. in 1981 from the University of Texas School of Law in Austin, Texas. He practices complex business litigation, civil appeals and probate litigation.

Monica Y. Ybarra has joined TBS Factoring Service LLC as corporate counsel. She received her J.D. from the OCU School of Law in 2014. Ms. Ybarra currently serves on the Oklahoma County Bar Association Board of Directors and as the OCU School of Law Alumni Association chair.

Mark A. Yancey was named chief learning officer for the U.S. Department of Justice Office of Legal Education. He received his J.D. from Cumberland School of Law at Samford University in Birmingham, Alabama, in 1986.

Keith F. Givens has joined the firm of Mansell, Engel & Cole. He practices primarily in insurance coverage, bad faith and personal injury matters. Mr. Givens received his J.D. from the OU College of Law and an LL.M. from the London School of Economics in London.

Benjamin Aycock has joined the Tulsa-based firm of Henry + Dow. He practices primarily in large marital estate and divorce cases. Mr. Aycock received his J.D. from the TU College of Law in 2006.

Moura A.J. Robertson has joined the Tulsa-based firm of Doerner, Saunders, Daniel & Anderson LLP as partner. She practices primarily family law and mediation. Ms. Robertson received her J.D. from the TU College of Law in 1992.

Sutton Smith Murray has joined the Tulsa-based firm of Smakal Munn PC. Ms. Murray received her bachelor's degree from Vanderbilt University in Nashville, Tennessee, and her J.D. from the UCLA School of Law in Los Angeles. She also holds a Master's of Fine Arts from TU.

KUDOS

Kyle Sweet was appointed to the Board of Directors of the Collaborative for Accountability and Improvement, a program at the University of Washington College of Medicine. Mr. Sweet is the only defense attorney on the board. He received his J.D. from OU College of Law in 1997.

Raymond E. Penny Jr. received Region II Prosecutor of the Year award at the Association of Oklahoma Narcotics Enforcers banquet. Mr. Penny formerly served as deputy director of the Gang and Organized Crime Protection Unit in the Tulsa County District Attorney's Office where he worked with Tulsa Police, Homeland Security, DEA Task Force agents and the FBI in an effort to reduce trafficking drugs and weapons in the Tulsa area.

Brian Hermanson was awarded the Oklahoma District Attorneys Association Scales of Justice for his work as the association president for 2018-19. Mr. Hermanson received his J.D. from the OU College of Law in 1978.

Judge Gerald A. Williams was awarded the Justice Michael D. Ryan Award for Judicial Excellence by the Public Lawyers Division of the State Bar of Arizona. He received his J.D. from the OU College of Law in 1989.

IN MEMORIAM

Samuel Thomas Allen III of Sapulpa died Aug. 2. He was born April 13, 1923. **In 1943, he left college to serve as a lieutenant junior grade in the U.S. Navy through the remainder of World War II.** Mr. Allen received his J.D. from the OU College of Law in 1950. His career began as an assistant county attorney before he spent some time in private practice, where he remained for the duration of his career. Mr. Allen was appointed by Gov. Bellman as a special judge of the Supreme Court to help resolve a backlog of cases in the early 1960s. In 1981, Chief Justice Irwin named him a special judge of the court of appeals. Memorial contributions may be made in memory of Mr. Allen to the charity of your choice.

John D. Board of Amarillo, Texas, died March 11. He was born March 3, 1935, in Oklahoma City. Mr. Board received his J.D. from the OU College of Law in 1962 and was president of his class. His career included time spent practicing in Woodward, Amarillo and Guymon. In 1985, while living in Guymon, he served as Oklahoma Bar Foundation president. Memorial contributions may be made to BSA Hospice of the Southwest.

Charles E. Cheatham of Oklahoma City died Aug. 22. He was born Nov. 10, 1949, in Stillwater. Mr. Cheatham received his J.D. from Harvard Law School in Cambridge, Massachusetts, in 1979. He spent 40 years working in banking law. Memorial contributions may be made to the Oklahoma Medical Research Foundation.

Walter R. Gaidaroff of Oklahoma City died Aug. 21. He was born Oct. 18, 1950, in Chickasha. Mr. Gaidaroff received his J.D. from the OCU School of Law in 1981.

Judge Robert Hert Jr. of Stillwater died Aug. 26. He was born June 21, 1944, in Colorado Springs, Colorado. Mr. Hert received his J.D. from the OU College of Law in 1969. He worked in private practice in Stillwater until 2011. From 2005 to 2007, Mr. Hert was the contract administration law judge for the Office of Administrative Hearings, Oklahoma Department of Human Services. In 2011, he became special district judge of Payne and Logan counties, where he remained until earlier this year. **Mr. Hert earned the rank of lieutenant colonel in the United States Army Reserves**

and received numerous awards for his service. Memorial contributions may be made to the OSU General Athletics Fund through the OSU Foundation, 1219 PMB, Stillwater, 74078, or to Stillwater Cancer Center, Attn: Vicki Branstetter, 1201 W. 6th Ave., Stillwater, 74074.

William M. Northcutt of Tulsa died Aug. 20. He was born March 30, 1934, in Decatur, Arkansas. He received his J.D. from the TU College of Law in 1960 and began his legal career as a legal assistant for the Oklahoma Supreme Court before working for the City of Tulsa Legal Department. Memorial donations can be made to the Scout Resource Center, 4295 South Garnett Rd., Tulsa, 74146.

HOW TO PLACE AN ANNOUNCEMENT:

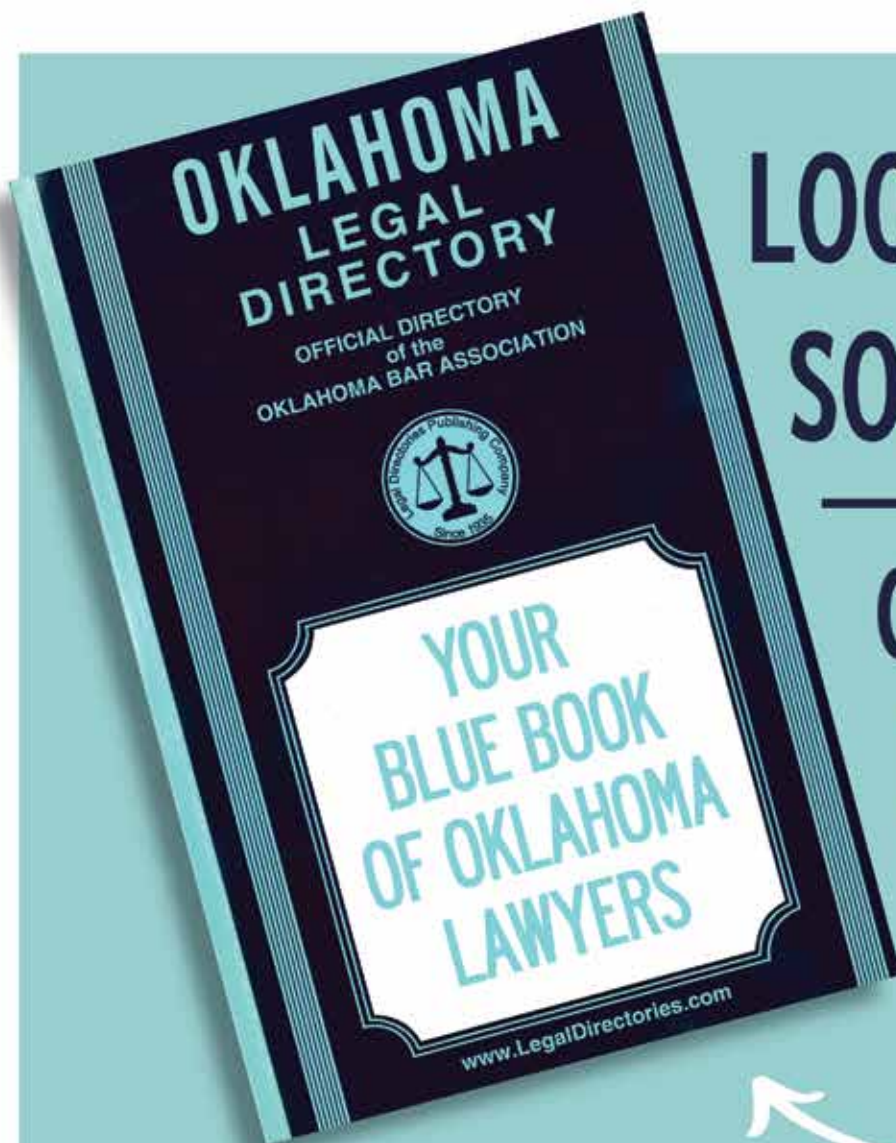
The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, 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:

Laura Wolf
Communications Dept.
Oklahoma Bar Association
405-416-7017
barbriefs@okbar.org

Articles for the December issue must be received by Nov. 1.



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The Oklahoma Legal Directory is the official OBA directory of member addresses and phone numbers, plus it includes a guide to government offices and a complete digest of courts, professional associations including OBA committees and sections. 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.

2019 ISSUES

NOVEMBER

Indian Law

Editor: Leslie Taylor
leslietaylorlaw@gmail.com
Deadline: Aug. 1, 2019

DECEMBER

Starting a Law Practice

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

2020 ISSUES

JAUNARY

Meet Your Bar Association

Editor: Carol Manning

FEBRUARY

Family Law

Editor: Virginia Henson
virginia@phmlaw.net
Deadline: Oct. 1, 2019

MARCH

Constitutional Law

Editors: C. Scott Jones & Melissa DeLacerda
sjones@piercecouch.com
Deadline: Oct. 1, 2019

APRIL

Law Day

Editor: Carol Manning

MAY

Diversity and the Law

Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Jan. 1, 2020

AUGUST

Children and the Law

Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2020

SEPTEMBER

Bar Convention

Editor: Carol Manning

OCTOBER

Mental Health

Editor: C. Scott Jones
sjones@piercecouch.com
Deadline: May 1, 2020

NOVEMBER

Alternative Dispute Resolution

Editor: Aaron Bundy
aaron@bundylawoffice.com
Deadline: Aug. 1, 2020

DECEMBER

Ethics & Professional Responsibility

Editor: Amanda Grant
amanda@spiro-law.com
Deadline: Aug. 1, 2020

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



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WHAT'S ONLINE

Registration

Register by mail, fax or online!
Walk-ins also welcome.

www.okbar.org/annualmeeting/registration

Hotel Info

Registration does not include hotel accommodations. The deadline to take advantage of the discounted room rate booked through the hotel website is Oct. 15.

tinyurl.com/AMhotel

CLE

OBA CLE programs are being offered all day Wednesday and Thursday morning.

Sign up to learn about the stages of legal marijuana enterprise and artificial intelligence, data analytics and legal ethics in a digital age.

www.okbar.org/annualmeeting/cle

Bar Business

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

www.okbar.org/annualmeeting/barbusiness

OBA Awards

Congratulations to this year's OBA Award winners.

www.okbar.org/annualmeeting/awards

Program of Events

This year's lineup includes luncheon speaker Ed Walters, Delegates Breakfast speaker Walt Coleman, several great CLE opportunities, the President's Reception, Midtown Pub Crawl, OBA section events and more!

www.okbar.org/annualmeeting/program



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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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JSLegalWritingServices.com: for small firms who need assistance. brief writing for federal and state courts. Discovery document and medical records review. Over 15 years of experience. Phone: 405-513-4005. Email: jennifer@jslegalwriting.com.

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LUXURY OFFICE SPACE AVAILABLE - One fully furnished office available for \$955/month and one smaller (unfurnished) office available for \$670/month lease in the Esperanza Office Park near NW 150th and May Avenue. The Renegar Building offers a 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. Gregg Renegar 405-488-4543.

OFFICE SPACE FOR LEASE: 4501 North Western Ave. Move-in ready. Recently remodeled. Prime location, reception area, conference room, kitchen and five private offices. Ample parking front/back. Interested parties call 405-672-7211.

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 405-416-7086 or heroes@okbar.org.

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.

DURBIN LARIMORE & BIALICK PC has an excellent opportunity for attorneys with 5-7 years of litigation experience. Those candidates with employment, oil and gas and/or environmental law experience a plus, but not required. Generous benefits package and competitive salary. Please send cover letter, resume and references to radams@dlb.net.

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ESTABLISHED, AV-RATED MIDTOWN TULSA LAW FIRM SEEKING ASSOCIATES with 0 to 5 years of experience to assist with insurance defense practice. Great growth potential. Excellent benefits. Send resume to "Box CC," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

DURBIN LARIMORE & BIALICK PC has an excellent opportunity for attorneys with 5-7 years' experience in corporate, real estate, business and commercial law. Those candidates with commercial litigation, probate and estate administration experience are a plus. Generous benefits package and competitive salary. Please send cover letter, resume and references to radams@dlb.net.

NORMAN BASED LAW FIRM IS SEEKING SHARP, MOTIVATED ATTORNEYS for fast-paced transactional work. Members of our growing firm enjoy a team atmosphere and an energetic environment. Attorneys will be part of a creative process in solving tax cases, handle an assigned caseload and will be assisted by an experienced support staff. Our firm offers health insurance benefits, paid vacation, paid personal days and a 401K matching program. No tax experience necessary. Position location can be for any of our Norman, OKC or Tulsa offices. Submit resumes to Ryan@polstontax.com.

JENNINGS TEAGUE, AN AV RATED DOWNTOWN OKC LITIGATION FIRM whose primary areas of practice are insurance defense, products liability and transportation defense, seeks an associate attorney with 5-10 years of experience. The position will encompass all phases of litigation, including pleadings and motion practice, discovery, depositions, investigation, research and trial. Compensation commensurate with experience. Please submit cover letter, resume, writing sample and references to kbambick@jenningssteague.com.

POSITIONS AVAILABLE

WELL-ESTABLISHED AV PLAINTIFF'S PERSONAL INJURY AND MEDICAL MALPRACTICE FIRM seeks lawyer with at least two years litigation experience. Submit resume, writing sample and law school transcript to "Box KK," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152."

INVESTIGATOR. OFFICE OF THE GENERAL COUNSEL, OKLAHOMA BAR ASSOCIATION. Applications are now being accepted for a position as an investigator for the Office of the General Counsel, Oklahoma Bar Association. The investigators review allegations against members of the bar which may involve violations of the rules of professional conduct. Duties include interviewing witnesses, reviewing legal documents and financial statements, preparing reports and testifying at disciplinary and reinstatement hearings before the Professional Responsibility Tribunal. Applicants should have a degree from an accredited university or comparable work experience, possess excellent writing skills and be able to work independently. Some travel may be required. Law enforcement, accounting, legal or investigative experience strongly preferred. Salary negotiable, depending upon credentials and experience. Excellent benefits including retirement, health and life insurance. Resumes and cover letters should be submitted by Oct. 24, 2019 to Gina L. Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152 or electronically to ginah@okbar.org. The Oklahoma Bar Association is an Equal Opportunity Employer.

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The Moral of That Story Is...

By Holly Cinocca

EARLY IN MY LEGAL CAREER as the new “lady D.A.” for a rural county, I was preparing for a hearing by reading through a deposition transcript. This one made me laugh out loud. A middle-aged woman claimed her husband abused her, but as it turns out, she also admitted to having bruises from “falling into a dumpster.” The

attorney questioning her was clearly stunned and began quizzing her as to how a person manages to fall into a trash dumpster. Well, she was taking the trash out of her motel room to the dumpster.

She says, “Well, I was wearin’ flip-flops, and I tripped just as I was gettin’ up to the dumpster.” She said she crashed into it and

just “flopped right on in,” cracking a rib and bruising herself all over. The attorney paused for a bit and then asked, “Had you been drinking?” Answer: “Yeah, I was pretty messed up.” Well, *that* explains a lot. The moral of that story is whisky and flip-flops don’t mix.

A couple days later, I received another police report and photographs that made me burst out laughing. An older couple with a very manicured lawn lived next door to a lady who worked long hours and failed to mow her lawn for a couple of weeks. The older couple reported her to the city, and the city told her to mow her lawn or pay a fine.

The next day the couple left for a few hours, and when they returned, there were freshly mowed “crop circles” right in the middle of their front yard. The pictures were hilarious, you could see where the mower came from next door, made a big doughnut circle, then went back next door. The older couple was furious and filed a police report, saying their lawn “was ruined for the entire season!”

I wasn’t sure what I was supposed to charge her with – criminal mowing? I think that’s the best passive-aggressive behavior I’ve ever seen. I guess the moral of that story is be careful who you report to city code enforcement!



Ms. Cinocca practices in Tulsa.

FRIDAY,
OCTOBER 25, 2019
9 A.M. - 4:20 P.M.

Oklahoma Bar Center
1901 N. Lincoln Blvd.
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MCLE 7/0



FEATURED TRAINER:

Robert Levine, Attorney, Author,
and former law school professor

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TOPICS INCLUDE:

- Program Objectives and Roadmap
- General Provision; Overview of the UCC
- Sales and Leases
- Documents of Title
- Secured Transactions
- Negotiable Instruments
- Bank Deposits and Collections
- Letter of Credit
- Funds Transfers

TUITION: Early registration by October 20, 2019, is \$225. Registrations received after October 20, 2019 will increase \$25 and \$50 additional for walk-ins. Registration includes continental breakfast and lunch. For a \$10 discount, enter coupon code FALL2019 at checkout when registering online for the in-person program. All programs may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org to register.

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FRIDAY,
OCTOBER 25, 2019
9 A.M. - 3:50 P.M.

Renaissance Waterford Hotel
6300 Waterford Boulevard
Oklahoma City, OK 73118

MCLE 6/1

PROGRAM PLANNERS:

Melanie Dittich,
OBA Women in Law Co-chair

Brittany Byers,
OBA Women in Law Co-chair

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TOPICS INCLUDE:

- Reflections from the Bench Panel: Moderator by The Honorable Noma Gurich, Chief Justice, Oklahoma Supreme Court
- LGBT Rights Under Title VII of the Civil Rights Act of 1964
- Nonprofit Board Service
- Practical Tips for Appeals
- Cyber-Ethics for Lawyers
- *Bracken* case: Jurisdictional Ramifications



Luncheon Keynote Speaker:
Marcia Coyle, Chief Washington
Correspondent, *The National Law Review*

TUITION: Early registration for the CLE program and Awards Luncheon is \$150 and must be received by Friday, October 20th. Students may register by October 18th for the program and luncheon for \$50 by emailing ReneeM@okbar.org or call 405-416-7029. Government lawyers may register by October 20th for the program and luncheon for \$100 and must also contact Renee. Luncheon only registrations are \$45. Student luncheon only \$40. All registrations received October 19th - 24th increase \$25 and walk-ins increase \$50.