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Journal

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THE OKLAHOMA BAR Journal

contents

February 2020 • Vol. 91 • No. 2

THEME: **FAMILY LAW**

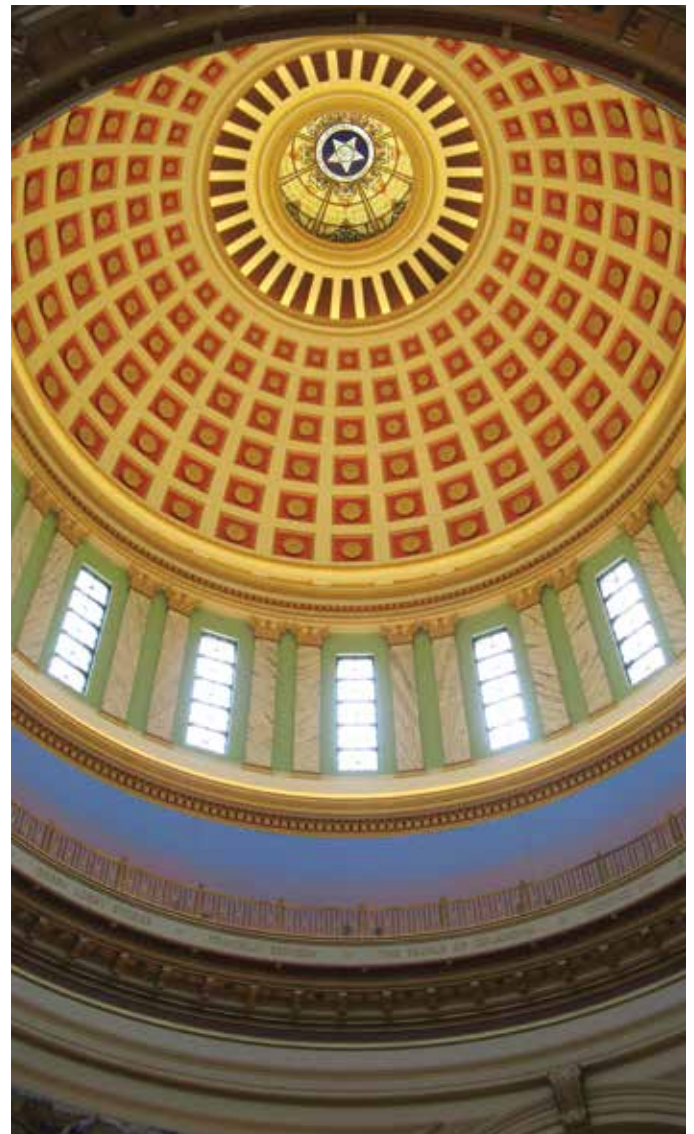
Editor: Virginia Henson

FEATURES

- 6 THE INCONVENIENT TRUTHS ABOUT INCONVENIENT FORUMS IN CHILD CUSTODY PROCEEDINGS
By PHILLIP J. TUCKER AND BECKY BRYAN ALLEN
- 12 FOR THE CHILDREN: INDIAN STATUS IS A POLITICAL CLASSIFICATION
By AUSTIN R. VANCE
- 18 LEGISLATURE CLEARS UP SURROGACY QUESTIONS IN OKLAHOMA
By ROBERT G. SPECTOR
- 24 SUPPORT OF A DISABLED ADULT CHILD
By MONICA DIONISIO AND KARA ROSE DIDIER
- 28 AFFIDAVIT OF SUPPORT IMPLICATIONS IN DIVORCE
By SAJANI "ANN" ZACHARIAH AND CASSITY GIES
- 32 A SOLDIER'S RIGHTS AND THE OKLAHOMA RELOCATION STATUTE
By JOHN P. CANNON
- 40 ASPECTS OF INTERNATIONAL CHILD ABDUCTION
By BRITA HAUGLAND CANTRELL

PLUS

- 46 LEGISLATIVE MONITORING COMMITTEE GEARS UP FOR 2020 SESSION
By MILES PRINGLE



DEPARTMENTS

- 4 FROM THE PRESIDENT
- 50 FROM THE EXECUTIVE DIRECTOR
- 52 LAW PRACTICE TIPS
- 58 ETHICS & PROFESSIONAL RESPONSIBILITY
- 60 BOARD OF GOVERNORS ACTIONS
- 65 OKLAHOMA BAR FOUNDATION NEWS
- 66 YOUNG LAWYERS DIVISION
- 68 FOR YOUR INFORMATION
- 70 BENCH AND BAR BRIEFS
- 73 IN MEMORIAM
- 76 EDITORIAL CALENDAR
- 77 WHAT'S ONLINE

The State of the OBA

By Susan B. Shields

IT HAS BEEN A WONDERFUL FIRST MONTH.

Being sworn in as president in the beautifully renovated Supreme Court courtroom at the Capitol with family, friends and colleagues in attendance was the single greatest honor of my professional career.

OBA tradition is that one of the first official events of a new bar president is to be hosted by the Garfield County Bar Association in Enid. I want to thank them again for their hospitality and warm welcome. Because February is a month of “state of the...” addresses, here is some of the information I shared with the Garfield County bar about the current state of the OBA; and, since we are now in a new decade, I think it is also interesting to compare the OBA today with where it was 10 years ago.

As of the beginning of 2020, the total membership of the OBA is 18,239, as compared to 14,396 total members at the beginning of 2010 – more than a 20% increase. Oklahoma lawyers are more urban and less rural than ever before. Oklahoma and Tulsa counties continue to have the highest concentration of lawyers – about 66% of total members in 2020, up from about 51% in 2010. The graphs on page 51 show information about membership and the geographical breakdown of members in Oklahoma and Tulsa counties and the remainder of the state.

Another important statistic is the age of our members. In 2020 the majority of practicing Oklahoma

attorneys are over age 50, and we have increasing numbers of inactive and over age 70 senior attorneys. The OBA will continue to provide services to our newest lawyers who are the lifeblood and future of the OBA, but going forward, the aging of our membership will

require that the OBA maintain and even ramp up support and resources for attorneys nearing retirement who need to plan for the transition of their law practices.

What about the OBA's financial health? There are not too many things in 2020 that are the same price they were in 2010. OBA dues in 2010 were \$275

and are the same today. The more than 1,100 members who have been in practice three years or less pay one-half of the regular dues, or \$137.50 per year. This year's OBA budget predicts a healthy reserve of funds at the end of 2020. However, it appears the trend will be that the total number of active members may decline, or at least not increase, over

(continued on page 51)

In 2020 the majority of practicing Oklahoma attorneys are over age 50, and we have increasing numbers of inactive and over age 70 senior attorneys.



Susan Shields

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405-552-2311

FEBRUARY WELLNESS TIP

Lawyers sit a lot! Research says that taking a short walk, standing up when on the telephone or using a stand-up desk for 10 minutes or more each hour improves health.

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The Inconvenient Truths About Inconvenient Forums in Child Custody Proceedings

By Phillip J. Tucker and Becky Bryan Allen

ALL FAMILY LAW CASES START WITH A JURISDICTION ANALYSIS, and a family law jurisdictional probe is often more complex than other types of civil litigation. The initial case review depends upon what is happening (e.g., original dissolution of the marriage action, paternity determination, post decree child custody modification, post decree child support modification, guardianship, adoption, international child abduction, etc.). If called upon to represent a client in a family law case, one must gather enough initial information to determine the nature/type of the pending family law proceeding.

Further, in the appropriate case (*i.e.*, one involving a custody determination of a child or children), one must make a determination on whether or not a court is an *inconvenient forum* under the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).¹ As hard as we may try, we cannot predict the future. Because life's only constant is change, courts, when asked, will consider establishing child custody orders based on a best interest determination and will modify a child custody order when a continuing change in circumstances necessitates new orders. At the core of every child custody order – whether it be the original order or a modification – is the court's jurisdictional power to act.

WHAT IS FORUM NON CONVENIENS?

A *forum non conveniens* is a court's discretionary power to decline to exercise its jurisdiction where another court may more conveniently hear a case.²

If your family law case involves a minor child(ren), a UCCJEA jurisdictional analysis must be made. As we all learned in law school, subject matter jurisdiction focuses on the power and authority of a court to act. It either exists by statute or not. It cannot be conferred upon the court by agreement of the parties.³ UCCJEA authority to act is a subject matter jurisdictional prerequisite for the court making a child custody determination.⁴

A child custody determination means an order of the court providing for the legal custody, physical custody or visitation with respect to a child.⁵ Under the UCCJEA, the term includes a permanent,

temporary, initial and modification orders.⁶ A child custody proceeding means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue.⁷ The terms includes a proceeding for divorce (dissolution of marriage), separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, adoption and protection from domestic violence, in which the issue may appear.⁸

Take time in your jurisdictional analysis to read and understand statutory terms before applying them to your case facts. Such an effort will go a long way in correctly understanding the jurisdictional question(s), as well as helping you clearly explain your position both to your client and the court.

Further, the UCCJEA is expansive in scope. It applies to all states and territories,⁹ tribes¹⁰ and foreign countries.¹¹

STRUCTURE OF THE ANALYSIS

Step 1

Determine whether a prior child custody determination exists regarding the child(ren) in question. If so, there is an initial determination¹² and child custody jurisdiction (absent an emergency)¹³ exists solely with the issuing court in the issuing state.¹⁴ If the issuing court acted under jurisdictional principles consistent with 43 O.S. §551-201, then the child custody order is entitled to full faith and credit. The issuing court also has exclusive, continuing child custody jurisdiction until that court (the issuing court) makes these findings:

- 1) That, *at the time of the filing of the parties' proceeding*, that neither:
 - the child, the child and one parent nor the child and a person acting as a parent have a significant connection with the issuing state; and
 - substantial evidence is no longer available in the issuing state concerning the child's care, protection, training and personal relationships¹⁵

or

- 2) A court (of this or another state) determines that the child, the child's parents and any person acting as a parent do not presently reside in the issuing state.¹⁶

If a prior child custody determination exists, then it becomes the issuing court and only the issuing court in the issuing state who has the power to decline the exercise of its exclusive, continuing jurisdiction under 43 O.S. §551-207. So what does one do? Prepare and file your

modification action and a motion for the Oklahoma court and the issuing court to communicate¹⁷ to see if the issuing court will relinquish its jurisdiction. Normally, this will require you work with counsel in the issuing state to facilitate the communication or, with the filing of the Oklahoma modification, counsel in the issuing state can file an inconvenient forum motion in the issuing court seeking to have that court relinquish jurisdiction to the Oklahoma court.

An Oklahoma court cannot determine the issuing court is an inconvenient forum. Only the issuing court can relinquish its jurisdiction, either on its own accord, on a motion brought before that court or at the invitation of another court to relinquish.

Step 2

If no prior child custody determination exists, then you must plead why the Oklahoma court has initial child custody jurisdiction under 43 O.S. §551-201. This is generally a home state examination (*i.e.*, where the child resided for the last six months immediately

preceding the commencement of the action per 43 O.S. §551-201(A) (1)). In determining whether to exercise initial child custody jurisdiction, the Oklahoma court may make an inconvenient forum determination.¹⁸ Again, this can be raised "upon the motion of a party, the court's own motion, or request of another court,"¹⁹ but it should be noted that the UCCJEA expressly rejects the idea of comparing two jurisdictions in order to decide which state has the most significant connections. A state has jurisdiction if it meets the requirements of 43 O.S. §551-201(A) (2). The comparison between the two states is part of the 43 O.S. §551-207 analysis on *forum non conveniens*. If more than two states have jurisdiction then the section on simultaneous proceedings applies.²⁰

KEY STATUTE

43 O.S. §551-207(B) sets out at least eight relevant factors for the court's consideration. The court shall allow the parties to submit information (evidentiary hearing) and shall consider all relevant factors.

The inconvenient forum analysis comes into play when a state has assumed initial child custody

The inconvenient forum analysis comes into play when a state has assumed initial child custody jurisdiction, usually a home state, but there is another state other than the child's home state which would be more appropriate to hear the case.

jurisdiction, usually a home state, but there is another state other than the child's home state which would be more appropriate to hear the case. Once the inconvenient argument is raised, the home state court will conduct an evidentiary hearing as required by 43 O.S. §551-207(B). During this evidentiary hearing, parties will submit information and the court will consider all factors it considers relevant, eight of which are laid out in subsection (B):

- 1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- 2) The length of time the child has resided outside the state;
- 3) The distance between the court in the state and the court in the state that would assume jurisdiction;
- 4) The relative financial circumstances of the parties;
- 5) Any agreement of the parties as to which state should assume jurisdiction;
- 6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- 7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- 8) The familiarity of the court of each state with the facts and issues in the pending litigation.

This list of factors is not exclusive, and courts are free to consider factors outside of these eight.²¹ Further, courts need not consider every factor, but must only consider relevant factors.²² Additionally, the home state court may communicate with another state pursuant

to 43 O.S. §551-110 before making a decision on whether to retain or decline jurisdiction.²³

With respect to these eight factors, there are notes in the comments of the UCCJEA written by the National Conference of Commissioners on Uniform State Laws which help add meaning to the factors. Under factor 1, the court should consider whether the parties are in different states as a result of domestic violence.²⁴ Under factor 3, even if there is a significant distance between the parties, the distance may be alleviated by 43 O.S. §551-111 taking testimony out of state and/or 43 O.S. §551-112 cooperation between courts, preservation of records.²⁵ Lastly, with respect to factor 7, the court can look to the procedure and evidentiary laws of the two states, the flexibility of the court docket and whether one of the courts would be able to arrive at a solution to all legal issues raised.²⁶

The procedure of 43 O.S. §551-207 and its factors are illustrated in the recent Virgin Islands Supreme Court case of *Gayanich v. Gayanich*.²⁷ In this case, Mr. and Mrs. Gayanich were married in Oklahoma and had two children here in 2014 and 2015. In January of 2016 the parties moved to St. Croix, Virgin Islands.²⁸ In August of that year, Mrs. Gayanich moved back to Oklahoma and Mr. Gayanich soon thereafter filed a divorce and custody proceeding in the Virgin Islands.²⁹ The children were 2 and 3 years old at this time and had spent all but the last eight months in Oklahoma, yet under 43 O.S. §551-201(A)(1) the Virgin Islands were considered their home state.³⁰ In this case, the trial court found it had home state jurisdiction because the children had lived in the Virgin Islands with their parents for the six months immediately preceding the commencement of Mr. Gayanich's case.³¹

In response to this finding of jurisdiction, Mrs. Gayanich filed a motion to dismiss for lack of jurisdiction and more notably for this discussion a dismissal based on *forum non conveniens*. The trial court then held an evidentiary hearing as required and weighed the 207(B) factors. The court found evidence on three of the factors most relevant and persuasive. These included the length of time the children had resided outside the Virgin Islands, the relative financial circumstances of the parties and the nature and location of the evidence required to resolve the pending litigation.³²

First, the children had lived in the Virgin Islands for eight months at the time the case was filed and they were 2 and 3 years old at the time of filing. The court found that this factor did not weigh heavily in favor of either Oklahoma or the Virgin Islands.³³ Second, the court looked to not only the parties' income from their respective jobs, but also the contributions given to them by family members to consider their financial circumstances. The court found that the parties' assets, debts and family members who contribute to the parties were located in Oklahoma.³⁴ Third, the Virgin Island trial court found that a majority of the evidence was located in Oklahoma: 11 of the 13 witnesses to be called reside in Oklahoma, both parties were originally from Oklahoma, both parties' extended families reside in Oklahoma and evidence of parenting such as medical records, doctors and childcare were all located in Oklahoma.³⁵

Based on these facts, the Virgin Island's trial court held that although it had home state jurisdiction, Oklahoma was a more convenient forum to hear the case under *forum non conveniens*. The case was ordered transferred and the Virgin Island's case stayed.

Mr. Gayanich appealed and the Supreme Court of the Virgin Islands affirmed.³⁶

ONCE YOU HAVE PROVEN ANOTHER STATE IS A MORE CONVENIENT FORUM

Per 43 O.S. §551-207(C), if a court determines it is in an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and “may impose any other condition the court considers just and proper.”

Venue transfer between Oklahoma counties based on *forum non conveniens* is governed by 43 O.S. §103. The analysis is the same. One just substitutes the word state for county in the intra-state examination and uses the factors set out in 43 O.S. §551-207(B).

CONCLUSION

For the family law attorney, being able to navigate the UCCJEA is a necessary, but at times a foggy journey. One of the trickiest parts to understanding the UCCJEA is knowing how the different provisions work together. At first glance, it is unclear how 43 O.S. §551-207 can be used (whether in an initial proceeding, when there are two pending cases or how provisions like §110 Communication Between Courts can fit in). Our hope is that we added a little meaning to the inconvenient forum provision and helped tie it into the bigger picture of the UCCJEA.

ABOUT THE AUTHORS

Phillip J. Tucker is the founding partner of The Tucker Law Firm in Edmond. He received his J.D. from the OCU School of Law in 1983. He was 2004 chair of the Family Law Section, serves as a senior co-editor of the section’s *Family Law Practice Manual* and is involved in the section’s Legislative Committee.

Becky Bryan Allen is a new associate with The Tucker Law Firm, earning her J.D. from the OU College of Law in 2019. In law school, she was a member of *Oklahoma Law Review* and OU’s ABA mediation team. She was admitted to practice in September 2019 and is a member of the Family Law Section.

ENDNOTES

1. 43 O.S. §§551-101, *et. seq.* The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws in 1997. The UCCJEA has since been adopted by 49 U.S. states, the District of Columbia, Guam and the U.S. Virgin Islands. The act became effective in Vermont on July 1, 2011. As of Jan. 22, 2019, the only state that has not adopted the UCCJEA is Massachusetts. Puerto Rico has also not adopted the act. However, for *forum non conveniens* purposes, the analysis is the same. Also note there is another statutory basis to discuss *forum non conveniens*, 12 O.S. §140.3. However, where two statutes exist, the provisions of the more specific statute controls. *Minn. Mining & Mfg. Co. v. Smith*, 1978 OK 99, 581 P.2d 31.
2. *Black’s Law Dictionary* 589 (5th ed. 1979).
3. *Joliff v. Joliff*, 1992 OK 38, 829 P.2d 34 (Adherence to the UCCJA’s jurisdictional requirements [a prior act to the UCCJEA] must be satisfied before an Oklahoma court may consider the issue of custody). *See also, Marriage of White and Jones*, 2018 OK CIV APP 68, 430 P.3d 544.
4. *Id.*
5. 43 O.S. §551-102(3).
6. *Id.*
7. 43 O.S. §551-102(4).
8. 43 O.S. §551-102(4). And, contrary to 43 O.S. §551-103, since Nov. 1, 2011, the UCCJEA also applies to adoption proceedings. 10 O.S. §7502-1.1. A legislative cleanup is needed.
9. 43 O.S. §551-102(15).
10. 43 O.S. §551-102(16) and 43 O.S. §551-104.

11. 43 O.S. §551-105 (child custody law of foreign country cannot violate fundamental principles of human rights). *See also, Lin Shu-Hsin v. Virgin*, #117,389, #117,692 (Okla 2018).
12. 43 O.S. §551-102(8).
13. Emergency jurisdiction is set forth at 43 O.S. §204. It requires the child and the emergency to be present in Oklahoma and it provides that if a prior child custody determination has been made, the court issuing the emergency orders “shall immediately communicate with the court of that [issuing] state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.” 43 O.S. §204(D).
14. 43 O.S. §551-102(9&10).
15. 43 O.S. §551-202(A)(1).
16. 43 O.S. §551-202(A)(2).
17. 43 O.S. §551-110.
18. 43 O.S. §551-207.
19. *Id.*
20. *See*, 43 O.S. §551-206.
21. National Conference of Commissioners on Uniform State Laws, Uniform Child Custody and Jurisdiction and Enforcement Act §207 cmt. (1998).
22. *See, Gayanich v. Gayanich*, 2018 WL 3475542, 8-10. (V.I. 2018) (citing, *Shanoski v. Miller*, 780 A.2d 275, 280-81 (Me. 2001); *Miller v. Miller*, 52 A.3d 53, 74 (Md. Ct. App. 2012); *Ramsey v. Ramsey*, 995 So.2d 881, 887 (Ala. Civ. App. 2008); *Symington v. Symington*, 167 P.3d 658, 660 (Wyo. 2007)).
23. National Conference of Commissioners on Uniform State Laws, Uniform Child Custody and Jurisdiction and Enforcement Act §207 cmt. (1998).
24. *Id.*
25. *Id.*
26. *Id.*
27. 2018 WL 3475542 (V.I. 2018).
28. *Id.* at 2.
29. *Id.*
30. *Id.* at 3.
31. *Id.*
32. *Id.* at 6.
33. *Id.* at 3.
34. *Id.* at 4.
35. *Id.* at 4.
36. *Id.* at 18.

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For the Children: Indian Status Is a Political Classification

By Austin R. Vance

THE INDIAN CHILD WELFARE ACT (ICWA) made headlines again in 2019. It was under attack, as usual, by those who have never been to Indian country, much less a tribal court proceeding. The primary culprit was not among the usual talking heads or lobbyists. Instead, Judge Reed O'Connor of the Northern District of Texas made national news by declaring ICWA unconstitutional in *Brackeen v. Bernhart*.¹ That controversial decision is now subject to *en banc* review before the 5th Circuit Court of Appeals, which will decide whether Indian status under ICWA is an “impermissible racial classification.”²

It remains unclear, however, if Judge O'Connor knew or cared that Indian status is the backbone of federal Indian law writ-large;³ after all, unlike Oklahoma, Texas is not exactly a hotbed for Native American issues.⁴ In fact, it is hardly a comparison at all:⁵ Oklahoma could not exist without its tribal community. Aside from its Choctaw name and the thousands of tribal members that make Oklahoma whole, 38 tribes and nations provide substantial economic power to the state.⁶ For those reasons, and many others, Judge O'Connor's ignorance cannot be allowed to fester here. Oklahoma attorneys have an inherent and practical responsibility to learn a few basic tenants of Indian law, such as: Indian status is a political classification, not a racial one.

It is admittedly simpler to think of Indian status in racial terms alone. Growing-up, children often learn about Native Americans through stereotypes taught in school, perhaps even playing

cowboys and Indians at recess. Likewise, TV and movies regularly portray indigenous people as a homogenized group with essentialized cultural features, like war bonnets and teepees. Those stereotypes harden with time. As adults, that image of “Indian” as a single race often exists at the expense of particular tribes, such that there are distinctions in name without notable difference. While a current and prominent challenge to institutional ignorance may become a trend – such as denouncing “Redskin” mascots and trading Columbus Day in for Indigenous Peoples' Day – overcoming the collective knowledge of hundreds of years will take time. Whatever one believes about Native Americans as a racial archetype, however, is not relevant to an adequate understanding of Indian status as a legal phenomenon. Judge O'Connor and others fail to grasp that concept.

Nonetheless, a careful examination of the two competing schools of thought on Indian status should

reveal the latent racism within the *Brackeen* decision. For comparative purposes, the first camp understands Indian status as a political classification that derives from a government-to-government relationship between federally recognized tribes and the United States. Any benefits an individual receives from being an “Indian” is due to their membership in a sovereign polity that the United States is obligated to care for as a result of treaty making and a guardian-ward relationship. The second camp, however, incorrectly equates Indian status with biological race. That view is shared with a series of ill-advised judicial opinions following the Civil War. In the wake of those opinions, Congress began shifting Indian status toward a political classification during the Great Depression. In reality, this issue should have ended in the 1970s, when the Supreme Court formally purged racial classification and declared Indian status a political classification.⁷ Yet, *Brackeen* demonstrates a review is in order.



THE LEGAL HISTORY OF INDIAN STATUS

While contemplating Indian status as a political category may be new to some, the idea spawned from the Constitution itself. More specifically, the Indian Commerce Clause of Article I Section 8 Clause 3 provides Congress with the power to regulate commerce with Indian tribes. Like the general Commerce Clause, the Indian Commerce Clause does not say much in a literal sense, but it “singles Indians out as a proper subject for separate legislation.”⁸ Likewise, the use of the Treaty Clause in Article II affirmed the existence of a government-to-government relationship between the federal government and tribes.⁹ Taken together, these provisions identify Indians as special, but – like most of the Constitution – they do not provide much clarity beyond that

conclusion. Indian status came with growing pains as a result.

After acquiring independence, an adolescent Congress quickly began regulating trade with tribes. In fact, one of its first pieces of legislation was the Intercourse and Trade Act, which prohibited purchasing land from Indian tribes absent federal approval.¹⁰ An issue arose, however, as the act did not define “Indian” for purposes of its implementation. For almost half a century, the issue was largely ignored as settlers were simply allowed to determine who should be considered Indian for themselves. For that reason, the Supreme Court did not analyze Indian status until after the Civil War in *U.S. v. Joseph*.¹¹

In *Joseph*, the court had to determine whether Taos Pueblo Indians were “Indian” within the meaning of the Intercourse and Trade Act.

Rather than relying on membership or citizenship, SCOTUS utilized racial characteristics and stereotypes that would make Roger Taney blush.¹² For purposes of the test, the court considered characteristics like intelligence, criminality and inebriation. The court determined the people of the Taos Pueblo were “Indians only in feature, complexion, and a few of their habits,” and found them to be too civilized to be Indian. Approximately 40 years later, the court took up the issue again in *U.S. v. Sandoval*. Astonishingly, the court kept the racial characteristics test in *Joseph* but reached an opposite result. The people of the Santa Clara Pueblo were defined by “primitive modes of life, largely influenced by superstition and fetichism, and chiefly governed according to the crude customs inherited from their ancestors,

they are essentially a simple, uninformed, and inferior people.”¹³ With that pseudo-scientific analysis, the Santa Clara Pueblo people were cast as “Indian.” From there, the issue remained dormant until Congress passed the Indian Reorganization Act (IRA) in 1934.

The IRA restructured the foundation of federal Indian law by providing support for tribal governments and individual Indians. It ultimately sought to undo the mass destruction and attempted genocide of Native Americans and their cultures. Unlike the Trade and Intercourse Act, however, Congress explicitly defined “Indian” within the IRA. There, an Indian was considered 1) a tribal member; 2) a descendant of a tribal member residing on a reservation in 1934; or 3) anyone with one-half or more Indian blood.¹⁴ Based on that definition, the act also created a hiring preference for Native Americans to work within the Bureau of Indian Affairs (BIA). It would take another 40 years before the Supreme Court addressed whether Indian status under the IRA – more specifically the hiring preference – violated the Constitution as “invidious racial discrimination” in *Morton v. Mancari*.¹⁵

Unlike *Joseph and Sandoval*, the *Morton* court analyzed Indian status based on the political association between tribes and the federal government. For instance, the guardian-ward relationship and treaties demonstrated a tangible and special relationship between tribes, Indians and the United States, derived from the Constitution, that is political in nature. As applied to the BIA employment preference, Indian status was likened to the requirement that a senator must live in the state he or she represents. Simply put, it is logical to have stakeholders involved in developing and implementing policies

that affect them, even if they are exclusively tribal members.

The court was also concerned that holding Indian status was an impermissible racial classification would void an entire title of United States code. A workable solution became readily apparent to the court, however, as it determined Indians are not “a discrete racial group, but, rather... members of quasi-sovereign tribal entities.” Three years later, the court reaffirmed *Morton’s* political classifications analysis in *United States v. Antelope*.¹⁶ There, the court determined that Indians can be subject to special federal criminal jurisdiction not “because they are of the Indian race but because they are enrolled members.” The issue remained largely undisturbed until *Brackeen*.

INDIAN STATUS AND ICWA

In *Brackeen*, Judge Reed O’Connor issued an order that found Indian status under ICWA was an impermissible racial classification. While the order is lengthy, his erroneous Equal Protection analysis is only a few pages long.¹⁷ There, Judge O’Connor distinguished the principle case on Indian status, *Morton*, in favor of a 15th Amendment case about Hawaiian voting rights, *Rice v. Cayetano*. In *Rice*, the court determined Hawaii could not create voting rights based on ancestry on the islands traced to 1778. Because Hawaii was dominated by an isolated culture at that time, Justice Kennedy determined that ancestry there was merely a “proxy for race.” Judge O’Connor’s order, however, ignored that the *Rice* court specifically distinguished *Morton* for 10 pages of its opinion. For that reason, and others, the *Brackeen* order was appealed.

On its first review, the 5th Circuit determined Judge O’Connor erroneously distinguished ICWA from *Morton*, as the act merely extends the political classification based on

“the government-to-government relationship between the tribe and the federal government.” There was simply no reason ICWA created racial preference where one did not exist before. Likewise, *Rice* was inapplicable to ICWA because it focused on the 15th Amendment, voting rights and a group of non-Indians. ICWA, in contrast, is a federal law exclusively concerning Indian children and is not *solely* based on racial ancestry. For those reasons, the 5th Circuit originally ruled Judge O’Connor should have applied rational basis and found “an Indian child is a political classification that does not violate equal protection.” Although the 5th Circuit unanimously agreed with that aspect of its opinion, *Brackeen’s* reversal remains uncertain at the moment, as *en banc* review is set for early 2020.

Beyond the 5th Circuit’s original dissection of Judge O’Connor’s order, however, there are a litany of other reasons Indian status cannot be considered racial classification. First and foremost, the federal government determines who qualifies for Indian status,¹⁸ which is inconsistent with jurisprudence describing race as “immutable” and “permanent.”¹⁹ Without the federal regulation limiting Indian status to tribal lineal descendants,²⁰ for example, tribes could adopt anyone for membership.²¹

Second, even though Indian status is based on lineal descendance it is not inherently racial, as Justice Stevens explained in *Rice*:

The distinction between ancestry and race is more than simply one of plain language. The ability to trace one’s ancestry to a particular progenitor at a single distant point in time may convey no information about one’s own apparent or acknowledged race today. Neither does it of necessity imply one’s own

identification with a particular race, or the exclusion of any others “on account of race.” The terms manifestly carry distinct meanings, and ancestry was not included by the Framers in the Amendment’s prohibitions.²²

United States citizenship, for instance, can be based solely on parental lineage.²³ Even though children are the same race as their parents and eligible for citizenship based on biological lottery, citizenship is purely understood as political in nature.²⁴ Indian status under ICWA is as tangentially related to the race of the parents as United States citizenship.

There are two examples to solidify that point. First, individuals that are not racially Native American can qualify for Indian

do not qualify as Indian under ICWA. Many tribes require a parental enrollment with the tribe for a child to be eligible for membership. If neither parent is enrolled, for whatever reason, a child may not be considered Indian. In fact, only 60% of racially identified Native Americans are enrolled tribal members.²⁵

Further still, if courts can declare Indian status an impermissible racial classification it is unclear how Congress could fulfill its Constitutional role of regulating Indian affairs. As applied to ICWA, for example, there is simply no way to sever Indian status and preserve the act’s purpose or functionality. As Mathew Fletcher, director of the Indigenous Law and Policy Center at Michigan State University, recently observed:



status under ICWA. For example, following the Civil War, some Oklahoma tribes were required to adopt former slaves as members, commonly referred to as “freedman.” In those tribes, freedman may have no Native American ancestry at all but are still members, or have children eligible for membership, for ICWA purposes. Second, some Native Americans

“Babies don’t get born and run down to the citizenship office and file a petition.... To say that somehow this kid hasn’t been enrolled yet and therefore doesn’t have a political relationship is really quite disingenuous.”²⁶ Even if the Fifth Circuit does ultimately reverse the *Brackeen* decision, Judge O’Connor’s logic should still be regarded as dangerous as other courts may

model his argument elsewhere. In fact, the *Brackeen* decision itself is merely the perversion of dicta from a recent Supreme Court decision.

In 2013, Justice Alito wrote the majority opinion in *Adoptive Couple v. Baby Girl*, which begins: “This case is about a little girl (Baby Girl) who is classified as an Indian because she is 1.2% (3/256) Cherokee.”²⁷ That was a dog whistle. Baby Girl’s blood quantum has nothing to do with the court’s holding; nonetheless, it is repeated three times throughout the opinion. That emphasis on blood quantum reveals that Justice Alito’s understanding of Indian status is in line with the racial characteristics test found in *Joseph and Sandoval*. While *Joseph and Sandoval* openly reduce Indian status to barbaric racial characteristics, Justice Alito employs a cloak-and-dagger approach to note Baby Girl is minutely Cherokee. He specifically places undue emphasis on her fractionated blood quantum – a classification system reserved for show dogs, racehorses, and Indians.²⁸ While he would not admit as much, Justice Alito felt compelled to call attention to his intuitive ability to identify an Indian, just like the settlers did prior to *Joseph*.²⁹ Fortunately, Justice Sotomayor took the issue to task.

In her *Baby Girl* dissent, she posits that the reference to the Baby Girl’s blood quantum is at odds with the court’s precedent that “squarely hold[s] that classifications based on Indian tribal membership are not impermissible racial classifications.”³⁰ Further still, Justice Alito’s “analytically unnecessary references to the fact that Baby Girl is 3/256 Cherokee by ancestry do nothing to elucidate its intimation that the statute may violate the Equal Protection Clause as applied here.” In the end, the reference to Baby Girl’s blood quantum did nothing more

than “create a lingering mood of disapprobation” without actually addressing any issue of racial discrimination. Sotomayor correctly predicted that Alito’s characterization would fester into a façade of Equal Protection used to undermine ICWA – exactly as seen in Judge O’Connor’s order. Justice Alito’s dicta and Judge O’Connor’s order summarily demonstrate the danger of a judiciary that cannot identify the distinction between Native Americans as ethnic groups and Indian as a political status.

CONCLUSION: THERE ARE TWO CAMPS

Children are often taught that you can judge an individual by the company they keep and ICWA is no different. There are only two camps of thought regarding Indian status: 1) those that believe it is a political classification; and 2) those that believe it is racial. In the former, there is constitutional originalism, tribal self-determination and modern federal Indian law. The opinions in *Morton* and *Antelope*, as well as Sotomayor’s dissent in *Baby Girl*, represent this school of thought. In the latter, there is Judge O’Connor’s *Brackeen* decision, Justice Alito’s *Baby Girl* dicta and the racial characteristic test found in *Joseph* and *Sandoval*.

ABOUT THE AUTHOR

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ENDNOTES

1. Judge Reed O’Connor “has become a go-to judge for Republicans over certain heated national social issues such as health care and transgender rights.... Some legal experts have denounced O’Connor’s ruling, calling it ‘badly flawed’ and ‘an exercise of raw judicial power.’” Kevin Krause, “A Look at the Low-Key Texas Judge Who Tossed Obamacare Shows a History of Notable Conservative Cases,” *Dallas News* (Dec. 18, 2018), www.dallasnews.com/news/courts/2018/12/18/associates-say-judge-tossed-obamacare-fair-no-agenda.
2. *Brackeen v. Zinke*, 338 F. Supp. 3d 514 (N.D. Tex. 2018).
3. See *United States v. Wilgus*, 638 F.3d 1274, 1287 (10th Cir. 2011) (Indian status as a political category is the foundation for the Indian Reorganization Act, the Major Crimes Act and tribal court jurisdiction.).
4. Texas is only home to three federally recognized tribes. *Contra, Alabama-Coushatta Tribe of Texas v. Texas*, 918 F.3d 440 (5th Cir. March 14, 2019), *pending cert.*
5. It was tempting to fill this article with comparisons to the University of Texas’s lackluster football season, such as “racial classification, like Texas football, is not back.” Ultimately, the better editorial angels of legal writing prevailed, but Horns Down nonetheless.
6. Kyle D. Dean, “The Economic Impact of Tribal Nations in Oklahoma Fiscal Year 2017,” *Oklahoma Native Impact* (July 10, 2019), www.unitedforoklahoma.com/media/1456/2019-economic-impact-of-tribal-nations-in-oklahoma.pdf.
7. *Morton v. Mancari*, 417 U.S. 535, 552 (1974).
8. Art. I, §8, cl. 3; *Morton*, 417 U.S. at 552.
9. Art. II, §2, cl. 2; *Morton*, 417 U.S. at 552.
10. The “Non-Intercourse Act” as it came to be known is still valid law: 25 U.S.C. §177.
11. *United States v. Joseph*, 94 U.S. 614, 616, 24 L. Ed. 295 (1876).
12. “[T]he right of property in a slave is distinctly and expressly affirmed in the Constitution.... Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the plaintiff was a slave, and not a citizen.” *Dred Scott v. Sandford*, 60 U.S. 393, 451-53, 15 L. Ed. 691 (1857), *superseded* (1868) (C.J. Taney).
13. *United States v. Sandoval*, 231 U.S. 28, 39 (1913).
14. As an aside, the blood quantum qualification certainly continues the racial characteristic test by the United States in a new form. That particular qualification, however, largely continues simply due to legal inertia, is not relevant to the vast majority federal programs, and could be struck down fairly easily without greatly effecting federal Indian law. See *Rice v. Cayetano*, 528 U.S. 495 (2000).
15. *Morton*, 417 U.S. at 551.
16. *United States v. Antelope*, 430 U.S. 641 (1977).
17. *Brackeen*, 338 F. Supp. 3d at 531-34.
18. *Adoptive Couple v. Baby Girl*, 570 U.S. 690 (2013) (J. Sotomayor dissenting) (erroneously citing 25 C.F.R. §83.11(e) as 83.7(e)).

19. “But a person’s politics is rarely as readily discernible—and never as permanently discernible—as a person’s race.” *Vieth v. Jubelirer*, 541 U.S. 267, 287, 124 S. Ct. 1769, 1782, 158 L. Ed. 2d 546 (2004); “[R]ace... is an immutable characteristic determined solely by the accident of birth.” *Frontiero v. Richardson*, 411 U.S. 677, 686, 93 S. Ct. 1764, 1770, 36 L. Ed. 2d 583 (1973).
20. 25 C.F.R. §83.11(e).
21. “Whatever obligations the prisoner may have taken upon himself by becoming a Cherokee by adoption, his responsibility to the laws of the United States remained unchanged and undiminished. He was still a white man, of the white race, and therefore not within the exception in the act of Congress.” *United States v. Rogers*, 45 U.S. 567, 573, 11 L. Ed. 1105 (1846).
22. *Rice*, 528 U.S. at 539 (J. Stevens dissenting).
23. 8 U.S.C. §1401.
24. “Citizenship is membership in a political society.” *Luria v. United States*, 231 U.S. 9, 22, 34 S. Ct. 10, 13, 58 L. Ed. 101 (1913).
25. Brief of Appellants Cherokee Nation, Oneida Nation, Quinault Indian Nation, and Morongo Band of Mission Indians, *Brackeen v. Bernhardt*, CN-18-11479 (5th Cir. 2019), available at (citing Changing Numbers, Changing Needs: American Indian Demography & Public Health 108-09 (Gary D. Sandefur, et al., eds., 1996)), available at: turtletalk.files.wordpress.com/2019/01/intervenortribesbrief.pdf.
26. Alleen Brown, “How a Right-Wing Attack on Protections for Native American Children Could Upend Indian Law,” *The Intercept* (June 17, 2019), theintercept.com/2019/06/17/indian-child-welfare-act-goldwater-institute-legal-battle/.
27. *Adoptive Couple*, 570 U.S. at 641.
28. “Kenneth Ryan, an Assiniboine in Montana, expressed this sentiment when he declared before a gathering of Indian leaders in Oklahoma in 1993 that, ‘American Indians, horses, and dogs are the only warm-blooded mammals in the world who have to carry papers to show who they are.’” Jennie D. Woltz, “The Economics of Cultural Misrepresentation: How Should the Indian Arts and Crafts Act of 1990 Be Marketed?,” *17 Fordham Intell. Prop. Media & Ent. L.J.* 443, 453-54 (2007).
29. President Donald Trump also shares that view: “I think I might have more Indian blood than a lot of the so-called Indians....” Gary Silverman, “US Presidential Campaign: Trump’s Casino War,” *Financial Times* (May 19, 2016), www.ft.com/content/d1c95162-1b49-11e6-b286-cddde55ca122.
30. *Adoptive Couple*, 570 U.S. at 690 (J. Sotomayor dissenting).

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Legislature Clears Up Surrogacy Questions in Oklahoma

By Robert G. Spector



MANY AMERICANS ARE UNABLE TO CONCEIVE and bear children naturally. This has led many to resort to becoming pregnant using artificial reproduction technology (ART). The most common form of ART is artificial insemination donor. This usually occurs when the mother is able to conceive and bear a child but the other parent, for one reason or another, is unable to have children.¹ Matters become much more difficult when the intended mother is unable to conceive or carry a child to term. Thus, was born the concept of surrogacy.

Surrogacy is divided into two categories – gestational surrogacy and genetic surrogacy. Genetic surrogacy is when the father’s sperm is used to impregnate an egg from the woman who is to carry the child to term (the surrogate). This can occur either by artificial insemination or by in vitro fertilization. The resultant child is born by the surrogate and is genetically related to both the surrogate mother and the biological father. By agreement, the surrogate would be required to relinquish the child to the person who was intended to be the mother (usually the biological father’s wife). A relinquishment of parental rights on the part of the surrogate and an adoption by the intended mother would normally follow. This type of surrogacy has been controversial since the beginning. Many states, starting with New Jersey, found agreements providing for genetic surrogacy to be against public policy.²

Gestational surrogacy is generally defined as the sperm of the intended father being united with

the egg of the intended mother with the resulting embryo being implanted in a surrogate who has no biological relationship with the child. It can be expanded so the sperm comes from an anonymous donor, the egg from an anonymous donor, fertilization is done in vitro and the resulting fertilized egg is implanted into the surrogate. Unlike basic artificial insemination, Oklahoma has no rules concerning surrogacy of either type. Because a surrogate is likely paid compensation for her services, the attorney general asserted that genetic surrogacy would violate the children human trafficking statute and therefore is illegal in Oklahoma.³

This year, the Legislature passed House Bill 2468⁴ which provides a procedure by which gestational surrogacy can take place in Oklahoma.⁵ The process allows a court to approve a contract between intended parents who wish to have a child through gestational surrogacy and a surrogate to allow the surrogate to carry the child to term and relinquish

the child to the intended parents.⁶ The statute is gender neutral and is applicable to same-sex couples, as well as opposite-sex couples.⁷

WHO ARE THE PLAYERS AND WHAT CAN THEY DO?

The statute contemplates a number of different people.⁸ There are donors who are the individuals who contribute the egg or the sperm. A gestational carrier is a person who agrees to become pregnant with a child. The carrier cannot have any genetic relationship to the resulting child. An intended parent is the person or persons who intend to become the lawful parents of the child being carried by the gestational carrier.

An intended parent can enter in a contractual arrangement with the gestational carrier for the carrier to become impregnated with a child conceived by artificial insemination and carried to term. If the agreement meets the requirements of the act then the court is required to approve it and the agreement is then legally enforceable.⁹

A gestational carrier must be 21 years old and have been a resident of Oklahoma for 90 days preceding the date of the agreement unless the intended parent has been resident for 90 days preceding the agreement.¹⁰ The carrier must undergo a physical examination relating to the pregnancy and a mental health consultation with a mental health professional. The intended parent or parents must also go through a mental health consultation.¹¹

THE CONTRACT AND THE PROCESS

The following people, and only these people, are necessary parties to the contract: the gestational carrier and the carrier's spouse and each intended parent of the child, however, there may be no more than two intended parents. If the intended parent is married then the marriage partner must be an intended parent. If more than one person is to be the intended parent they must be married to each other.¹²

The agreement itself must comply with the following requirements:¹³ it must be in writing and witnessed by a notary; all parties must be represented by counsel; the intended parents and the gestational carrier must be represented by separate counsel; spouses of intended parent and gestational carrier may be jointly represented by the counsel representing the intended parent or the gestational carrier; and the agreement must include a statement indicating who the lawyers are, who they represent and that the clients have been fully advised of the consequences of the agreement.

The following terms must be in the contract: the parties must agree to the jurisdiction of the Oklahoma courts; the gestational carrier must agree to become pregnant by means of assisted reproduction; the gestational carrier must agree to relinquish all

parental rights to the resulting child; the intended parents shall be the sole parents of any child born pursuant to the gestational carrier arrangement, and the intended parents shall be entitled to and shall accept legal and physical custody of the child and all parental rights and obligations with respect to such child immediately upon the child's birth, regardless of the mental or physical condition of such child or the number of such children.

The parties must agree to exchange information during the pregnancy. Any eggs or sperm shall be from either the intended parent or a donor. The agreement must also disclose the identity of the physician who will perform the assisted reproduction. The physician must also inform the parties of the rate of successful conceptions and births attributable to the procedure, including the most recent published outcome statistics of the procedure at the facility at which it will be performed. The potential risks associated with the implantation of multiple embryos and consequent multiple births resulting from the

procedure must also be disclosed along with the expenses related to the procedure. Further required disclosures include the health risks associated with fertility drugs used in the procedure, egg retrieval procedures and egg or embryo transfer procedures and reasonably foreseeable psychological effects resulting from the procedure. The agreement shall also identify who is responsible for the medical, legal and travel expenses associated with the gestational carrier arrangement.

The following terms may, but are not required to, be in the contract:¹⁴ the promise of the carrier to undergo all medical procedures recommended by the medical provider and the carrier's agreement to refrain from activities that could harm the unborn child, including restraining from alcohol, tobacco and using nonprescription drugs;¹⁵ and the promise of the intended parents to pay a stipend to the carrier and to pay for certain expenses.

TIMING

The agreement must be validated by the court prior to the transfer of gametes or embryos to



the gestational carrier.¹⁶ However, prior to validation, the carrier may begin a medical regime designed to increase fertility. Procedures for the retrieval of gametes from the intended parents or donor and the storage of the embryos may also take place prior to validation.

NONVALIDATION¹⁷

A gestational agreement that is not validated is not enforceable. Should that occur, the existence of a parent-child relationship resulting from a unenforceable gestational agreement is determined by other law.¹⁸ Financial obligations that were contracted for must be paid if they have already been incurred.

VALIDATION PROCEDURE¹⁹

The procedure to seek validation of the agreement begins by filing a petition in a district court with appropriate venue. The petition must contain the names and addresses of the parties; the names of any parties that have not joined the petition and the reason why they have not; whether any medical procedures have already taken place and the details of such measures; and a request that the court validate the agreement. The agreement must be attached to the petition, along with affidavits or statements supporting the allegations in the petition.²⁰ Any party not joining in the petition must be served and has 10 days to provide the court with information to assist the court with its determination. Failure to respond does not prevent the court from validating the agreement.

The court shall validate the agreement²¹ if it finds that it has jurisdiction over the parties and they have all met the requirements of the statute. The court must also find the medical evidence shows the intended parent is unable to carry a pregnancy to term, or it is medically inadvisable to give birth to a child. The court must also

assure that each party has received legal advice and has voluntarily entered into the agreement and the surrogate has given birth to at least one child and the intended parents have made provision for the child's guardianship if necessary.

The order validating the agreement must require that the intended parents be listed as the parents on the birth certificate; order the medical facility where the child is to be born to recognize the intended parents as the legal parents of the child; and ensure that the intended parents have the right to the immediate custody of the child, the right to name the child and the right to make all health decisions.

The court may also validate an agreement that was not validated before the parties began the process of in vitro fertilization. If the court determines the gestational agreement does not meet the necessary requirements to be validated, it shall specify each deficiency that it found which prevents it from validating the agreement. The parties may amend the agreement to cure any other identified deficiencies and thereafter file an amended petition to validate the gestational agreement. The parties may amend as many times as necessary to cure any deficiencies identified by the court.

PARENTAGE DETERMINATIONS AND OTHER PROCEDURES²²

Once the agreement has been validated, the child is to be considered as if it was the natural born child of the intended parents. The gestational carrier and her spouse have no parental rights.

Once the child has been born, the intended parents must file a notice with the court within 21 days. After the court receives the notice, it must enter an order recognizing the intended parents as the legal parents of the child and, if necessary, an order requiring the surrogate to surrender the child to the

intended parents and require the birth certificate to be issued in the intended parents' names.

It is possible that the resulting child may be related to the surrogate.²³ If there is such an allegation, the court shall determine parentage by law other than this act.²⁴ An allegation that the surrogate is the biological parent must be brought within 180 days.

AMENDMENTS AND TERMINATION²⁵

A validated gestational agreement can be amended. However, an amended agreement must be re-validated by the court. The amendments may not change the identity of the gestational surrogate or any intended parent. Those changes can only be accomplished by terminating the agreement and entering into a new agreement.

A validated gestational agreement may be terminated but only if the specific statutory procedures are followed. The procedure requires the person seeking to terminate send notice to each party to the agreement. The notice of termination must then be filed with the court. The court, after determining that the surrogate is not pregnant by artificial insemination, must terminate the agreement. Once the court so orders the agreement is terminated.²⁶

Once the agreement has been terminated all artificial insemination procedures must cease. The agreement may be reinstated within one year should the court find the gestational carrier became pregnant by means of an assisted reproduction procedure contemplated by the gestational agreement that was performed before the party seeking to terminate the gestational agreement served upon the gestational carrier the written notice of termination of the gestational agreement.

However, the compensation can vary depending on the number of embryos that are implanted, the number of assisted reproduction procedures undertaken in order for the gestational carrier to become pregnant, the number of children with which the gestational carrier becomes pregnant and the duration of the pregnancy.

No party to a terminated agreement is liable for damages. However, termination does not relieve any party of the duty to pay for or to reimburse any other party for any medical, legal or travel expenses incurred pursuant to the gestational agreement prior to its termination which would otherwise be owed if the gestational agreement had not been terminated, and a party having a duty to pay or reimburse such expenses shall be liable to pay or reimburse such expenses.

A gestational agreement may not be terminated after the surrogate becomes pregnant.

COMPENSATION²⁷

A surrogate may be paid a reasonable compensation for carrying the child. The amount must be negotiated in good faith between the parties. The amount of compensation may not be tied to the quality, or any genomelated traits, of the sperm, eggs, gametes, embryos or resulting child. However, the compensation can vary depending on the number of embryos that are implanted, the number of assisted reproduction procedures undertaken in order for the gestational carrier

to become pregnant, the number of children with which the gestational carrier becomes pregnant and the duration of the pregnancy.

The surrogate may also receive reimbursement for expenses and economic losses resulting from being a surrogate.

DEATH AND INHERITANCE

In the event an intended parent predeceases the birth of a child covered by a validated gestational agreement, upon birth the resulting child shall be delivered into the custody of the surviving intended parent. If there are no surviving intended parents, custody of child shall be determined by the guardianship provisions of the intended parents' estate planning documents. If there are no estate planning documents or the named guardian cannot exercise custody, the court shall appoint a guardian. In that case, a court may appoint the gestational carrier or gestational carrier's spouse as the child's guardian.²⁸

At birth, the child shall be considered a child of the intended parents for purposes of inheritance. The child cannot inherit from the surrogate nor may the surrogate under any circumstances inherit from the child.

CLINICAL ERROR

Errors in artificial reproduction clinics do happen.²⁹ If it turns out the child is not biologically related to either the intended parents, the egg donor or the sperm donor, the intended parents are still to be considered as the parents of the child unless a contrary determination is made by a court in an action brought by the genetic parent within 180 days.³⁰

BREACH OF AGREEMENT³¹

In the event of a breach of a gestational agreement or noncompliance with the requirements of the act, the court shall determine the respective rights and obligations of the parties to the gestational agreement based solely on the evidence of the original intent of the parties and the provisions of the act. After determining that the contract has been breached, the court is authorized to use any remedy available at law or equity for breach of the gestational agreement or noncompliance with any requirement of this act. However, specific performance is not an available remedy to require the gestational carrier or any other party to be impregnated or undergo an assisted reproduction procedure.

The breach of the gestational agreement by any intended parent does not relieve the intended parents of the obligation to support a child born pursuant to the gestational agreement. The court in any action for the alleged breach or the enforcement of a gestational agreement shall award costs, attorney fees and expert fees to the prevailing party.

CONCLUSION

Like most states, Oklahoma did not have any laws on surrogacy until the passage of HB2468. It has now joined the list of states that have chosen to legalize and regulate gestational surrogacy. It was probably a constitutional imperative given that Oklahoma allows same-sex female couples to have a child. This bill provides the answer for same-sex male couples.³²

Attorneys who plan to practice in the artificial reproduction area whether representing individuals or fertility clinics should read this act with a good deal of care.

ABOUT AUTHOR

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ENDNOTES

1. Oklahoma has long recognized the use of artificial insemination to conceive a child. 10 O.S. §§551-553. The statutes were enacted in the mid-1960s and are very anachronistic. They provide that the procedure may only be performed by a physician and only upon the request of a husband and wife. Actually, artificial insemination is easy to perform and is used in many cases to conceive

children, regardless of the marital status of the inseminated person. Of course, there are hardly any situations where the court has become involved as the statute requires.

2. See *Matter of Baby M.*, 109 N.J. 396, 537 A.2d 1277 (N.J. 1988). *But see* *Paternity of F.J.R.*, 349 Wis. 2d 84, 833 N.W.2d 634 (Wis. 2013)(validating a traditional or genetic surrogacy contract).

3. 15 Okl. Op. Atty. Gen. 277 (Okl.A.G.) referring to genetic surrogacy. Arguably the opinion did not affect gestational surrogacy.

4. A number of other jurisdictions have also recently passed surrogacy legislation. See Del. Stat., tit. 13 §§8801 to 8809; Me. Rev. Stat. tit. 19a, §§1931 to 1938; Nev. Rev. Stat. §§126.500 to 126.810; N.H. Rev. Stat. §§168B:1 to 168B:22; 750 ILCS 47/1 to 47/75; D.C. Code §§16401 to 16412. The Uniform Law Commission again revised the Uniform Parentage Act in 2017. www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f. Although the 2002 version of the UPA contained a surrogacy provision, Oklahoma did not adopt that article. The 2017 version of the act contains extensive provisions concerning both gestational and genetic surrogacy. The genetic surrogacy provisions are more streamlined than Oklahoma's and do not require court approval.

5. The bill has an emergency clause attached to it and is now law following the governor's signature. The act is codified at 10 O.S. §557.1 through §557.25. Citation will be to the statutory section number.

6. The venue for the court approval lies in the country where the gestational carrier is located, or in Oklahoma or Tulsa county. §557.16. That court continues to exercise exclusive continuing jurisdiction over the proceedings for 180 days after the birth of the child. The proceedings are governed by the rules of civil procedure and substantively by Oklahoma law. §557.3; §557.15. All documents are to be kept confidential and the court is to be closed except to parties and their attorneys. §557.15.

7. Earlier versions of the statute had conflicting provisions as to whether it would be applicable to same-sex male couples. One provision seemed to require that the "mother" be unable to bear a child. That was changed in a later draft. Were it not done there would have been a good argument that the statute would be unconstitutional. See *In re Gestational Agreement 449 P.3d 69* (Utah 2019) (A provision of the Utah Uniform Parentage Act requiring at least one intended parent be a woman for court approval of a gestational agreement violated the due process and equal protection rights of a married same-sex male couple).

8. §557.2.

9. §557.3.

10. §557.5.

11. §557.6.

12. The provision is questionable. A heterosexual couple that is not married to each other can conceive a child. A same-sex male couple that is not married to each other cannot utilize this act and therefore cannot have a child. Since we have long ago separated marriage from children, the requirement that the intended parents be married is anachronistic. Another odd provision of the act requires that none of the parties to the gestational agreement can be in the country illegally.

13. §557.6.

14. §557(D).

15. Interestingly the statute does not mention abortion. The Uniform Parentage Act 2017 in Section 804(A)(7) states that nothing in the act restricts or enlarges the carrier's right to an abortion. The same result will probably be

reached in Oklahoma due to the act's silence on the subject.

16. §557.7. The Uniform Parentage Act 2017 does not require court approval for gestational surrogacy. It does genetic surrogacy.

17. §557.8.

18. That would usually be the Oklahoma version of Uniform Parentage Act for opposite-sex couples. 10 O.S. §7700-101 *et seq.* For same-sex couples, see *Schnedler v. Lee*, 2019 OK 52, 445 P.3d 238.

19. §557.9.

20. The court need not hold an evidentiary hearing if it is satisfied from the documents that the requirements of validation are met. §557.10(D).

21. §557.10.

22. §§557.11; 557.12.

23. *Cf Steven S. v. Deborah D.*, 25 Cal. Rptr.3d 482, 127 Cal. App. 4th 319 (2005).

24. §559.19.

25. §§557.13; 557.14.

26. An unvalidated gestational agreement may be terminated without involving the court.

27. §557.17.

28. §557.21.

29. See www.nytimes.com/2019/08/21/health/spermdonorsfrauddoctors.html; nationalpost.com/health/ivfmixupsleadtobabiesbornwithunintendedparentage.

30. §557.23.

31. §557.24.

32. For a discussion of this issue, see Robert G. Spector, "SameSex Marriage Came to Oklahoma: Now What Happens?," 69 *Okl. L. Rev.* 1 (2016).

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Support of a Disabled Adult Child

By *Monica Dionisio and Kara Rose Didier*

WE ALL KNOW THAT A PARENT HAS A DUTY to support his or her minor child. This duty is clearly imposed in 43 O.S. §112(E), but what about an adult child? Can a parent be required to financially support a child who reached the age of majority? Not surprisingly, that answer depends.

This article explores the current status of the law in the United States regarding the following questions:

- 1) Can a parent be required to support an adult child who has a disability?
- 2) Does it matter when the child first became disabled?
- 3) If a parent is required to pay child support, can a parent’s support obligation be reduced or offset by public benefits the child is receiving?

CAN A PARENT BE REQUIRED TO SUPPORT AN ADULT CHILD WHO HAS A DISABILITY?

In Oklahoma, a parent has a duty to support an adult child who is disabled and unable (as opposed to unwilling) to support himself. Sometimes, this is based on a court’s interpretation of 43 O.S. §112.1A. Notably, 43 O.S. §112(E) provides a specific exception for 43 O.S. §112.1A. 43 O.S. §112.1A(B) provides that with respect to a mentally or physically disabled child:

- 1) The court may order either or both parents to provide

for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

- a) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support, and
- b) the disability exists, or the cause of the disability is known to exist, on or before the eighteenth birthday of the child.

- 2) A court that orders support under this section shall designate a parent of the child or another person having physical custody or guardianship of the child under a court order to receive the support for the child. The court may designate a child who is eighteen (18) years of age or older to receive the support directly.

Other times, the court instead relies on the decisions of courts

in prior cases. Occasionally, if the court has no supporting statutory or case law on which to rely, the court will forge ahead and base its decision on its interpretation of the historical common law relating to parental duties.

Interestingly, in Oklahoma, it usually is not necessary to prove that a child has a particular disability that may qualify the child for federal or state benefits. Instead, Oklahoma bases the definition of “disability” as one that causes the adult child to require substantial care and personal supervision, as specifically enumerated in 43 O.S. §112.1A(B)(2). As the Oklahoma Court of Civil Appeals concluded, “[a] court may only award disabled adult child support if the evidence shows a causal relationship between [the adult child]’s alleged mental or physical disability and his inability to support himself.”¹

In other words, it is not the mere fact the adult child has a disability that triggers a parent’s ongoing duty to provide support. Rather, it is the fact that the child cannot support himself independently due to an existing disability that imposes the legal obligation on a parent to ensure support is available. If a child with a disability has sufficient



income or resources to support himself, a court typically will not require a parent to pay child support to the child. The Court of Civil Appeals has also scrutinized treatment that is voluntary in nature (as opposed to judicially or medically required), finding that it falls short of “required substantial care and personal supervision.”²

It is important to note that parents who divorce always can agree voluntarily that child support will be provided for an adult child who has a disability. This typically would occur in the separation agreement or decree of divorce entered into by the parents when a divorce is finalized. 43 O.S. §112.1A(D)(1) provides a parent with physical custody or guardianship of an adult disabled child the right to seek continued support for that child at any time. Relatedly, the Oklahoma Supreme Court has found that even where an obligation is lacking in specificity or scope, that does not render it unenforceable.³ This benefits parties who may agree upon child support at the time of an agreed order but leave open the question of proper future amounts. However, this issue is best resolved at the time of the divorce, since waiting to raise this issue until child support is about to stop often results in protracted and hostile litigation.

Practitioners should not think that child support ordered under 43 O.S. §112(E) precludes the ability

to seek child support under 43 O.S. §112.1A. The Oklahoma Court of Civil Appeals addressed this argument in 2011.⁴ When father argued that mother's use of 43 O.S. §112(E) when the child was a minor prevented her, by issue preclusion, from re-litigating and extending his child support obligation, the Oklahoma Court of Civil Appeals pointed father to the exact language of 43 O.S. §112(E) which is excepted by the provisions of 43 O.S. §112.1A: "Except as otherwise provided by Section 11.2A of this title..."

DOES IT MATTER WHEN THE CHILD'S DISABILITY BEGAN?

Can a parent be required to pay child support for an adult child who did not have a disability when the child reached majority

age, but later became disabled? In Oklahoma, an adult child must have incurred his or her disability before the child reaches the age of majority.⁵ The Oklahoma Supreme Court took a look at this when it evaluated a father's request to have his 20-year-old son declared a "special needs child" under 43 O.S. §112.1A due to his substance abuse addiction.⁶ Father's attempt to link his son's substance abuse to mother's usage of alcohol in his son's presence coupled with her alleged permissiveness was unsuccessful.⁷ However, many courts have concluded that a child remains a "minor" if the child is never emancipated, no matter what the chronological age of the child may be.

CAN PUBLIC BENEFITS THE CHILD IS RECEIVING OFFSET OR REDUCE THE PARENT'S SUPPORT OBLIGATION?

Social Security payments received by an adult child may be taken into account when calculating the amount of the parent's support obligation. Unlike calculation of child support for a minor child, the standard under 43 O.S. §112.1A requires a more individualized inquiry into the needs of a disabled adult and is therefore not susceptible to a generalized formula, such as the child support guidelines.⁸ The amount of support for a disabled child who has medical or psychological needs is unique to that person.⁹

In determining support under 43 O.S. §112.1A, the court must consider 1) any existing or future



needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability, 2) whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child, 3) the financial resources available to both parents for the support, care and supervision of the adult child and 4) any other financial resources or other resources or programs available for the support, care and supervision of the adult child.¹⁰ The Court of Civil Appeals recently determined the custodial parent is not under any obligation to seek additional financial resources or programs.¹¹

43 O.S. §112.1A does not necessarily prevent a court from utilizing the guidelines associated with the calculation of child support for a minor child. After determining the factors stated in 43 O.S. §112.1A, the court may utilize the guidelines to assist in determining the financial resources of each parent to allocate to each parent their percentage of the support as determined under 43 O.S. §112.1A to meet the needs of the disabled adult.¹²

WHAT IS THE EFFECTIVE DATE OF MODIFIED CHILD SUPPORT ORDERS FOR ADULT DISABLED CHILDREN?

Is modification of a child support order for a disabled adult child retroactive to the date a motion to modify support is filed? Most recently, the Court of Civil Appeals determined that it is.¹³ The court read 43 O.S. §112.1A(F) and 43 O.S. §118I(A)3 together in determining this issue.¹⁴ While 43 O.S. §112.1A is silent as to the effective date of an order modifying support, §112.1A(F) provides that orders modified by this section

are subject to modification and enforcement "in the same manner as any other order provided by this title." Therefore, under the court's reasoning, no conflict arises when subjecting the support orders defined in §112.1A(F) to the provisions of §118I(A)3 and making modifications retroactive to the date a motion to modify support is filed.¹⁵ It should be noted this is a different result than that reached by the Court of Civil Appeals in 2019, wherein the court reasoned that §118I did not extend retroactive application to modified support order for adult children and declined to make its order retroactive to the date of filing.¹⁶

ABOUT THE AUTHORS

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ENDNOTES

1. *Patrick v. Patrick*, 2016 OK CIV APP 52, ¶15, 377 P.3d 176.
2. *Id.* at ¶18.
3. *Holleyman v. Holleyman*, 2003 OK 48, ¶12, 78 P.3d 921.
4. *Gregory v. Gregory*, 2011 OK CIV APP, 259 P.3d 914.
5. 43 O.S. §112.1A(B)(1)(b).
6. *Patrick*, 2016 OK CIV APP 52, 377 P.3d 176.
7. *Id.* at ¶19.
8. *Morgan v. Morgan*, 2019 OK CIV APP 5, ¶41, 438 P.3d 837.
9. *Id.*
10. 43 O.S. §112.1A(E).
11. *Morgan*, 2019 OK CIV App 5, ¶46, 438 P.3d 837.
12. *Id.* at ¶42.
13. *Marriage of Teague*, 2020 OK CIV APP 1, ___ P.3d __.
14. *Id.* at ¶10.
15. *Id.*
16. *Morgan v. Morgan*, 2019 OK CIV APP 5, ¶¶49-50, 438 P.3d 837.

Affidavit of Support Implications in Divorce

By Sajani “Ann” Zachariah and Cassity Gies

BEING THE SPOUSE OF A UNITED STATES CITIZEN is the most common way to attain lawful permanent resident status, informally referred to as “getting a green card.” Each year the United States Citizen and Immigration Services (USCIS) admits more lawful permanent resident statuses through marriage than any other major type of admission.¹ In a country where nearly half of all marriages end in divorce,² couples using marriage as grounds for obtaining a green card face special issues during their divorce and even after. Because Oklahoma has one of the highest divorce rates in the country, with as many as two out of every three marriages ending in dissolution,³ family lawyers should be especially aware of the implications that come through marriage-based immigration.

When a principal applicant for lawful permanent resident status seeks to immigrate using their spouse as a sponsor, the sponsoring spouse must submit, amongst a host of other things, an Affidavit of Support.⁴ The affidavit is required to show that the immigrant will have adequate means of financial support and will not become a public charge.⁵ Form I-864, an Affidavit of Support, is a legally enforceable contract between the federal government and the sponsoring spouse.⁶ A sponsoring spouse accepts legal responsibility for financially supporting their alien spouse until they either become a United States citizen, die or are credited with 40 quarters of work (approximately 10 years). Divorce does not end that financial obligation.⁷

Three obligations arise for an I-864 sponsor: 1) the sponsor must reimburse the government for

means-tested benefits received by the beneficiary over the obligatory 10-year period; 2) the sponsor must maintain the immigrant spouse at 125% above the federal poverty or at 100% of the federal poverty level for the household if the sponsor is an active military member; and 3) the sponsor must report any change in address to the attorney general and the state in which the sponsored alien lives during the period that the affidavit is enforceable.⁸

Signing an Affidavit of Support puts a sponsor in privity with both the beneficiary spouse and also with the federal government. If at any point before citizenship is granted or the 10 years pass, the beneficiary spouse receives means-tested public assistance from a federal, state or local agency, that agency can legally sue the sponsor and require him to repay the money that the agency provided to

the beneficiary.⁹ The term “means-tested public benefits” include food stamps, Medicaid, Supplemental Social Security Income (SSI), Temporary Assistance for Needy Families (TANF) and the State Child Health Insurance Program.¹⁰ This area of immigration practice has seen a lot of discussion lately, with recent memorandums released by the Trump Administration criticizing governmental agencies for not properly enforcing reimbursement.¹¹

In addition to the privity between the United States and the sponsor, the signor of an Affidavit of Support also obliges himself to the beneficiary and pledges to maintain the spouse at 125% above the federal poverty line. The current federal poverty line for a single household is \$12,490,¹² and 125% of that amount results in a promise to maintain the beneficiary at an annual income of \$15,612.50.



Several interesting arguments can be crafted by an attorney who is aware of the implications of an Affidavit of Support. Oklahoma courts, albeit in unreported case law, recognize the Affidavit of Support as a cause of action, independent of divorce that can be brought by the beneficiary ex-spouse.¹³ Oklahoma case law presently offers no precedent utilizing the Affidavit of Support as a consideration for spousal support awards in divorce proceedings, however, divorce attorneys in other states successfully argue it as both grounds for spousal support or, alternatively, as a separate support obligation apart from the divorce itself.

In *Erler v. Erler*, a California court order granted separate enforcement of the I-864 pledge of support despite the divorce judgment not recognizing it due to a premarital contract. There, the Turkish ex-wife

succeeded in an appellate action to enforce the I-864 obligation.¹⁴

Thus, under federal law, neither a divorce judgment nor a premarital agreement may terminate an obligation of support. Rather, as the Seventh Circuit has recognized, “[t]he right of support conferred by federal law exists apart from whatever rights [a sponsored immigrant] might or might not have under [state] divorce law.” We therefore hold that the district court correctly determined that Yashar has a continuing obligation to support Ayla.¹⁵

Enforcing the obligation as part of an award for spousal support was recognized in *Motlagh v. Motlagh*.¹⁶ During a divorce, initiated by the sponsoring spouse, the lower court concluded that the I-864 affidavit was not an obligation to pay defendant 125% of the federal poverty line and that the

husband was only obliged to act as a “safety net.” This decision was reversed by the court of appeals, holding that the husband was required to satisfy his support obligation by paying whatever amount was necessary for the beneficiary spouse to reach the 125% mark, permitting consideration of all income sources that the beneficiary receives. The court explained that this could be achieved either through a spousal support order arising from the divorce proceedings or a separate I-864 support obligation enforcement action.

Other courts, however, go the opposite direction, finding the I-864 inadequate as grounds for spousal support. In 2014, an Intermediate Washington State Appeals Court shot down the *Motlagh* argument reasoning that the state’s statutory factors listed

for consideration in awards of spousal support do not include an I-864 obligation.¹⁷

Creative lawyering in this area could help forge a new argument for Oklahoma clients seeking spousal support as more attorneys become aware of the ongoing obligations that the I-864 creates. The argument could also be used to defend against spousal support by pointing out that the obliging spouse will continue to face liability from federal agencies on behalf of any assistance his ex-spouse receives during whatever time remains under the 10-year pledge.

As the Oklahoma immigrant community continues growing, these family law arguments are likely to develop and grow as well, highlighting how many hats a divorce lawyer wears every day as we answer questions ranging from immigration policies to tax concerns. Knowing all these legal issues while balancing a client's

emotional stress during one of the hardest times of their lives makes for a well-rounded and well-informed family law practice.

ABOUT THE AUTHORS

Sajani "Ann" Zachariah immigrated to the United States in 1984 at 5 years old. She graduated from the OCU School of Law in 2011, joining Mazaheri Law Firm in 2012. She practices family law and immigration law, two areas in which she has personal experience.

Cassity Gies, associate attorney at Phillips Murrah, is passionate about family law. She graduated *summa cum laude* from the OCU School of Law in 2019 as a Hatton W. Sumners scholar and represented her graduating class as the William Conger Distinguished Student.

ENDNOTES

1. *Persons Obtaining Lawful Permanent Resident Status By Type And Major Class Of Admission: Fiscal Year*, U.S. Dept. Homeland Sec., 2014 to 2016, www.dhs.gov/immigration-statistics/yearbook/2016/table6, (last visited Sept. 16, 2019).
2. Joshua A Krisch, "Mapping Americans' Divorce Risk By State Paints an Unnerving Picture," *Fatherly*, (June 7, 2018), www.fatherly.com/health-science/american-divorce-rate-state/.
3. *Id.*
4. *I-485, Application to Register Permanent Residence or Adjust Status*, U.S. Citizenship & Immigration Serv., www.uscis.gov/i-485, (last visited Sept. 16, 2019).
5. *Affidavit of Support*, U.S. Citizenship & Immigration Serv., www.uscis.gov/greencard/affidavit-support (last visited Sept. 16, 2019).
6. *Id.*
7. *Id.*
8. 8 U.S.C. §1183(a) (2009).
9. *Form I-864P, 2019 HHS Poverty Guidelines for Affidavit of Support*, U.S. Citizenship & Immigration Serv., www.uscis.gov/i-864p (last visited Sept. 17, 2019).
10. *Id.*
11. *Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens*, 2019 Daily Comp. Pres. Doc 201900334 (May 23, 2019).
12. *Poverty Guidelines*, U.S. Dep't Health & Human Serv., aspe.hhs.gov/poverty-guidelines (last visited Sept. 18, 2019).
13. See *Schwartz v. Schwartz*, No. 04-CV-00770, 2005 WL 1242171.
14. *Eler v. Eler*, 824 F.3d 1173, 1177 (9th Cir. 2016).
15. *Id.*
16. 100 N.E. 3d 937, 944 (Ohio App. 2d Dist.2017).
17. *In re Marriage of Khan*, 332 P.3d 1016, 1019 (Wash. App. Div. II 2014).

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A Soldier's Rights and the Oklahoma Relocation Statute

By John P. Cannon

RELOCATION OF A PARENT OR CHILD IS COMPLEX in any child custody case, however when relocation is a result of military duty, the issues are even more complex. The past two decades of deployments has caused legislators to take note and pass legislation to try to protect the custody and visitation rights of servicemembers across our country. Oklahoma has developed a wide range of laws to protect servicemembers in Oklahoma in custody and visitation disputes, but the battle to defend servicemember's parental rights is not yet won.

Most child custody cases involving relocation are as a result of one parent *voluntarily* moving. However, for servicemembers, many times moving is not a choice but an order. Additionally, failure to comply with a lawful military order can subject a servicemember to nonjudicial punishment, administrative action or courts-martial action under the Uniform Code of Military Justice. Until very recently, many servicemember parents were essentially being punished for serving their country, as it related to relocation and child custody.

Issues often arose when a servicemember had custody or visitation rights of a child or children whose other parent was not the servicemember's spouse. When ordered to deploy on short notice many servicemember parents did not have sufficient time to give proper notice or transfer child custody prior to deployment, which resulted in their loss of custodial rights. In some cases, servicemembers lose their custody rights during military duty.

OKLAHOMA RELOCATION STATUTE

The Oklahoma Relocation Notification of Children statute¹ specifies multiple requirements a parent must meet, including providing the following information to the other parent prior to relocation: relocation timelines, reasons for the move, proposed visitation schedule and exact address.

Oklahoma family law presumes it is in the best interest of every child to have a strong continuous relationship with both parents.² Therefore, timely and meaningful notice must be provided to a former spouse or other parent of child prior to moving a child or children out of state. A party seeking to relocate with a child must provide notice to the other parent or party with custody or visitation rights as soon as practicable or at least 60 days prior to the relocation.³ The nonrelocating party or former spouse has the right to seek a court order to stop the relocating party from moving out of state with the

child(ren). At the hearing, the court will decide whether the proposed move is being made in good faith or whether it is an attempt to deprive a party of visitation or physical custody of their child(ren).

RELOCATION NOTICE REQUIREMENT

The notice required prior to moving out of Oklahoma with a child(ren) must include the specific requirements found in Okla. Stat. tit. 43 §112.3⁴ in order to comply with Oklahoma family law. However, these requirements are nearly impossible for servicemembers to comply with when relocation due to service obligations occur on short notice.

The law requires, among other things:

- Serve notice of intent to relocation on the other parent and/or party entitled to visitation, including:
 - The intended new address;

- ❑ The new mailing address, if different;
 - ❑ The home telephone number, if known;
 - ❑ The date of the intended move or proposed relocation;
 - ❑ Specific reasons for the proposed relocation of the children; and
 - ❑ Revised visitation or custody schedule;
- The notice must be provided on or before the 60th day before the proposed move, unless the party could not reasonably have known and then notice must be provided 10 days in advance;
 - The notice requirement exists so long as a party has a right to custody or visitation;
 - Contempt of court may be sought for failure to abide by these requirements;
 - The court may consider failure to notify in modification of custody or visitation;
 - Attorney fees and costs may be assessed for failure to give the required notice; and
 - Relocation is authorized if the party notified of relocation does not file an objection within 30 days of notice of intent to relocation.



PROCESS TO OBJECT TO RELOCATION

A party must file an objection with the court in order to initiate an objection to relocation. However, it is crucial a party acts as soon as possible to avoid waiving the right to object, which expires 30 days after notice, as stated above. The party objecting is entitled to a hearing in court. At the hearing, a party may be able to have the other party parent/custodian forced to return to Oklahoma, return the child(ren) to Oklahoma or seek contempt of court for violating the relocation statute,⁵ which should be an existing order in your custody case. These principles are well intended; however, they do not apply logically to a deploying service member on an accelerated schedule with multiple other service and personal obligations to take care of before shipping out.

OKLAHOMA LEGISLATURE'S RESPONSE

To address the growing problem of the relocation statute's negative effects on service members, the Oklahoma Legislature moved to enact the Oklahoma Deployed Parents Custody and Visitation Act (ODPCVA) to protect the rights of servicemember parents and their children in custody disputes. The ODPCVA was an attempt to preserve the relationship between servicemember parents and their children during periods when a servicemember parent would be absent as a result of military service.⁶ The ODPCVA was designed to protect the rights of deployed servicemembers parents and their children in the following ways:

- Ensuring that child custody arrangements in place before they deploy will be re-instated post deployment; and

- Designating a person with a close relationship to the child, including stepparents, siblings and grandparents, to exercise the deployed parent's visitation rights during deployment.⁷

When a parent is deployed and seeks relief under the ODPCV, the deploying parent has a right to transfer his or her visitation rights to a stepparent, a designated family member or another designated individual.⁸ Within The ODPCVA, there is a rebuttable presumption that it is in the best interest of the child for a stepparent, designated family member or another designated person to exercise the deployed parent's custodial rights and duties.⁹ The ODPCVA provides protections to both parents and guardians with child custody matters during deployment.¹⁰

In order to qualify under the ODPCVA, a servicemember parent must show the following:

- He or she is a deploying parent; and

- His or her mandatory leave qualifies as deployment under the statutory definition.¹¹

KOHLER V. CHAMBERS – REDUCING MILITARY PARENT PROTECTIONS

With the procedures and policies of the ODPCVA codified in statute, the issue moving forward is whether or not the Legislature did enough to protect servicemembers in Oklahoma. The Oklahoma Supreme Court made it clear earlier this year, the Legislature did not. Unfortunately, the Oklahoma Supreme Court's recent ruling in *Kohler v. Chambers* shows there are gaps in protection for servicemember parents and their children involved in custody and visitation proceedings.

Kelley Kohler, a married man with three children, received orders to report for basic training and advanced individual training with the United States Army National Guard.¹² In April 2012, Kohler had a daughter, R.L.K., with Carolynn Chambers.¹³ In December

To address the growing problem of the relocation statute's negative effects on service members, the Oklahoma Legislature moved to enact the Oklahoma Deployed Parents Custody and Visitation Act (ODPCVA) to protect the rights of servicemember parents and their children in custody disputes.

2016, Kohler and Chambers entered into an agreed decree of paternity and joint custody plan.¹⁴ Under the plan, Kohler and Chambers split custody equally and followed a week-on-week visitation schedule.¹⁵ Every other week, R.L.K. lived with her father, stepmother and two younger half-siblings.¹⁶ In August 2017, Kohler received an order from the Department of Defense Military Entrance Processing Station commanding him to report to initial active duty for training.¹⁷ The order required Kohler to complete nine weeks of basic training in South Carolina and 19 weeks of individual training in Virginia.¹⁸ During these seven months of training, Kohler was not allowed to travel with his spouse or children.¹⁹ Immediately, Kohler filed a motion seeking an order authorizing the temporary transfer of his custody and visitation rights with R.L.K. to his spouse, R.L.K.'s stepmother.²⁰ He asserted his right to transfer custody as a deploying parent under the ODPCVA.²¹ After an expedited hearing, the trial court affirmed Kohler's motion and granted Kohler's spouse custodial rights during Kohler's leave on the grounds that 28 weeks (seven months) of mandatory training qualified as deployment under the ODPCVA.²² In response, Chambers filed a motion to vacate the judgment, arguing the trial judge erred as a matter of law by treating Kohler as a deploying parent under the ODPCVA.²³ The trial court denied Chambers' motion and upheld its previous ruling that Kohler's leave entitled him to relief under the ODPCVA.²⁴ Chambers appealed the trial court's order to the Oklahoma Supreme Court.²⁵

The Oklahoma Supreme Court analyzed the ODPCVA and its intent to determine whether Kohler was a deploying parent under the act.²⁶ To determine whether Kohler was a deploying parent,

the court first considered whether his mandatory leave qualified as deployment.²⁷ Deployment is defined as "the temporary transfer of a servicemember in compliance with official orders to another location in support of combat, contingency operation, or natural disaster requiring the use of orders for a period of more than thirty (30) consecutive days, during which family members are not authorized to accompany the servicemember at government expense."²⁸

In finding Kohler met the statutory requirements as a servicemember who received military orders requiring him to leave his family for more than 30 days, the court limited its inquiry into whether Kohler's leave for training was "in support of combat."²⁹ Unfortunately, the act failed to include a definition for "in support of combat."³⁰ The court found the lack of definition problematic because of the possibility of an overbroad application from a literal reading of "in support of combat."³¹ It held that "a literal reading of 'in support of combat' would be so overreaching as to create an absurd result not intended by the Legislature."³²

Labelling the statute ambiguous, the court looked to extrinsic sources for help in defining the phrase. Finding no definition of "combat" in Oklahoma legislation, the court improperly relied on the Internal Revenue Code's definition of combat zone, "any area which the President of the United States by Executive Order designates ... as an area in which Armed Forces of the United States are or have engaged in combat."³³ In reliance on this definition, the court held that "it is clear that Father's training was not deployment for 'combat' or in 'support of combat.'"³⁴ After a de novo review, the court reversed and remanded the case, holding that Kohler was

not a "deploying parent" because his seven-month leave was not "in support of combat, contingency operation, or natural disaster."³⁵ This ruling is opposed to the spirit and statutory interpretation of the ODPCVA as well as the Servicemembers Civil Relief Act (SCRA).³⁶

SCRA PROTECTIONS

The United States Supreme Court held in *Le Maistre v. Leffers*,³⁷ "the act [SCRA] must be read with an eye friendly to those who dropped their affairs to answer their country's call." Simply stated, the United States Supreme Court has held the SCRA should be read in favor of the servicemember the act, as the ODPCVA, was intended to protect. A servicemember is qualified for the multiple SCRA protections, including a stay of civilian legal proceedings, if performing military service, which is defined under the SCRA as follows:

- Full-time active duty members of the five military branches (Army, Navy, Air Force, Marine Corps and Coast Guard);
- Reservists on federal active duty; and
- Members of the National Guard on federal orders for a period of more than 30 days.³⁸

These protections take effect immediately upon receipt of military orders for reservists, including National Guard soldiers placed on active duty.³⁹ The Oklahoma Supreme Court failed to consider the best interest of Kohler and his daughter. Despite the court's assurance "of course our paramount concern in any proceeding involving custody or visitation is the best interests of the child," the court did not give any consideration or even discuss

whose custody was in R.L.K.'s best interest.⁴⁰ Had the court put more emphasis on the best interest of R.L.K., it likely would have agreed with the trial court and vested custodial authority to R.L.K.'s stepmother, with a longstanding relationship with her stepdaughter, during Kohler's leave. As Kohler indicated in his pleadings, transferring his custody to R.L.K.'s stepmother was his effort to preserve his family unit, while he served his country.⁴¹

Kohler worried "[R.L.K.'s] routine, structure and well-being would be adversely impacted during his deployment if his parenting rights were not transferred to his wife."⁴² If R.L.K.'s stepmother had temporary custody, R.L.K.'s routine would remain the same. Like always, R.L.K. would stay with her mother for one week and then stay with her stepmother and younger siblings the next week. The joint custody plan between Kohler and Chambers was created so R.L.K. could spend a significant amount of time with her father, her stepmother and her younger siblings.⁴³ At no point did Chambers give a reason for why transferring custody to R.L.K.'s stepmother would be contra to her daughter's interest.⁴⁴ Additionally, Chambers did not dispute Kohler's spouse had a substantial and close relationship with R.L.K., thus failing to rebut the statutory presumption. Instead Chambers' argued Kohler's custodial rights should not be transferred to R.L.K.'s stepmother because his mandatory leave for training did not qualify as deployment.

The Oklahoma Supreme Court failed to consider the legislative intent behind the ODPCVA in finding Kohler was not a deploying parent under the act and failed to consider the implications of the most relevant federal statutes, the SCRA. The primary goal of statutory construction is to

ascertain and effect the intent of the Legislature.⁴⁵ When a statutory phrase is susceptible to more than one reasonable interpretation and is therefore ambiguous, the court is required to determine the legislative intent and to give the statute a reasonable and sensible construction that will avoid absurd consequences.⁴⁶ When there is any doubt as to the purpose or intent of a statute, it may be resolved by resort to other statutes relating to the same subject matter.⁴⁷ The most obvious example being the SCRA, which is a federally codified act intended to protect servicemembers from adverse action when they enter active duty service, including orders outside of combat.

The purpose of the act is to protect a "deploying parent," a "legal parent of a minor child ... who is a member of the United States Armed Forces and who is deployed or has been notified of an impending deployment."⁴⁸ The Oklahoma Supreme Court does not dispute that Kohler is the legal parent of R.L.K. and that he is a member of the U.S. Armed Forces.⁴⁹ The court's only issue is whether Kohler's mandatory order to attend training constitutes as deployment.⁵⁰ The question thus becomes whether training, an early and essential part of military service, constitutes as deployment under the act.⁵¹ The court reasoned that Kohler's mandatory leave to attend training did not qualify as deployment because training is not "in support of combat."⁵² The court feared a literal reading of "in support of combat" "would be so overreaching as to create an absurd result not intended by the legislation."⁵³

THE ABSURDITY CANON

The court's reliance and liberal application of the absurdity canon in *Kohler* was misplaced. As the dissent points out in *McIntosh v. Watkins*, "[e]ven when applicable,

the absurdity canon provides a very narrow exception to [the court's] duty to apply the plain meaning of a statute."⁵⁴ In the rare circumstance the plain meaning of a provision is to be ignored because the court believes the legislation could not have intended what they wrote, "it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application."⁵⁵

Recently, in *McIntosh*, the Oklahoma Supreme Court appropriately applied the absurdity canon when a literal reading of a statutory provision was so absurd the legislation could not have intended what they wrote.⁵⁶ A defendant who was driving under the influence rear-ended a vehicle, injuring the two passengers.⁵⁷ When both vehicles pulled over to discuss the accident, the defendant returned to his vehicle and fled when the plaintiff went to call the police.⁵⁸ The defendant was later arrested and charged with driving a motor vehicle while under the influence of alcohol and leaving the scene of an accident involving damage.⁵⁹

Later in court, an issue arose regarding whether the plaintiff was entitled to treble damages for the damage sustained to his vehicle.⁶⁰ The applicable statute stated that treble damages are available *only* in an accident "resulting only in damage to a vehicle..."⁶¹ Since the plaintiff sustained physical injuries in addition, the trial court ruled he was not entitled to treble damages.⁶² The Oklahoma Supreme Court reversed the lower court, stating the statute applied even if a victim sustains an injury.⁶³ The majority held that the statute was ambiguous and by including physical injury, the opinion prevented an absurd interpretation that would lead to greater harm.⁶⁴

In *McIntosh*, a literal application of the statutory provision would be absurd and prevent a victim from bringing a civil action for treble damages for suffering physical injury. The court's interpretation maintains the obvious public

in *McIntosh*, nothing negative or unfair would result from a literal reading of "in support of combat." A military servicemember would not act in support of combat operations unless they have received the appropriate training. To distinguish

phrase "in support of combat," it should have considered Article 1, Section 102 of the UDPCVA. The subject matter of the UDPCVA is similar to the ODPCA, unlike the Internal Revenue Code. Oklahoma Legislature enacted an early version of the UDPCVA, which spoke of "deployment" in strict terms as to support of combat.⁶⁶

The current version of the UDPCVA accounts for the majority of "military absence" triggering rights and duties under the Oklahoma Act, the ODPCVA. Article 1, Section 102 defines deployment as:

[T]he movement or mobilization of a service member for more than [90] days but less than [18] months pursuant to uniformed service orders that: a) are designated as unaccompanied; b) do not authorize dependent travel; or c) otherwise do not permit the movement of family members to the location which the service member is deployed.



policy for treble damages: deterrence from fleeing the scene of an accident.

In *Kohler*, anything but a literal reading of "in support of combat" would be an absurd result, contrary to the underlying public policy. As pointed out in *Kohler's* pleadings, according to the court's definition, "some parents – those who are under orders to be separated from their families for long periods of time would be given the protection of the act, and their children would receive its benefits. Others, in the same situation but for the point they have reached in the military career, would not."⁶⁵ Such a result would completely undermine the legislative intent and public policy aims to protect the rights of servicemember parents and their children. Unlike

training from deployment would be contra to public policy by deterring servicemember parents from joining the military in fear of losing custodial rights during the initial training stage.

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) is a national response to address custody and visitation issues for servicemembers. Oklahoma has not enacted the UDPCVA; however, 10 states have and others are pending enactment. Both acts are intended to provide additional protections beyond the SCRA discussed above. In light of the Oklahoma Supreme Court's doubt as to the intent of the

Col. Mark E. Sullivan, a retired Army JAG, served on the Drafting Committee for the UDPCVA.⁶⁷ In an article reviewing the *Kohler* case, Col. Sullivan stated the Drafting Committee debated the definition of deployment; however, no compelling reason was found to limit the protection of the act to a strict "deployment" definition; only encompassing military operations.⁶⁸

The ODPCVA was enacted to protect the rights of servicemember parents and their children; however, the court in *Kohler* identified a gap in the act's protection and focused on that gap in reaching its decision. The custodial rights of servicemember parents in the early stages of their careers remain in jeopardy so long as the court continues to distinguish mandatory training from deployment and

fails to prioritize the best interest of the child in custody proceedings. Protection should be afforded to every servicemember that raised their hand and volunteered to risk sacrificing everything to stand and defend our great nation. Subsequent to the court's decision in *Kohler*, the Oklahoma Legislature should amend the ODPCVA to mirror the UDPCVA and protect all servicemembers serving our country from losing their rights to custody or visitation, regardless of service obligation.

CONCLUSION

The Oklahoma Supreme Court's decision in *Kohler* is a step in the wrong direction for servicemember's parental rights. However, the ball is now in the Oklahoma Legislature's hands to correct the interpretation issue identified by the court in *Kohler*. Every soldier, marine, sailor or servicemember that raised his or her right hand to sacrifice all to defend our nation deserves nothing less than all the protection available by judges and legislatures in protecting their parental rights. Relocation of parents and their children is a delicate legal issue. However, the rights of servicemembers cannot be forgotten.

ABOUT THE AUTHOR

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ENDNOTES

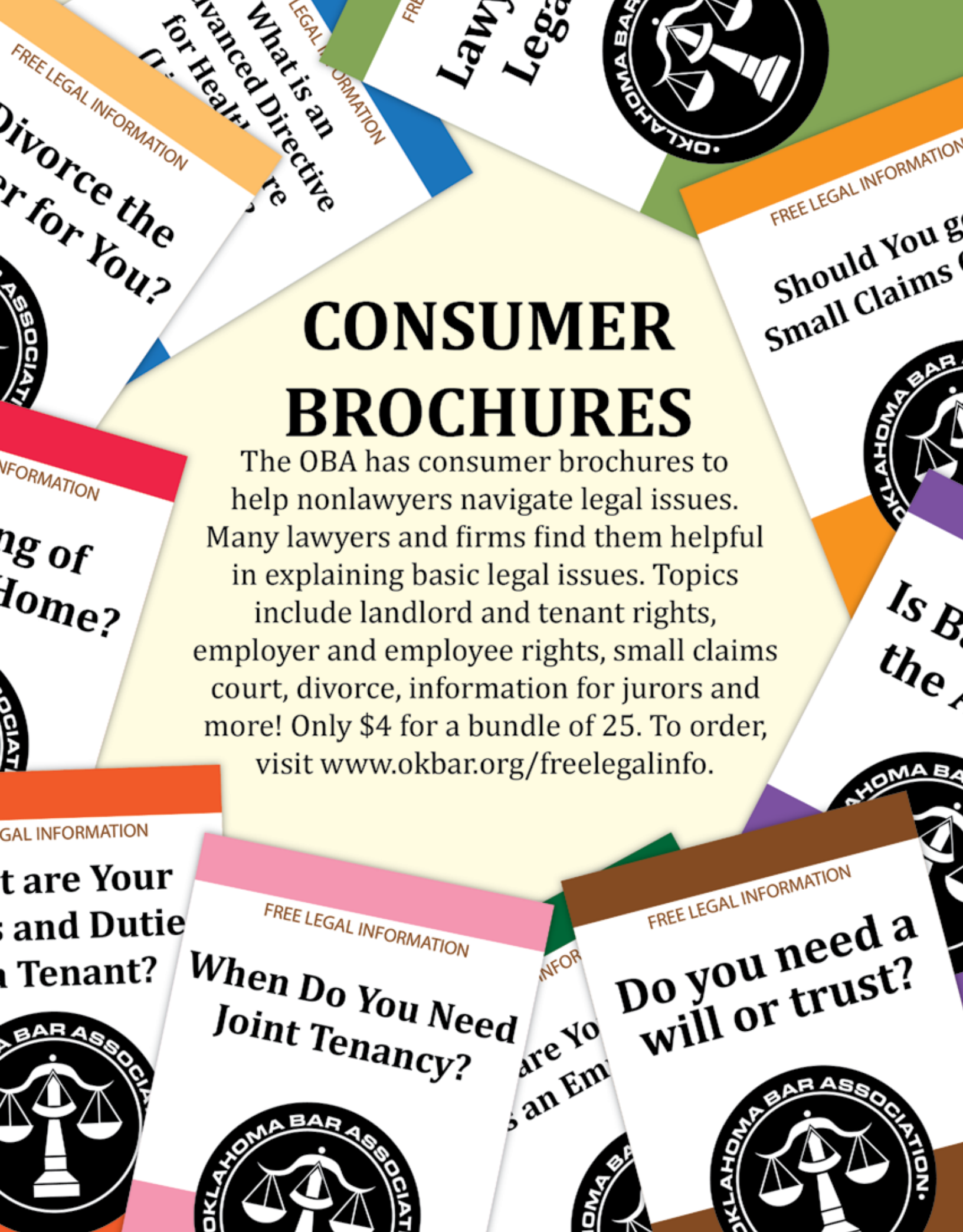
1. Okla. Stat. tit. 43 §112.3.
2. *Gibbons v. Gibbons*, 1968 OK 77, 442 P.2d 482 at ¶12 (Okla. 1968).
3. *Id.*
4. Okla. Stat. tit. 43 §112.3.
5. *Id.*
6. Okla. Stat. tit. 43 §§150 to 150.10.
7. *Id.*
8. *Id.* §150.8.
9. *Id.*
10. *Id.* §150.2.
11. *Id.* §150.4.
12. *Kohler v. Chambers*, 2019 OK 2, ¶3, 435 P.3d 109, 111.
13. *Id.*
14. *Id.*
15. *Id.*
16. Appellee's Answer Brief at 1, *Kohler v. Chambers*, 2019 OK 2 (2019) No.DF-116391.
17. *Kohler*, 435 P.3d at 111.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at 113.
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 114 (quoting Section 112 of 26 U.S.C. §7508).
34. *Id.* at 114.
35. *Id.*
36. 50 U.S.C. §§3901-4043.
37. *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).
38. 50 U.S.C. §3911(2).
39. 50 U.S.C. §3917(a).
40. *Id.* at 112.
41. Appellee's Answer Brief at 7, *Kohler v. Chambers*, 2019 OK 2 (2019), No.DF-116391.
42. *Id.* at 2.
43. *Id.* at 9.
44. *Id.* at 10.
45. *McIntosh v. Watkins*, 2019 OK 6, ¶4, 441 P.3d 1094, 1096, *reh'g denied* (April. 29, 2019).
46. *Id.*
47. *Id.*
48. Okla. Stat. tit. 43 §150.1(5).
49. *Kohler*, 435 p.3d at 113.
50. *Id.*
51. *Id.*
52. *Id.* at 114.
53. *Id.*
54. *McIntosh v. Watkins*, 2019 OK 6, ¶12, 441 P.3d 1094, 1103, *reh'g denied* (April 29, 2019).
55. *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 202-03, 4 L.Ed. 529 (1819); *Lexington Ins. Co. v. Precision Drilling Co.*, 830 F.3d 1219, 1223 (10th Cir. 2016) (Gorsuch, J.) (citing Antonin Scalia and Bryan A. Garner, *Reading Law* 237-38 (2012)) (Similarly, the 10th Circuit has stated that "an error in a statute must be so 'unthinkable' that any reasonable reader would know immediately both 1) that it contains a 'technical or ministerial' mistake, and 2) the correct meaning of the text. When these demanding conditions are met, a court may invoke the [absurdity] doctrine to enforce the statute's plain meaning, much as it might in cases

where a modifier is misplaced or the grammar otherwise mangled but the meaning plain to any reasonable reader. Cabined in this way, the absurdity doctrine seeks to serve a 'linguistic rather than substantive' function and does not depend nearly as much on doubtful claims about legislative intentions, risk nearly as much interference with the separation of powers or pose anything like the same sort of fair notice problems as its more virulent cousin. Instead, it aims only to enforce a meaning reasonable parties would have thought plain all along.").

56. *McIntosh v. Watkins*, 2019 OK 6, ¶16, 441 P.3d 1094, 1100, *reh'g denied* (April 29, 2019).
57. *Id.* at 1095.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 1097.
62. *Id.* at 1095.
63. *Id.* at 1100.
64. *Id.* at 1100-01.
65. Appellee's Answer Brief at 6, *Kohler v. Chambers*, 2019 OK 2 (2019) No.DF-116391.
66. See *Kohler*, 435 p.3d at 112 (stating the ODPCVA was very similar to drafts of the UDPCVA).
67. www.ncfamilylaw.com/absence-basic-training-custody-and-deployment-the-a-b-c-d-of-military-parenting.
68. *Id.*

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A Client Intake Primer: International Child Removal or Retention

By Brita Haugland Cantrell

INTERNATIONAL DISPUTES CONCERNING A CHILD'S residence may be subject to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) done at the Hague on Oct. 25, 1980, and its implementing legislation, the International Child Abduction Remedies Act (ICARA).¹ The stated common purpose of the Hague Convention and ICARA is to protect children internationally from a wrongful removal or retention and to establish procedures for a prompt return to the habitual residence.² It is a mechanism to prevent parents who are dissatisfied with custodial orders, directives or rights from abducting children, to seek more favorable treatment in another country.³ Contracting states are required to return the children without deciding anew the issue of custody.⁴

HAGUE TREATY PARTNER COUNTRIES

As of the date of this publication, there are 101 contracting states to this convention, and the complete list of countries can be found at the website for the Hague Conference on Private International Law.⁵

BURDEN OF PROOF CONSIDERATIONS FOR CLIENT INTAKE

Pursuant to ICARA, a party filing a Hague Convention action has the burden of proof to establish by a preponderance of the evidence that a child has been wrongfully withheld (removed, retained or access rights denied) within the meaning of the convention.⁶ A removal or retention is "wrongful" when it "is in breach

of rights of custody attributed to a person ... under the law of the State in which the child was habitually resident immediately before the removal or retention."⁷ A Hague Convention petitioner must show: "1) the child was habitually resident in a given state at the time of the removal or retention; 2) the removal or retention was in breach of petitioner's custody rights under the laws of that state; and 3) petitioner was exercising those rights at the time of removal or retention."⁸ Further, the wrongful act must have occurred and not be merely anticipatory.⁹ For example, courts may dismiss a Hague Convention action where it is conceivable that a parent could be denied access or that a child may be inappropriately retained, if the turn of events has not yet occurred.¹⁰

The term "habitual residence" is not defined by the Hague Convention or ICARA.¹¹ That determination begins as a question of fact for the court based on the unique circumstances of each case.¹² Factors courts consider include a child's acclimatization to a home or country¹³ or the parents' last settled or common purpose as to the child's habitual residence.¹⁴ Even if a child has lived in a country where there was no settled intent to make it the child's permanent home, courts may find that the habitual residence lies elsewhere.¹⁵

Under ICARA, the relief available is limited to the return of a child to the country of habitual residence. ICARA directs that the courts will determine only the rights under the Hague Convention and will not provide additional



relief on any underlying child custody claims.¹⁶ In fact, there is no actionable claim pursuant to ICARA where a party merely disputes or moves to modify visitation terms.¹⁷

INITIAL INTAKE CHECKLIST

Under ICARA and the Hague Convention, a client intake to evaluate the unique circumstances as to each child would consider the following:

- The child's present location;
- All individuals currently residing at the child's present location;
- The child's birth date, location and biological parents; collecting copies of birth certificates;
- A timeline for all locations where the child has lived, identifying the purpose for and extent of time at each;
- The child's citizenships; collecting copies of all passports;
- Each parent's citizenships;
- The circumstantial ties of the child to each country in which the child has lived, including schools, religious affiliations, extended family or cultural ties;
- The current habitual home country of the child, recognizing that children in one family can have different habitual residences;
- All facts concerning the child's removal from the habitual residence to a new residence and any parental agreement in that regard;
- The degree to which a child is settled in a new environment; and
- Any grave risk of harm that would be imposed by returning a child to the habitual residence.

CUSTODY ORDERS AND RIGHTS

Pursuant to the Hague Convention, a removal is wrongful when it is in breach of custody rights under the laws of the country of a child's habitual residence and where those custody rights were being exercised at the time of the removal.¹⁸ Accordingly, intake should cover the following:

- Identify and obtain copies of all custody orders and any other filings in a prior custody case;
- Identify the parental custody rights under the laws of the habitual residence;
- Identify all facts concerning each parent's exercise of custody rights at the time of removal; and
- Consider the necessity of affidavits providing statements of law or fact as to custody, custody rights and the exercise of custody just prior to removal.

THE DEFENSES TO RETURN

Under a Hague Convention analysis, the United States Supreme Court instructs that the following are defenses to the return of a child:

Return is not required if the parent seeking it was not exercising custody rights at the time of removal or had consented to removal, if there is a "grave risk" that return will result in harm, if the child is mature and objects to return, or if return would conflict with fundamental principles of freedom and human rights in the state from which return is requested.¹⁹

As a result, it is important to evaluate at intake whether the petitioning parent was, at the time of the retention or removal, actually

exercising custody rights; whether the petitioning person had ever agreed to the removal or retention or whether the child would be subject to a grave risk of physical or psychological harm if returned.

Parental consent and acquiescence are separate and distinct affirmative defenses.²⁰ The consent defense concerns the petitioner's conduct before the contested removal or retention, while acquiescence concerns whether the petitioner by words or action subsequently agreed to or accepted the removal or retention after the fact.²¹ If the party removing a child or children intends to argue one of these defenses, the burden of proof is on the remover.²² As a result, client intake should:

- Identify all evidence that a parent gave consent prior to removal or acquiesced afterwards or to the contrary, declared no consent to the removal;
- Obtain copies of all documentary or written evidence, which might include letters, emails or text messages, an agreement reduced to writing;
- Examine whether the parents purchased a home, otherwise established a residence or obtained employment evidencing agreement as to the child's home;
- Evaluate any evidence of an expected return to another country; and
- Investigate enrollment in schools, activities, programs or services.

ATTORNEY FEE DISCLOSURES AT INTAKE

Pursuant to 22 U.S.C.A. §9007(b)(1), Hague Convention petitioners may be required to bear the costs of legal counsel, court costs incurred with their petitions and

travel costs for the return of a child or children. However, if a court does order the return, it also shall order the respondent to pay the necessary expenses incurred by the petitioner, unless the respondent can establish that such would be clearly inappropriate.²³

According to the 10th Circuit, the “clearly inappropriate” standard provides this court with “broad discretion in its effort to comply with the Hague Convention consistently with our own laws and standards.”²⁴ An award of fees and expenses under the convention and ICARA involves principles of equity.²⁵ As an example, one court admonished:

Indeed, his financial condition is such that it is “clearly inappropriate to award *any* attorney’s fees against him, because he simply will be unable to pay any amount of an award for attorney’s fees and still provide any support to his children, and such an award would

simply convert [Petitioner’s] counsel’s *pro Bono* work into a marital debt.²⁶

At intake, the financial discussion should include the potential cost and burden of Hague Convention litigation.

COUNTRIES THAT ARE NOT HAGUE SIGNATORIES

Apparently, the courts are not uniform in the treatment of parental rights derived from non-Hague countries.²⁷ However, according to the United States Court of Appeals for the 10th Circuit, when a child is removed to a nonsignatory country, there is no remedy under the Hague Convention or ICARA.²⁸ Because the Hague Convention does not address treatment of non-Hague signatories, courts are left with the International Parental Kidnapping Crime Act of 1993.²⁹

JURISDICTION, CALENDAR AND TIMING

Hague Convention cases move quickly, and clients and counsel need to be prepared.³⁰ Article 11 of the Hague Convention directs that contracting states act expeditiously in proceedings for the return of children.³¹ The judicial or administrative entities are to reach a decision within six weeks or they may be asked to explain the lack of a decision.³²

Hague Convention actions must be filed expeditiously as well. Pursuant to Article 12 of the Hague Convention, if there was a wrongful removal or retention and a period of less than a year has elapsed from the date of wrongful removal/return, the court must return the child, and the return is mandatory unless an Article 13 exception applies.³³ If, however, the child has been retained for more than one year, the court gains discretion in whether or not to return the child.³⁴

The time period for filing starts to run from the date of the wrongful

However, according to the United States Court of Appeals for the 10th Circuit, when a child is removed to a nonsignatory country, there is no remedy under the Hague Convention or ICARA.²⁸ Because the Hague Convention does not address treatment of non-Hague signatories, courts are left with the International Parental Kidnapping Crime Act of 1993.

act. As an example, if a child was removed to a country with agreement that the child would be returned Aug. 1, and the child was not returned on that date, Aug. 1 begins the retention.

With respect to choosing the appropriate court for filing, a Hague Convention case may be filed as follows:

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.³⁵

Both federal and state courts have original and concurrent jurisdiction in the place where the child is located.³⁶

CONCLUSION

A careful and expeditious intake is required when a potential international dispute arises concerning a child's country of residence, to determine applicability of the Hague Convention and its implementing framework. While the intake necessarily analyzes each child's habitual residence, it also must analyze the role of each parent in the move or planned move from the habitual residence. While the primary premise underlying the Hague Convention and ICARA is a simple one, the intake analysis is as complicated as are the internationally conflicted families with ties to multiple countries.

ABOUT THE AUTHOR

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ENDNOTES

1. 22 U.S.C.A. §9001(b)(2) (ICARA is "in addition to and not in lieu of the provisions of the Convention."). See also The Hague Convention on the Civil Aspects of International Child Abduction, 1988 WL 411501, which also can be found using the Hague Conference on Private International Law website, www.hcch.net, and selecting "Child Abduction." To review specific Hague Convention history, refer to Hague Conference on Private International Law, Actes et documents de la Quatorzieme session (1980), Tome III, Child abduction (ISBN 90 12 03616 X, 481 p.).
2. See *Shealy v. Shealy*, 295 F.3d 1117, 1121 (10th Cir. 2002).
3. *Id.*; see also *Navani v. Shahani*, 496 F.3d 1121, 1124 (10th Cir. 2007).
4. *Navani*, 496 F.3d at 1129; see also *Ogawa v. Kang*, ___ F.3d ___, 2020 WL 119960 at *2 (10th Cir. 2020).
5. See Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, found at www.hcch.net.
6. 22 U.S.C.A. §9003(e)(1)(A and B).
7. *Navani*, 496 F.3d at 1128.
8. *Id.* at 1124.
9. See *Toren v. Toren*, 191 F. 3d 23, 27(1999) ("We conclude that the district court jumped the gun by addressing the issue of the children's habitual residence prior to making the threshold determination as to whether there had been any retention of the children at all within the meaning of the Hague Convention.").
10. *Id.* at 28 ("In addition, while it is conceivable that the Massachusetts court could deny the father any visitation with his children, and that this denial of access could amount to a retention, the fact remains that this turn of events has not yet occurred.).
11. *Watts v. Watts*, 935 F.3d 1138, 1144 (10th Cir. 2019).
12. *Holder v. Holder*, 392 F.3d 1009, 1015 - 1016 (9th Cir. 2004) (internal citation and quotation marks omitted).
13. *Id.*; see also *Mozes v. Mozes*, 239 F.3d 1067, 1078 (9th Cir. 2001) ("Most agree that, given enough time and positive experience, a child's life may become so firmly embedded in the new country as to make it habitually resident even though there be lingering parental intentions to the contrary.").
14. See *Delvoye v. Lee*, 329 F.3d 330, 332-333 (3rd Cir. 2003).
15. *Watts*, 935 F.3d at 1143.
16. 22 U.S.C. §9001(b)(4).
17. *Toren*, 191 F. 3d 23, 28-29.

18. See *Ogawa*, 2020 WL 119960 at *6 ("But only by understanding the nature and extent of his rights under Japanese law can we evaluate whether the content of his rights is within the Convention's definition of rights of custody.").

19. *Chafin v. Chafin*, 568 U.S. 165, 169, 133 S.Ct. 1017, 1021-22 (2013).

20. *Padilla v. Troxell*, 850 F.3d 168, 175 (4th Cir. 2017) ("Consent and acquiescence are two separate and 'analytically distinct' affirmative defenses.").

21. *Id.*; see also *Baxter v. Baxter*, 423 F. 3d 363, 371 (3rd Cir. 2005).

22. 22 U.S.C. §9003(e)(2).

23. 22 U.S.C.A. §9007(b)(3).

24. See *West v. Dobrev*, 735 F. 3d 921, 932 (10th Cir. 2013) (awarding fees, costs and expenses to be paid by university professor/father to lawyer/mother, where the father was not blameless).

25. See *Mendoza v. Silva*, 987 F. Supp. 2d, 910, 916 (N.D. Iowa 2014) (finding that the father had a good faith belief that the parties had agreed that he would take the children to the United States and that awarding fees against him now would interfere with his ability to provide support to his children).

26. *Id.* at 917.

27. See Lexi Maxwell, "The Disparity in Treatment of International Custody Disputes in American Courts: A Post-September 11th Analysis," 17 *Pace Int'l L. Rev.* 105, 125-127 (Spring 2005).

28. *De Silva v. Pitts*, 481 F.3d 1279, 1284 (10th Cir. 2007).

29. 18 U.S.C. §1204.

30. *Chafin*, 133 S.Ct. at 1027-1028.

31. *Id.* at 1021-22.

32. Hague Convention, *supra* note 1, at art.11.

33. See Hague Convention, *supra* note 1, at art.12.

34. *Id.*

35. 22 U.S.C. §9003(b).

36. 22 U.S.C. §9003(a).



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Legislative Monitoring Committee Gears Up for 2020 Session

By Miles Pringle

HELLO FROM THE Legislative Monitoring Committee! The committee has been hard at work gearing up for the 2020 session of the Oklahoma Legislature. As you may know, the purpose of the committee is to monitor legislation that affects the practice of law and to inform members around the state as to the status of said legislation. To that end, the committee recently organized the Legislative Kickoff (a renaming of Legislative Reading Day).

At the Legislative Kickoff lawyers presented 90 bills in 90 minutes on topics from family law to criminal law. Additionally, Chief Justice Gurich gave a presentation on ethical issues relating to cannabis, and we were joined by a panel of legislators to discuss their views on the upcoming session. We greatly appreciate all of the wonderful speakers who gave their time and energy to the kickoff!

ISSUES FOR THE 2020 SESSION

Perhaps some of these issues will have been resolved by the time of publication, but there appear to be several issues the Legislature will be focusing on. First, as in every year, the budget will be a top priority. On Dec. 20, the Oklahoma Board of Equalization certified \$8.3 billion of available revenue to spend on next year's budget. This may make the budgeting process tough as

this means revenues are expected to be relatively flat from last year; however, it is still a welcome reprieve from the declining revenues we recently experienced.

Second, also related to revenue, renegotiations of the gaming compacts between the state and the tribes has been making headlines. This dispute has made its way into the courts to interpret whether or not the compacts auto-renewed on Jan. 1 of this year. If an agreement is eventually reached, the Legislature may need to draft legislation to codify the compacts.

Other issues are health care, criminal justice reform and cannabis. The state continues to grapple with if/how to handle Medicaid expansion, and efforts have been made to bring this issue to the voters. Legislators from both sides of the aisle are in favor of doing more on criminal justice, and it appears bail reform may be the next piece that gets addressed. How to properly regulate the exploding cannabis industry in Oklahoma remains a moving target for law makers as well. Come to the OBA's Day at the Capitol to get an update on these and many other issues!

OBA DAY AT THE CAPITOL

Mark your calendars for OBA's Day at the Capitol on Tuesday, March 10, at the Oklahoma Bar Center. This event is a good

opportunity for OBA members to hear from government officials on their views of the ongoing session. We plan to have representatives from the Supreme Court, Governor's Office and Office of the Attorney General. Afterward, attendees are invited to go over to the Capitol and meet with legislators.

In addition to learning more about what is going on at the Capitol, the OBA's Day at the Capitol is the committee's opportunity to inform legislators about the OBA and that lawyers in the state are happy to be a resource for legislators to consult. We make it clear the OBA is a nonpartisan arm of the Oklahoma Supreme Court made up of attorneys licensed to practice law in this state. The OBA has no position on any particular legislation (unless it is a "bar bill" approved at the OBA's Annual Meeting), but we are happy to connect legislators with attorneys who have experience in the subject matter he/she may have questions about.

Please contact Debbie Brink at debbieb@okbar.org, or by calling 405-416-7014 (or 800-522-8065) to RSVP for this event.

LEGISLATIVE CALENDAR

As an overview of the legislative process in Oklahoma, here are some important dates for you to be aware of:

- Jan. 16: Deadlines for the introduction of bills and joint resolution, and minor redraft requests
- Feb. 3: First day of the Second Regular Session of the 57th Oklahoma Legislature
- March 12: Deadline for third reading of a bill or joint resolution in the house of origin
- April 23: Deadline for third reading of a bill or joint resolution in the house opposite the house of origin
- May 29: Sine Die Adjournment

JOIN THE COMMITTEE

I encourage you to become a member of the Legislative Monitoring Committee, the OBA's largest committee and one of its most active with attorneys participating from around the state. If you are already a member, continue to sign on and use the MyOKBar Communities page to communicate with the committee. If you have a bill that needs to be posted for others to see, please do so. If you have any suggestions or questions, please feel free to contact me through the LMC Communities page.

Mr. Pringle is general counsel for The Bankers Bank and serves as the Legislative Monitoring Committee chairperson.



NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE OKLAHOMA INDIGENT DEFENSE SYSTEM BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract ("Offers") to provide non-capital trial level defense representation during Fiscal Year 2021 pursuant to 22 O.S. 2001, '1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2021 (July 1, 2020 through June 30, 2021) in the following counties: **100% of the Oklahoma Indigent Defense System caseloads in THE FOLLOWING COUNTIES:**

**CRAIG, GARFIELD, GARVIN, GRANT, KAY
MCCLAIN, MCINTOSH, NOWATA, ROGERS**

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board's consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor, traffic, youthful offender and wildlife cases in the above counties during FY-2021 (July 1, 2020 through June 30, 2021). Offers may be submitted for complete coverage (100%) of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m.

[The deadline for submitting sealed Offers is 5:00 PM, Thursday, March 12, 2020.](#)

Each Offer must be submitted separately in a sealed envelope or box containing one (1) complete original Offer and two (2) complete copies. The sealed envelope or box must be clearly marked as follows:

FY-2021 OFFER TO CONTRACT
_____ COUNTY / COUNTIES

TIME RECEIVED:
DATE RECEIVED:

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to OIDS, FY-2021 OFFER TO CONTRACT, P.O. Box 926, Norman, OK 73070-0926. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at 111 North Peters, Suite 500, Norman, OK 73069. **Please note that the Peters Avenue address is NOT a mailing address; it is a parcel delivery address only.** Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 PM, THURSDAY, March 12, 2020 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 13 2020, beginning at 9:30 AM, and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Non-conforming Offers will be rejected on Friday, March 13, 2020, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 27th, 2020, at a place to be announced.**

With each Offer, the attorney must include a résumé and affirm under oath his or her compliance with the following statutory qualifications: presently a member in good standing of the Oklahoma Bar Association; the existence of, or eligibility for, professional liability insurance during the term of the contract; and affirmation of the accuracy of the information provided regarding other factors to be considered by the Board. These factors, as addressed in the provided forms, will include an agreement to maintain or obtain professional liability insurance coverage; level of prior representation experience, including experience in criminal and juvenile delinquency proceedings; location of offices; staff size; number of independent and affiliated attorneys involved in the Offer; professional affiliations; familiarity with substantive and procedural law; willingness to pursue continuing legal education focused on criminal defense representation, including any training required by OIDS or state statute; willingness to place such restrictions on one's law practice outside the contract as are reasonable and necessary to perform the required contract services, and other relevant information provided by attorney in the Offer.

The Board may accept or reject any or all Offers submitted, make counter-offers, and/or provide for representation in any manner permitted by the Indigent Defense Act to meet the State's obligation to indigent criminal defendants entitled to the appointment of competent counsel.

FY-2021 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2016, FY-2017, FY-2018 FY-2019 and FY-2020 together with a 5-year contract history for each county listed above. The request form below may be mailed to **OIDS OFFER-TO-CONTRACT PACKET REQUEST, P.O. Box 926, Norman, OK 73070-0926, or hand delivered to OIDS at 111 North Peters, Suite 500, Norman, OK 73069 or submitted by facsimile to OIDS at (405) 801-2661.**

REQUEST FOR OIDS FY-2021 OFFER-TO-CONTRACT PACKET

Name: _____ OBA #: _____

Street Address: _____ Phone: _____

City, State, Zip: _____ Fax: _____

County / Counties of Interest: _____



New Decade Will Bring Significant Changes to the OBA

By John Morris Williams

THE NEWNESS HAS WORN a bit off New Years. However, we are not only off to a start of a new year, we are stepping into a new decade. To be honest, I never thought what I would be doing in 2020. As a kid, I would calculate to the turn of the century and that seemed forever away, but here we are in 2020 and the decade of the '20s.

I have no crystal ball and certainly am not a visionary. However, there are few things you might want to consider as we begin the march to 2030.

Except for one, all the management staff at the OBA will retire in this decade. Over 200 years of experience will be exiting the building. The good news is the OBA has been able to attract and retain talent. The bad news is the calendar is not on our side in keeping all these talented and dedicated folks.

The '20s will be a time of transition not only of the OBA staff, but of the profession as a whole. I have previously written that most law firms in this decade will be run by millennials (born between 1980 and 2000). They will likely make up a large portion of the management and governance of the OBA.

Historically millennials are not a generation that sticks around anywhere long enough to get a gold watch at retirement. Let's face it, most may not even have a watch because the time is on their phones. My guess is this will bring innovation and greater technology

usage. Both of which will require resources and ingenuity.

When I came to the OBA almost 18 years ago, I was the age millennials are now. My fear then, and my fear now, is how much changes in technology will capture resources and change the way we interact and deliver legal services. My fears are not based on necessarily bad results, but my ability to keep up. As sad as it seems, there are those of us who are no longer able to keep up, and enjoying this decade outside of the practice of law might be something many need to start considering.

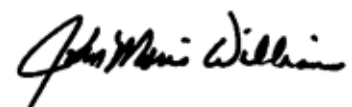
Artificial intelligence is developing rapidly. This technology will offer efficiency to discovery processes that have previously been very time consuming. All the data we now collect and save without a good method to review and analyze will become more manageable. The data may also reveal some things about us that are hard to live with. The data could tell you what's "best" and "worst" in many areas, like the "best" month for billable hours and the "worst" month for new client intake.

I do want to encourage those who embark on this new decade of data analytics to not use the data as a means of validation, or fortune telling of doom, but use it as a tool to improve. When I came to the OBA, I spent a considerable time reading old bar journals. It was old school data analytics. My purpose was not to find a path back. My

goal was to get a grasp of where we came from and how we got here. My hope was that it would help me to see where we needed to go next.

In my bar journal reading quest, I discovered about every decade the OBA reinvented itself in some way. Additionally, I discovered that generationally we have repeated ourselves. For example, in the 1960s we had a committee relating to military law and service. In the last decade, we created a similar committee and added a complimentary section. Our current Legislative Monitoring Committee, which has sprung back to life in the last decade, was created in the 1960s for the purpose of members coming to the OBA on a Saturday and reading every pending (printed) bill in the Legislature. Technology has changed accessibility of the materials, but our need for information remains the same. If history repeats itself, as it tends to do, bar journals from the 1970s may have more relevance than we now anticipate.

To those coming into the legal profession and those going out in this decade, I hope the analytics show that you did well and the '20s was a great decade for the OBA and all its members.

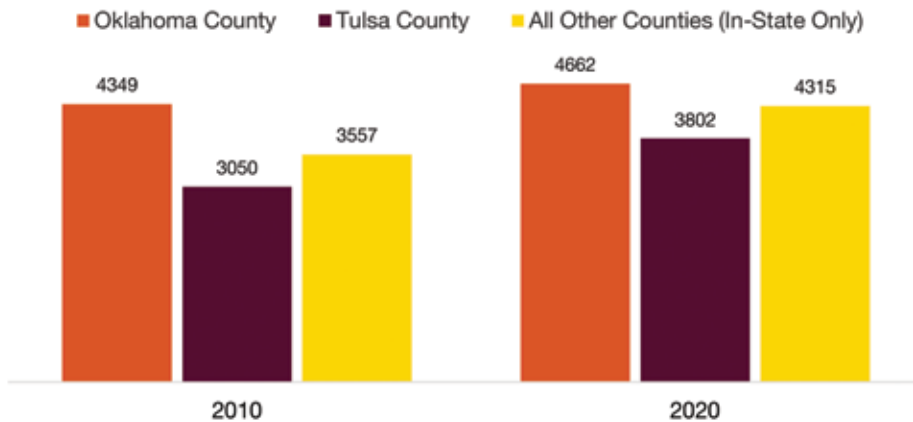


To contact Executive Director Williams, email him at johnw@okbar.org.

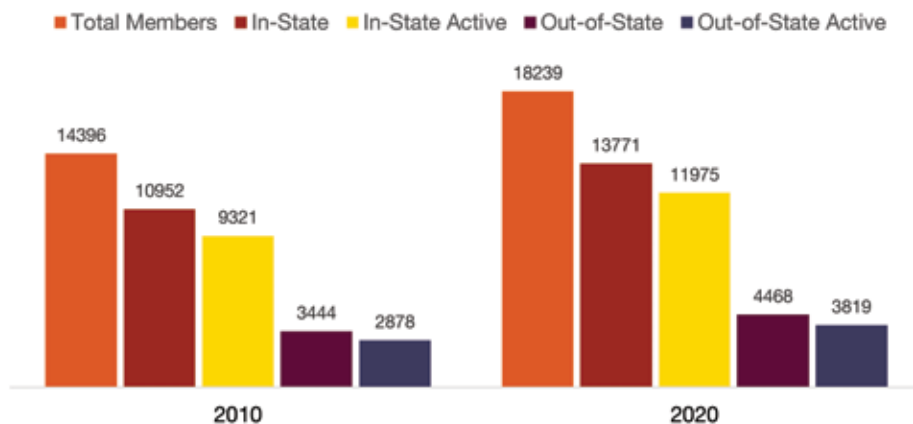
FROM THE PRESIDENT

(continued from page 4)

Active Member Geographical Data



Total Membership Data



the next 10 years, causing a need to re-examine the dues structure. The OBA has not had a dues increase since 2005, despite a total rise in consumer prices of about 35% from 2005 to 2020. I think we all get a lot of “bang for our buck” from our dues and the fact that our dues have not changed for the last 15 years is a result of outstanding stewardship of our funds by our bar staff and bar leaders over that period.

To sum up the state of the OBA, the financial health of the OBA is strong and Oklahoma lawyers continue to be in good hands with our OBA staff and many

volunteer leaders. If you are not already taking advantage of the exceptional benefits that your dues pay for – including free Fastcase legal research, ethics counsel and law practice management advice and services, the LHL hotline and counseling resources, our general counsel’s office, a top-notch CLE Department and section and committee memberships and resources, to name a few – I encourage you to do so. You will be glad you did.

As always, please do not hesitate to contact me with your questions, comments and suggestions.

The Risks of Technology Incompetence

By Jim Calloway

SOME 38 STATES have adopted the “duty of technology competence” either by modifying a comment to their rule of professional conduct to provide that lawyer competency includes understanding “the benefits and risks associated with relevant technology” or adopting a formal ethics opinion.¹

Many readers will have read dozens of blog posts, tweets and articles criticizing lawyers for their “reluctance,” “stubbornness,” “recalcitrance” or other pejorative terms for failing to be appropriately tech savvy. Others have attended CLE programs promising simple and understandable information about legal tech only to experience the speaker using what seemed like a different language.

Technological incompetence is nothing new. Fax machines and word processors transformed law office operations. Yet, soon someone faxed sensitive documents to opposing counsel’s paralegal with the same first name as the intended recipient or experienced word processing woes of “I forgot to save” or “I overwrote that file.”

There are significant risks to a lawyer today for being technologically incompetent. Most of these risks are easy to appreciate even though mitigating them may require some effort depending on an individual’s knowledge. Let’s talk about the risks.

THE RISK OF HARMING A CLIENT BY LACK OF KNOWLEDGE

There is virtually no risk that a state disciplinary authority will investigate or take action against you for lack of knowledge of Twitter or lack of Excel skills unless you were incompetently representing a client on a matter involving Twitter or made an Excel mistake that harmed a client. However, a lawyer today must have a baseline understanding of today’s technology and the inherent risks accompanying that technology. As with the substantive law, you must know enough to spot the issues. Colloquially stated, you don’t have to know everything, but you have to know what you don’t know.

“Professed technological incompetence is not an excuse for discovery misconduct” is not a court holding you want to see.² The self-defense argument of “I have to confess to this court, I am not computer literate. I have not found presence in the cybernetic revolution. I need a secretary to help me turn on the computer. This was out of my bailiwick” made this lawyer somewhat of a legal tech legend.

Lawyers must master many subjects that are more complex than common business technology. It is just a matter of adjusting the mindset from “I don’t understand this” to “I’m going to figure this out.”

Attend legal tech CLEs. Becoming familiar with online search is the key to finding many answers. If you have a technology question, there is an article, a blog post or a YouTube video with the answer. We all rely on familiar experts’ writings and authoritative publications online. Oklahoma lawyers can consult with your two full-time OBA practice management advisors.

THE RISK OF AN INADVERTENT DISCLOSURE

No good lawyer would intentionally share a client’s confidential or privileged information, but when most valuable information is held in digital format on computers connected to the internet, the risk of accidentally sharing client information or other inadvertent disclosure is significant.

Some lawyers work in a firm where the IT Department handles most cybersecurity matters. Every lawyer needs to understand the basics, and lawyers in smaller firms with no dedicated IT staff need a greater understanding.

The basics begin with making sure your antivirus, virtual private network (VPN) and firewall software subscriptions are paid for and up-to-date. Your operating system should be set to automatic update. Right now, your operating system is directly related to your technology competence. Support for



Windows 7 (including any security updates) ended Jan. 14, 2020, and thereafter should not be used for working on client matters unless the computer is offline and not networked with other computers.

THE RISK OF LOSING YOUR (OR, WORSE, YOUR CLIENTS') MONEY

A San Diego lawyer clicked on a bad link (or attachment) in an email. Malware was then installed that allowed an individual to monitor the lawyer's keystrokes. Soon the lawyer's access to his bank account was blocked and he received a phone call from a supposed bank employee offering to assist. The "assistance" culminated in \$289,000 being transferred from the lawyer's bank account to a Chinese bank, where it was withdrawn. This is a bad situation, but would have been even worse had

the transfer been from the lawyer's trust account and the lawyer could not immediately cover the loss.

Many scams are powered by today's technology. I often advise lawyers to tell their staff they are never to wire any money because of any email or other electronic communication from the lawyer. Any wiring instructions should be confirmed in a face-to-face conversation or at least a telephone conversation. We are now seeing the rise of "deep fakes," which means if there are enough audio clips of an individual available online, a wrongdoer can use artificial intelligence to assemble conversational speech that sounds like it comes from the lawyer. Maybe we will all have to establish secret "code words" so our co-workers and family will know they are talking with us and not a software construct.

THE RISK OF OVERSHARING ON SOCIAL MEDIA (OR IN PERSON)

If you have attended a CLE program on the intersection of legal ethics and technology, you probably have heard some social media horror stories. There's the former Illinois assistant public defender who blogged about problematic clients and judges she disrespected with enough information to identify those individuals using public sources. She was fired and her law license was suspended. There's the story of the Florida lawyer defending a man in a homicide trial who caused a mistrial by posting a picture of the leopard print underwear included in clothing the family brought for the defendant to wear in court. Several lawyers have also been disciplined for responding to online negative client reviews

in ways that revealed confidential information.

Social media and attorney-client confidences do not mix. If you are certain that your client would approve of your online postings, then there's a simple solution. Show them to the client in advance and get the client's written permission.

Here is a risk that some haven't considered - sharing "war stories" as a CLE presenter or to groups of lawyers. Some lawyer may be live-tweeting your presentation from the back of the seminar room. Giving real-world examples from past cases is a great educational tool, but make certain you are cautious about dates, court locations and fact patterns since information is available that could allow someone to ferret out the identity of your client. In today's environment, any statement prefaced with "my client said" may be problematic for a presenter.

THE RISKS OF EMAIL

At this point, one could write an entire law school textbook on the risks of email.

We all should understand that your greatest cybersecurity risk is you or someone else in your office clicking on an attachment or a link in an email that infects your

system with a virus or encrypts all your data in a ransomware attempt. Because this is one of your greatest security threats, regularly counsel your staff about not clicking on attachments or links in emails unless they are absolutely sure the emails are legitimate.

Every lawyer in private practice who uses email (which is essentially every lawyer) should read ABA Formal Opinion 477R "Securing Communication of Protected Client Information"³ and Opinion 648 from the Texas Center for Legal Ethics.⁴ Email is not secure. Even though our ethics opinions say that lawyers may use unencrypted emails to communicate with clients generally, there are many times that the contents of an email will make such communication inappropriate. Therefore, a law firm must have an alternative method of communication available even if the firm has decided to continue using standard email. Otherwise, lawyers will soon find themselves in the position of knowing something should not be sent out via standard email but having no safer alternative. At a minimum, a law firm should not email attachments containing important personal data and account numbers such as income tax

returns, brokerage or bank account statements or qualified domestic relations orders.

The best practice for solo and small firm lawyers is to use a case management system that provides for client portals that allow secure communication. Unencrypted emails can then be used only sparingly such as for rescheduling an appointment time. Many clients who do not want to deal with an encryption/decryption process will have no problem logging into a portal. Most already do this for banking and shopping. In addition, the portal can contain all the documents associated with a matter, which is a great client service. It is possible that at some point a formal ethics opinion will be issued prohibiting many, if not most, unencrypted email communications. Smart lawyers will place themselves ahead of the curve on this issue.

You must even be cautious about how your firm sets its spam filter. One Florida law firm set its spam filter to automatically delete spam. Later the system determined that a court order assessing attorney fees was spam and deleted it, so it was never seen by the attorneys. The 1st District Court of Appeal in Florida ruled that even though the attorneys never received the order,

We all should understand that your greatest cybersecurity risk is you or someone else in your office clicking on an attachment or a link in an email that infects your system with a virus or encrypts all your data in a ransomware attempt.

the failure to file a timely appeal under these circumstances did not constitute excusable neglect.

Some lawyers embarrass themselves or others by adding recipients to “email conversations.” It is not unheard of for a lawyer joining such an email conversation thread to scroll down and review the previous emails to see what discussion they missed. It is also not unheard of for that lawyer to see their name or their firm’s name mentioned in a derogatory context. Emailing with dozens of other previous emails included, some dating back significantly in time, is asking for trouble. Delete those prior threads. The recipients already have a copy.

Here’s another simple tip: never use the blind carbon copy (BCC) function on your email. Those who receive the BCC may reply and reveal to the other recipients you were secretly sending out copies. This may not rise to the level of an ethics violation but it’s not positive for your reputation. When tempted to BCC, email without it instead. Then go to your sent items folder and forward the email to whoever you wanted to BCC.

THE RISK OF LOSING VALUABLE CLIENT DATA

Lawyers often are concerned about external threats when your internal processes may also subject clients to another huge risk - loss of their data. A virus infection or ransomware encryption of your office computers is a headache and can knock the office offline for a week or more, but there is a path to recovery if you have a recent backup of your data. If you are doing do-it-yourself data backup and have the external backup drives attached to your computers when the ransomware strikes, your data backups could also be encrypted, resulting in the firm losing all its digital information. The first thought then is hoping that



your professional liability insurance premiums are current and recognizing that you must report this loss to your clients, which could be one of the most painful episodes of your legal career.

Many small firm lawyers also prefer to use laptops and may fail to back these up as regularly as the other computers on the network. Lawyers who use cloud-based practice management solutions have all their client file documents, communications records, billing records and other documents safely preserved by their provider, which is another reason that solo and small firm lawyers should strongly consider using a cloud-based practice management solution.

Lawyers who have not gone paperless and have only paper client files might feel they have benefited from this practice if there is a digital disaster, but they will be in worse shape if there is a physical disaster such as a fire, tornado or hurricane that destroys the physical client files.

ABA Formal Opinion 482 “Ethical Obligations Related to Disasters”⁷⁵ states that a lawyer’s obligation to protect critical client

information remains unbroken even if the lawyer is personally impacted by a disaster. The opinion states that the possibility of a file-destroying disaster requires a lawyer to make contingency plans. The opinion states that “[t]o prevent the loss of files and other important records, including client files and trust account records, lawyers should maintain an electronic copy of important documents in an off-site location that is updated regularly.” This states there is a duty to digitize critical client information. As a practical matter, given the challenges of making regular determinations of what is critical and the efficiency gains of using digital client files, this may be interpreted by many as a duty to digitize the entire file.

THE RISKS OF MOBILE TECHNOLOGY

To round up our tour of risks, we should consider challenges with mobile technology- the always-present mobile phones and tablets.

It is hard to imagine a practicing lawyer today without access to the law office email and calendar on his or her mobile phone.

Because that abundant supply of client information is available to anyone using the phone, it is therefore mandatory for these lawyers to have a passcode lock on their phone. Certainly, you could lend your phone to someone who needed to make a phone call, but it's not paranoid to suggest that you shouldn't let the phone get out of your sight. Lawyers who exchange text messages with clients should consider that text messages may be previewed on the lock screen. Some cautious lawyers will disable the message preview function on their phones or at least make certain that their phones are always placed face-down when they are with others.

Access to information on a lost phone is protected by the lock code, but the lawyer should still understand how to remotely wipe the phone of data when it is permanently lost. It should go without saying that your lock code for your phone should not be a number publicly associated with you, such as your street address number.

The tech-savvy lawyer will also appreciate that seizure and searches of mobile phone data at our borders are increasingly common even for a U.S. citizen returning from a trip. There are concerns about phone security when used in some authoritarian countries. Some lawyers will opt to buy a burner phone that will contain no client data for trips overseas while others might delete documents, email and calendar apps from their phone and then restore them when they return.

CONCLUSION

There are many different "bumps in the road" the practicing lawyer may experience. The new ethical "duty of technology competence" was not forced on lawyers by regulators. These rule changes recognize the reality of business operations today. It is the existence and use of modern technology tools that requires the lawyer using these tools to consider both the risks and potential benefits of the technology they use in representing their clients.

Author's Note: This column was originally published in the American Bar Association's GPSOLO magazine with the theme of "Digital Bumps in the Road" [November/December 2019]. We are reprinting it here because it covers important information for all Oklahoma lawyers. It has been lightly updated.

Mr. Calloway is OBA Management Assistance 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. Visit Robert Ambrogi's *LawSites* blog at lawsitesblog.com/tech-competence for the current list of jurisdictions.
2. *James v. Nat'l Fin. LLC*, No. CV 8931-VCL, 2014 WL 6845560 (Del. Ch. Dec. 5, 2014).
3. www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_477.pdf, May 22, 2017
4. www.legalethicstexas.com/Ethics-Resources/Opinions/Opinion-648.aspx, April 2015.
5. www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_482.pdf, Sept. 19, 2018.



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Stange Law Firm, PC is responsible for the content. Headquarters office: 120 South Central Avenue, Suite 450, Clayton, MO 63105. Kirk Stange is licensed in Missouri, Illinois and Kansas.

THE OBA IS HIRING.

**Oklahoma Bar Association is seeking a
director of educational programs.**

SUMMARY The Oklahoma Bar Association, the leading provider of continuing legal education in the state of Oklahoma, seeks a director of educational programs. The position manages and directs the OBA's CLE Department and other educational events for the association. The OBA CLE Department offers comprehensive and unique live programming for Oklahoma lawyers and has an impressive list of online programs that are available to lawyers nationwide. The OBA is a mandatory bar association of 18,000 members with its headquarters in Oklahoma City.

REQUIREMENTS

- Five years of legal practice, CLE management and/or marketing experience
- Law degree required; preference given to those licensed to practice in Oklahoma
- Must be self-motivated, positive, dependable and creative
- Possess a high degree of integrity and work well with others to achieve common goals
- Highly organized and able to handle multiple projects and deadlines
- Knowledge of budgeting processes and ability to effectively oversee budgets
- Must be able to meet member needs in a fast-paced work environment
- Exceptional attention to detail
- Strong oral, written and interpersonal communication skills and the ability to work effectively with a wide range of constituencies
- Ability to build relationships with faculty, participants and outside vendors
- Problem solver, quick thinker and idea generator
- Must be able to work within limits of an inside office position plus haul and transport equipment or materials required to conduct a CLE seminar

SKILLS

- Must be able to function in a Windows desktop environment
- Proficient in Microsoft Office including Outlook and Excel
- Internet resource, research and marketing expertise
- Experience with online CLE presentations

Send cover letter and resume by March 16, 2020, to johnw@okbar.org.

All inquiries and applications will be kept confidential.

Anticipated start date May 1.

The OBA is an equal opportunity employer.

Breaking Up is Hard to Do

Can We Still Be Friends?

By Richard Stevens

JUDGING BY THE NUMBER of calls I have received it appears that after the holidays is the time for professional legal associations to break up. These breakups can be stressful for both the lawyers and the clients involved creating a number of issues to be considered by both the attorney who leaves and the lawyer or lawyers who remain. Recently released ABA Formal Ethics Opinion 489 outlines ethical considerations for lawyers and law firms breaking up.

The very first obligation for lawyers involved in a breakup is ensuring that clients are diligently represented under ORPC 1.3 and 3.2. Lawyers must communicate information to their clients in a timely manner, including promptly notifying a client if a lawyer is changing law firm affiliations, and law firms may not restrict that communication. Departing lawyers and the remaining lawyers (or law firm) should attempt to reach an agreement on a joint communication informing clients of the lawyer's imminent departure.

This communication should give the clients the option of remaining with the firm, going with the departing attorney or choosing another attorney. If the departing attorney and firm are unable to agree on a joint communication, then both are free to contact clients to inform them of the lawyer's impending departure

and to offer the client to be represented by the firm, another firm or the departing lawyer. Neither the departing or remaining lawyers (or firm) may engage in false or misleading statements to clients.

Firms may request a reasonable notice period to ensure the client's

needs are met, but those notice periods may not infringe on the client's right to choose counsel or the lawyer's right to change firms. ORPC 5.6 prohibits restrictions on the client's choice of counsel and the lawyer's right to practice.

FREE COUNSELING FOR BAR MEMBERS

The OBA offers all bar members up to six hours of free short-term, problem-focused or crisis counseling. The service is strictly confidential. For help with stress, depression or addiction, call the Lawyers Helping Lawyers hotline at 800-364-7886 to be referred to a counselor in your area. The hotline is available 24 hours a day, 7 days a week. Identifying participant information is not made available to the OBA, and services are provided through a separate, contracted organization.

The hotline is answered by a counseling/mental health service. After-hours calls are answered by a licensed mental health professional. Calling the hotline is always the first step to receive help or information.

Call the hotline for:

- Stress
- Relationship challenges
- Depression/anxiety
- Substance abuse
- Short-term counseling
- Referrals
- Interventions
- Consultations
- Education
- Request for an LHL Committee member mentor
- Help for someone else who has a problem

Departing lawyers must be given access to resources that would normally be available to represent the client during any period of transition after the firm knows the lawyer intends to depart – but before such departure. The firm should allow the lawyer to retain any communications, in accordance with the client’s directions, pertaining to clients continuing to be represented by the departing lawyer.

ABA 489 makes clear that “[c]lients are not property” and lawyers and law firms “may not divide up clients” upon a dissolution of a firm or when a lawyer leaves a firm. Clients must be notified promptly when a lawyer leaves a firm so they may choose who is going to represent them.

Departing lawyers and remaining lawyers are responsible for orderly transitions. Both must coordinate to make sure all client records are organized and suitable for transfer according to the client’s choices. A firm must also ensure it has the capacity and expertise to continue the representation after the lawyer’s departure, should the client choose to be represented by the firm. Law firms should establish policies and procedures to affect these goals.

Both parties are responsible to protect the confidentiality of client information, but the departing

lawyer may retain names and contact information for clients for whom they worked in order to determine conflicts in future representation.

This article represents my summary of ABA Formal Ethics Opinion 489. I have included what I believe to be the most common issues presented by lawyers departing a professional legal association. I encourage anyone involved in this situation to read the full opinion.

Mr. Stevens is OBA ethics counsel. Have an ethics question? It’s a member benefit, and all inquiries are confidential. Contact him at richards@okbar.org or 405-416-7055. Ethics information is also online at www.okbar.org/ec.

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 Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Committee

Meeting Summary

The Oklahoma Bar Association Board of Governors met Dec. 13, 2019, at the Oklahoma Bar Center in Oklahoma City.

REPORT OF THE PRESIDENT

President Chesnut reported he attended numerous Annual Meeting events including presiding over General Assembly and attending the YLD meeting and House of Delegates. He also attended the Board of Governors holiday dinner.

REPORT OF THE VICE PRESIDENT

Vice President Neal reported he attended the House of Delegates, General Assembly, Delegates Breakfast, OBA Annual Luncheon and OBA Annual Meeting evening social events. He also spoke to the OBA Leadership Academy.

REPORT OF THE PRESIDENT-ELECT

President-Elect Shields reported she presided over the OBA House of Delegates, presented the 2020 OBA budget at the Supreme Court budget hearing and worked on 2020 OBA committee appointments, articles and other 2020 planning matters. She attended the OBA Annual Meeting, OBF Trustee meeting, Lawyers Helping Lawyers Assistance Program Committee meeting and follow up meetings and discussions about the program, swearing in of Justice Kane to the Oklahoma Supreme Court, two uniform bar exam advisory committee meetings and board Christmas party.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended Annual Meeting events including General Assembly and House of Delegates, budget hearing at the Supreme Court, Oklahoma County Bar Association holiday event, staff luncheon, Professional Responsibility Commission luncheon, OBA Board of Governors holiday dinner, swearing in of Justice Kane and Lawyers Helping Lawyers Assistance Program Committee planning meeting. He also worked with staff and President-Elect Shields on the process for filling a retiring director position.

REPORT OF THE PAST PRESIDENT

Past President Hays reported she attended the House of Delegates, General Assembly, Delegates Breakfast, OBA Annual Luncheon, Annual Meeting evening social events and OBA Family Law Section annual meeting, assisting with the business meeting and CLE. She also delivered remarks to the OBA Leadership Academy, assisted the OBA Family Law Section with 2020 planning and planning the board's has been party.

BOARD MEMBER REPORTS

Governor Beese reported he attended the OBA Annual Meeting including the House of Delegates, Muskogee County Bar Association annual banquet, MCBA meeting and Board of Governors Christmas party. **Governor DeClerck** reported

he attended the OBA Annual Meeting and Garfield County Bar Association Christmas party. He also continued investigation and planning for the board's meeting in Enid in October 2020. **Governor Fields**, unable to attend the meeting, reported via email he attended the Annual Meeting including the Resolutions Committee meeting and House of Delegates. He also attended the Pittsburg County Bar Association Christmas party.

Governor Hermanson, unable to attend the meeting, reported via email he attended the OBA Annual Meeting, OBA Annual Luncheon, Oklahoma District Attorneys Fall Conference, District Attorneys Council Executive Committee meeting, District Attorneys Council meeting, DAC Legislation Committee meeting, OBA Law Day Committee meeting, OBA Delegates Breakfast, OBA General Assembly, OBA House of Delegates, Pioneer Technology Advisory Council meeting on criminal justice and Kay County Bar Association meeting. **Governor Hicks** reported he attended the OBA Annual Meeting, Clients' Security Fund meeting and opening of the Tulsa County Juvenile Justice Center. **Governor Hutter** reported he attended the OBA Annual Meeting, House of Delegates and Board of Governors Christmas party. **Governor McKenzie** reported he attended the OBA Annual Meeting including the House of Delegates. He also conducted a 12-hour continuing legal education program

on criminal jury trials. **Governor Morton** reported he attended the OBA Annual Meeting, Legislative Monitoring Committee meeting, Member Services Committee meeting, Cleveland County Bar Association presentation on the Impaired Driver Accountability Program and the board's Christmas party. He also gave a presentation at the Tulsa County Courthouse on the new DUI laws. **Governor Oliver** reported he attended the Lawyers Helping Lawyers Assistance Program Committee meeting. **Governor Pringle** reported he attended the OBA Annual Meeting and OBA Christmas party. He chaired both the Legislative Monitoring Committee meeting and Financial Institution and Commercial Law Section annual meeting. **Governor Will** reported he attended the board's Christmas party. **Governor Williams** reported he participated in the OBA House of Delegates meeting and presided over a Professional Responsibility Tribunal proceeding. He attended the OBA Annual Meeting, Tulsa County Bar Foundation Board of Trustees meeting and TCBA Board of Directors meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Nowakowski reported the division hosted fabulous Annual Meeting events that were well attended. She attended several Annual Meeting events including General Assembly and House of Delegates in addition

to conducting the November YLD meeting.

BOARD LIAISON REPORTS

Governor Hutter said the **Solo & Small Firm Conference Planning Committee** met. The conference will be held June 18-20 at the Choctaw Casino & Resort in Durant. One of the social events will have a *Great Gatsby* theme. The committee is looking at speakers and ways to attract new vendors. Governor Williams said the **Diversity Committee** met and is having a party. Governor Oliver said the **Lawyers Helping Lawyers Assistance Program** hotline changed to another service provider and is going well. Former provider liaison Deanna Harris was hired by A Chance to Change, the new service provider, and will start making presentations to county bars.

Governor Pringle said the **Legislative Monitoring Committee** changed the name of OBA Reading Day to Legislative Kickoff, which will be held Feb. 1. Supreme Court Justice Gurich has already committed to speak on cannabis law. All legislators will be invited. Governor Morton said the **Member Services Committee** watched a demonstration by Tabs3 PracticeMaster, which is offering a member discount as part of its proposal that was approved by the committee. Management Assistance Program Director Jim Calloway said Tabs3 will be added to current benefits. A proposal from Lexology is being considered and tested, and the committee is looking at additional software as member benefits. Past President Hays said the **Women in Law Committee** held networking events for members in Oklahoma

Governor Morton said the Member Services Committee watched a demonstration by Tabs3 PracticeMaster, which is offering a member discount as part of its proposal that was approved by the committee.

Vice Chair Tom Walker, a long-time committee member, questioned the value of the committee because law school reports have become repetitive.

City and Tulsa. As a service project, the committee adopted a family with two children as part of the ReMerge Christmas Giving Program and will organize a group shopping event to purchase gifts for the family.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported a written report of Professional Responsibility Commission actions and OBA disciplinary matters from Oct. 25-Dec. 6, 2019, was submitted to the board for its review.

CLIENTS' SECURITY FUND

President Chestnut briefed incoming board members about the fund and how it works. CSF Chairperson Micheal Salem reviewed the committee's recommendations for claims to be approved. He explained that \$175,000 (plus the interest it earns during the year) is allocated to reimburse clients. When the approved claims exceed the allocated funds, an additional amount up to 10% of the permanent fund may be approved by the Board of Governors. The total amount of approved claims in 2019 is \$794,761.26 requiring the payouts to be reduced on a *pro rata* formulation. General Counsel Hendryx briefed the board on the

status of two former attorneys against whom there were several large claims. Executive Director Williams shared the history of how the fund has been funded. It was noted a task force reviewed the Clients' Security Fund and its funding in 2014. The board voted to approve the claims totaling \$794,761.26, to approve an additional allocation of \$170,820.73 from the permanent fund plus current interest income for a total payout of \$349,524.74 and to issue a news release. The amount of claims paid will be a pro-rated 43% of total claims. Chair Salem thanked Ben Douglas and General Counsel Hendryx for their assistance to the committee throughout the year.

AMENDMENT TO PROCEDURES OF THE OBA GOVERNING THE ELECTION OF LAWYER MEMBERS TO THE JUDICIAL NOMINATING COMMISSION

Executive Director Williams explained the current rule and had the experience of two candidates receiving more than 40%. New language is proposed to clarify the procedure should that happen again. The board approved the amendment to the procedure.

LAW SCHOOLS COMMITTEE REVISED MISSION/CHARTER

Chairperson Gene Thompson said the committee is experiencing a generational shift. Vice Chair Tom Walker, a long-time committee member, questioned the value of the committee because law school reports have become repetitive. The amended charter presents guidelines to allow flexibility, and Article III is an important addition that creates a rotation of leaders. Law school deans contributed suggestions for the document for the purpose of facilitating communication between the association and the law schools. It was noted the proposed charter states the committee shall elect its officers for consideration by the OBA president, which conflicts with OBA Bylaws that empower the president to appoint members of all standing committees. The board voted to modify Article III to substitute the word "recommend" for the word "elect." The board voted to approve the new charter as amended.

EXECUTIVE SESSION

The board voted to go into executive session to discuss the status of litigation. They met and voted to come out of session.

BOARD OF EDITORS APPOINTMENTS

The board voted to approve President-Elect Shields' recommendation to reappoint Melissa G. DeLacerda, Stillwater, as chairperson with a term to expire 12/31/2020; reappoint associate editor C. Scott Jones, Oklahoma City (Dist. 3); and appoint Roy D. Tucker, Muskogee (Dist. 7); terms to expire 12/31/2022.

OKLAHOMA INDIAN LEGAL SERVICES BOARD OF DIRECTORS APPOINTMENT

The board voted to approve President-Elect Shields' recommendation to reappoint Christine Pappas, Ada, term expires 12/31/2022.

PROFESSIONAL RESPONSIBILITY COMMISSION APPOINTMENTS

The board voted to approve President-Elect Shields' recommendation to reappoint Sidney K. Swinson, Tulsa, and appoint Jimmy Oliver, Stillwater, terms expire 12/31/2022.

MCLE COMMISSION APPOINTMENTS

The board voted to approve President-Elect Shields' recommendation to appoint Faith Orłowski, Tulsa, as chairperson, term expires 12/31/2020; reappoint members Adrienne Watt Nesser, Tulsa; Ryan J. Patterson, Coral Gables, Florida; and appoints Denise Cramer, Oklahoma City, terms expire 12/31/2022.

COMMITTEE ON JUDICIAL ELECTIONS APPOINTMENTS

The board voted to approve President-Elect Shields' recommendation to appoint Laura McConnell-Corbyn, Oklahoma City, and lay member John H. Cary, Claremore, and to reappoint Penny Stallings, Holdenville, terms expire 12/31/2027.

YLD LIAISON APPOINTMENTS

YLD Chair-Elect Haygood reported he has appointed a YLD liaison to each OBA standing committee.

APPOINTMENTS

President-Elect Shields announced she has made the following appointments:

Investment Committee – reappoint M. Joe Crosthwait, Midwest City, chairperson; reappoint Kendra Robben, vice chairperson, terms expire 12/31/2020; reappoint members Claire C. Bailey, Norman; William Grimm, Tulsa; and Patrick J. Hoog, Oklahoma City, terms expire 12/31/2022.

Audit Committee – appoint D. Kenyon Williams, chairperson, term expires 12/31/2020; appoint members Jordan Haygood, Oklahoma City, term expires 12/31/2020; Brandi Nowakowski, Shawnee, term expires 12/31/2020; Amber Peckio Garrett, Tulsa, term expires 12/31/2022.

ANNUAL MEETING DATES FOR 2020

President-Elect Shields shared options for dates and locations being considered for the Annual Meeting. Discussion followed. It was decided holding the meeting Monday through Wednesday was not an option.

NEXT MEETING

The Board of Governors met in January, 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, Feb. 21, in Oklahoma City.

6

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



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

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Court Grant Funds in Action

By Judge Jacqueline Stout



Representatives from the Mayes County Court Clerk's Office, District Attorney's Office and Mayes County defense bar join Judges Taylor, Gore and Stout and their staff in thanking OBF for its generous grant for the new courtroom technology at the Mayes County Courthouse.

IN 2019, THE OKLAHOMA BAR Foundation (OBF) awarded \$187,306.59 in funding to 14 Oklahoma counties. Mayes County received the largest grant awarded in the amount of \$69,057.27. This grant money was used specifically to purchase two mobile, high-definition LED interactive touchscreens to be shared among all courtrooms, new microphones, video conferencing equipment for a secured video conference line between Courtroom 2 and the Mayes County Jail, and update all of Courtroom 2's audio/video equipment.

OBF's generosity has enabled Mayes County to provide better security by conducting court appearances with criminal defendants via video conferencing instead of transporting defendants to and from the jail to the courtroom. The two mobile touchscreens are used in all types of hearings and jury trials to play videos and

display documents admitted as evidence for better viewing by the court participants. These touchscreens are shared among four courtrooms and have already been tested and proven successful during the September 2019 jury term. The grant allowed for technology that enabled judges to conduct jury trials in all four Mayes County courtrooms and resolve over 30 cases set for jury trial during the September 2019 jury term.

The improvements accomplished through the grant have greatly impacted Mayes County's legal system, ensuring citizens have the technology resources necessary to efficiently prosecute and defend their cases in today's modern legal environment.

Judge Stout is a special judge for the Mayes County District Court.

The 2020 Court Grant cycle is open now through March 2. For more information about OBF Grants and to fill out the online application please visit: www.okbarfoundation.org/grants/grant-applications.

Since 2008, \$980,390.59 in funding has been awarded to 60 of the 77 counties in Oklahoma, with some counties receiving multiple grants. District and appellate courts in Oklahoma can apply annually to receive grant funding for courtroom technology and needs related to the administration of justice.

Upcoming Ways to Get Involved With the YLD

By Jordan Haygood

OKLAHOMA WEATHER always brings uncertainties, and due to the threat of unexpected snowstorms, the YLD had to postpone its first meeting to Feb. 22. After the February board meeting, the YLD directors and past chairs will host a dinner and “roast” to celebrate the accomplishments of Immediate Past Chair Brandi Nowakowski. Brandi has been a huge asset to the YLD and its growth over the past year. The night

showing up early in the morning, nervous and ready to get that test over with. As I walked in, I received my BESK and remember how good it felt to have fellow young lawyers there to support me and to wish me good luck. The bags will be assembled at our board meeting on Feb. 22, at 10 a.m. at the Oklahoma Bar Center. If you would like to help assemble or help pass out the BESK, please come to our meeting or reach out to me personally.

- CLE Committee – planning and/or co-sponsoring a CLE
- Diversity Committee – increase diversity and inclusion within the legal community, participate in community impact projects with other organizations that serve larger minority populations
- Hospitality Committee – programming and events at Solo & Small Firm Conference and Annual Meeting
- Membership/New Attorney Committee – planning and hosting membership social events, swearing-in ceremonies and organizing BESKs
- Kick it Forward Kickball Tournament Committee – planning, organizing and fundraising kickball tournament for Kick it Forward Program

This year, one of my goals is to have more participation by young lawyers who are not directors.

will be filled with great food and laughter as we share our favorite memories of Brandi throughout her tenure in the YLD. She has become a great friend and confidant, and we are all excited to watch her continued growth and service as the OBA vice president.

With February comes the bar exam, and the YLD is here to support the test takers. The exam will take place Feb. 24-25 in Oklahoma City. The YLD will be at the test site before the exam to pass out bar exam survival kits (BESKs). The BESKs are bags filled with items such as candy, ear plugs, Tylenol, erasers and extra pencils. I remember like it was yesterday

This year, one of my goals is to have more participation by young lawyers who are not directors. One way to increase member participation is by joining one of the YLD committees. Whether you are interested in organizing community service events, planning membership activities or even organizing a kickball tournament, there are several committees you can be a part of. More specifically, the committees we are looking for participation in are:

- Community Service Committee – organizing and planning service projects

If you have questions about any of the above listed committees or are interested in joining one of these committees, please reach out to me.

Mr. Haygood practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at jorday.haygood@ssmhealth.com. Keep up with the YLD at www.facebook.com/obayld.



“Thank you”
is not enough.

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

To volunteer, visit

www.okbarheroes.org



FOR YOUR INFORMATION

NEW BOARD MEMBERS TAKE OATH

Nine new members of the OBA Board of Governors were sworn in to their positions Jan. 17 in the Supreme Court Ceremonial Courtroom at the Oklahoma Capitol.

Officers taking the oath were Susan B. Shields, Oklahoma City, president; Michael C. Mordy, Ardmore, president-elect; and Brandi Nowakowski, Shawnee, vice president. Sworn in to the Board of Governors to represent their judicial districts for three-year terms were Michael J. Davis, Durant; Joshua A. Edwards, Ada; Robin L. Rochelle, Lawton; and Amber Peckio Garrett, at large, Tulsa. Sworn in to one-year terms on the board were Chuck Chesnut, Miami, immediate past president and Jordan Haygood, Oklahoma City, Young Lawyers Division chairperson.



Past President Chuck Chesnut, Vice President Brandi Nowakowski, President Susan Shields and President-Elect Mike Mordy following their swearing in at the Capitol

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, Feb. 17, in observance of Presidents Day. Also, be sure to docket the 2020 Solo & Small Firm Conference in Durant June 18-20.



ASPIRING WRITERS TAKE NOTE

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



LHL DISCUSSION GROUP HOSTS MARCH MEETING

"Keeping Things in Perspective: Wins vs. Losses" will be the topic of the March 5 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 ken.skidmore@cox.net are encouraged to ensure there is food for all.

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

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

OBA MEMBER RESIGNATIONS

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

Robert J. Anderson
OBA No. 285
197 N. Wantagh Avenue
Levittown, NY 11756

Travis Grahn Cushman
OBA No. 30368
3904 W Street NW
Washington, DC 20007

Karen Gail Smolar
OBA No. 32969
118 Bluff Avenue
Carson, RI 02905

Kathy Ault
OBA No. 377
809 Timberdale Drive
Edmond, OK 73034-4257

Janet E. Dech
OBA No. 13186
12928 Black Hills Drive
Oklahoma City, OK 73142

Sheila Diane Timmons
OBA No. 20944
19473 E. 819 Road
Park Hill, OK 74451

Anthony Wayne Benedict
OBA No. 18204
5903 Kayview Drive
Austin, TX 78749

Ryan Michael Fuchs
OBA No. 21182
1634 Leg Iron Dr.
Frisco, TX 75036

Cynthia Ann Crane Troia
OBA No. 9093
641 S. 93rd Street
Omaha, NE 68114

Jason G. Breisch
OBA No. 32214
1532 Greenleaf Drive
Aledo, TX 76008

Mark L. Gibson
OBA No. 12305
3233 Bismarc Lane
Norman, OK 73072

Virgil R. VanDussen Jr.
OBA No. 10147
SWOSU College of Pharmacy
100 Campus Drive
Weatherford, OK 73096

Rebecca Anne Burbridge
OBA No. 21178
99-969 Aiea Heights Dr., Apt. R
P.O. Box 13089
Aiea, HI 96701

Kenny D. Harris
OBA No. 3898
P.O. Box 6656
Lawton, OK 73506-0656

Steven Edward Wegner
OBA No. 9439
104 Bywater Way
Chapel Hill, NC 27516

Lori Ann Pettus
OBA No. 10400
5005 S. Chestnut Ave.
Broken Arrow, OK 74011

KUDOS

Kathy Wallis was named 2019 Prosperity Bank Woman of the Year by the Edmond Chamber of Commerce. Ms. Wallis is the founding attorney of Wallis Law Group and practices primarily in the areas of business law and estate planning.

AT THE PODIUM

Amy J. Pierce and **Steven L. Barhols** presented some best practices on mediation to the Oklahoma Employment Lawyers Association.

ON THE MOVE

Steven K. Metcalf and **William H. Spitler** have formed the firm of Metcalf & Spitler LLP. The firm is located at 20 E. Fifth Street, Suite 410, in Tulsa and can be reached at 918-508-2870.

Aaron N. Morrison has joined the Norman-based Dewberry Law Firm. He practices primarily in the areas of estate planning and probate administration. Mr. Morrison received his J.D. from the OU College of Law in 2012.

Barrett Knudsen has joined Paycom Software Inc. as in-house counsel. He received his J.D. from the OU College of Law in 1998.

Matthew D. Craig has joined the firm of Connor & Winters LLP as an associate. He will practice primarily in the areas of bankruptcy and business reorganization, business formation and organization, commercial litigation, wills, trusts and estates. He received his J.D. from the OU College of Law in 2018.

David T. Potts has been elected shareholder for the Tulsa office of Hall Estill. Mr. Potts received his J.D. from the TU College of Law and practices primarily in tax law.

Alee A. Gossen and **Ryan W. Shaller** have formed the firm of Gossen & Schaller PLLC. Ms. Gossen practices primarily in the areas of estate planning, juvenile matters, guardianships and landlord/tenant issues. Mr. Schaller practices primarily in the areas of surface title examination, real estate, real estate finance and small business matters. Contact information for each attorney is available at www.gossenschaller.com.

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 April issue must be received by March 1.



**Looking for an
OBJ article?**

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Gaylord N. Benton of Blue Springs, Missouri, died May 9, 2019. He was born June 1, 1930, in Osage City, Kansas. Mr. Benton received his bachelor's degree in finance from the University of Kansas as well as a master's degree in economics. **He then served on active duty in the U.S. Naval Reserve, stationed in New Jersey and then Washington, D.C.** After release from active duty, he was transferred to the Retired Reserve with a permanent rank of full lieutenant. He received his J.D. from the George Washington University Law School in Washington, D.C. Mr. Benton's career included time working for firms in Kansas City, Oklahoma City and Tulsa. He retired in 1985 and settled in Blue Springs, Missouri. Memorial contributions may be made to St. Paul's Lutheran Church, 17200 East 29th St. S, Independence, Missouri 64055.

Robert N. Colombe of Tonkawa died June 16, 2018. He was born Sept. 23, 1920, in Fairfax. **Mr. Colombe attended the Oklahoma Military Academy and served his country as part of the Army Air Corps.** He graduated with his bachelor's degree from OSU and received his J.D. from the OU College of Law. Mr. Colombe worked as an attorney in Tonkawa for 60 years. Memorial contributions may be made to Northern Oklahoma College, P.O. Box 310, Tonkawa, 74653.

Marion M. Dyer of Broken Arrow died Dec. 26, 2019. He was born Feb. 11, 1933, in Tahlequah. Mr. Dyer received his J.D. from the TU College of Law in 1965. **He served his country in**

the U.S. Army during the Korean Conflict. Mr. Dyer was in the first group of special judges appointed in Oklahoma. Memorial contributions may be made to St. Stevens United Methodist Church, Board of Trustees, 400 W. New Orleans Street, Broken Arrow, 74011 or to Oklahoma Westie Rescue at www.okwestierescue.com.

Gerald Boise Eckley of Odessa, Texas, died Nov. 1, 2019. He was born Sept. 5, 1926. Mr. Eckley received his J.D. from the OU College of Law in 1951.

Donald Crosby Fuller of Bethany died July 26, 2018. He was born June 16, 1938. Prior to practicing law, Mr. Fuller worked as a certified public accountant. He received his J.D. from the OCU School of Law in 1990. **He was a member of the U.S. Marine Corps.** Memorial contributions may be made to the Daily Living Center, P.O. Box 608, Bethany, 73008.

Ellen E. Gallagher of Overland Park, Kansas, died May 23, 2016. She was born Nov. 7, 1965, in Norman. Ms. Gallagher graduated from Norman High School in 1984 and attended the University of Kansas for two years before transferring to OU, where she earned her bachelor's degree. She received her J.D. from the University of Kansas School of Law in 1991. She practiced law in Oklahoma for nine years before moving to Kansas. Memorial contributions may be made to the National Multiple Sclerosis Society, Mid-America Chapter, 7611 State Line Road #100, Kansas City, Missouri 64114.

James E. Hamilton of Rogers, Arkansas, died Jan. 10, 2019. He was born Dec. 2, 1925, in Howe. Mr. Hamilton received his J.D. from the OU College of Law in 1960. **He then served in the U.S. Army and Army Reserve, finishing first in his class of artillery training at Fort Sill.** Mr. Hamilton practiced in Poteau for nearly 50 years and served in the Oklahoma House of Representatives for 14 years. He was instrumental in transitioning the U.S. Job Corps training center near Heavener into what is now known as the Jim E. Hamilton Correctional Center and CareerTech Skills Center, the first combined site of a state's corrections and vocational technology departments in the nation. Memorial contributions may be made to Gideon Bibles or OU Medical Center.

Virgil M. Harry Jr. of Tulsa died April 11, 2018. He was born Oct. 30, 1926, in Ralston. Mr. Harry graduated from Classen High School where he was an All-State basketball player. **He enlisted in the U.S. Army in 1944 at the age of 17 and was awarded a Bronze Star during his enlistment.** After his service, Mr. Harry received his J.D. from the OU College of Law in 1951. He practiced law for a few years before venturing into the home construction industry. Alongside his brother and father, Mr. Harry established Harry Mortgage Co., of which he remained involved with until 2017.

William Richard Horkey of Tulsa died Nov. 24, 2019. He was born April 22, 1925, in Tulsa. **Mr. Horkey served as a pilot for the U.S. Army Corp from 1943-1945.** He received his J.D. from the OU College of Law in 1950 and was

a graduate of the Harvard Business School. Mr. Horkey's professional career included time as an attorney for Gulf Oil Co. and Skelly Oil Co. He then went on to become executive vice president of the Helmerich & Payne Co. until his first retirement at 65. He returned to work as vice president of Twenty-First Properties and then became CEO of the Woolslayer Co. His second retirement was at the age of 80, but Mr. Horkey continued working in pro bono trusts and wills until the age of 90. Memorial contributions may be made to the Tulsa Chapter of the American Red Cross or to the First Presbyterian Foundation.

Richard E. Hovis of Oklahoma City died Jan. 27, 2019. He was born Jan. 21, 1945, in Tulsa. He graduated from Edison High School and OSU. Mr. Hovis taught biology at Edison Junior High School before he received his J.D. from the TU College of Law. He practiced law in Tulsa, Muskogee and Hobart. Mr. Hovis previously served as associate district judge of Kiowa County.

James Patrick Kelley of Oklahoma City died Dec. 15, 2018. He was born Feb. 12, 1944, in Oklahoma City. Mr. Kelley received his J.D. from the OCU School of Law in 1970.

Marshall Scott Landon of Wagoner died Nov. 30. He was born April 1, 1951, in Phoenix. At the age of 4, Mr. Landon's parents moved to Ft. Gibson Lake and opened the Indian Lodge Motel, which he continued to manage until his death. He also operated The Landon Co., a family-owned business that his father started. Mr. Landon received his J.D. from the TU College of Law in 1978 and practiced law in Wagoner for 41 years. Memorial contributions may be made to the American Cancer Society.

Steven King McKinney of Siloam Springs, Arkansas, died Sept. 6, 2019. He was born Nov. 19, 1939, in Siloam Springs. **Following obtaining his bachelor's degree in business administration, Mr. McKinney went into the U.S. Army.** He was honorably discharged. Mr. McKinney received his J.D. from the University of Arkansas School of Law in Fayetteville, Arkansas, in 1970 and his LL.M. in taxation from New York University. He worked in Washington, D.C., for many years at the Civil Aeronautics Board with the federal government before moving to Oklahoma City to practice law at Monnet Hayes Bullis Thompson & Edwards. After his retirement, he took English literature classes at John Brown University and pursued his love of reading and writing poetry and short stories. Memorial contributions may be made to your local humane society or the American Diabetes Association.

Ralph W. Newcombe of Lawton died April 29, 2019. He was born Aug. 30, 1931, in Blanchard. Mr. Newcomb received his J.D. from the OU College of Law in 1960.

Richard Olderbak of Edmond died Dec. 16, 2019. He was born Oct. 29, 1959, in Lincoln, Nebraska. Mr. Olderbak received his J.D. from the OCU School of Law in 1997 and worked as an assistant attorney general for the state of Oklahoma.

Judge James H. Paddleford of Oklahoma City died Dec. 14, 2019. He was born Aug. 11, 1938. Mr. Paddleford received his J.D. from the OCU School of Law in 1967 and worked as an attorney in Oklahoma City, Cashion and Piedmont. He retired in 2009 as a special judge of the Oklahoma County District Court. Memorial contributions may be made to the Oklahoma Medical Research Foundation or the Oklahoma Institute for Child Advocacy.

Ray H. Painter Jr. of Tulsa died Dec. 23, 2017. He was born March 12, 1923, in Kansas City, Kansas. Mr. Painter received his J.D. from the TU College of Law in 1961.

Thomas D. Pearson Jr. of Norman died June 27, 2019. He was born April 5, 1939, in Wilkes-Barre, Pennsylvania. Mr. Pearson graduated with honors from West Point in 1962 and earned his MBA in economics from Loyola University. He received his J.D. from the Antonin Scalia Law School at George Mason University in 1984. **Mr. Pearson served three and a half tours in Vietnam. After 24 years with the U.S. Army, he retired from service in 1983.** He then began working as a criminal trial attorney until his retirement in 2012. After retiring from practicing law, he taught courses at OU.

Thomas B. Preston of Memphis, Tennessee, died Aug. 20, 2019. He was born Sept. 2, 1930, in Bartlesville. **After graduating from OSU, Mr. Preston served in the U.S. Army in Korea.** He received his J.D. from the OU College of Law in 1955 and began practicing in Bartlesville with the firm of Garrison, Preston, Preston & Brown. In 1967, he and his family moved to Memphis where he began teaching at the University of Memphis Law School. He moved back to Bartlesville in 1979 and became general counsel at Foster Petroleum Co., but returned to Memphis in 2003. Memorial contributions may be made to Oklahoma Wesleyan University, 2201 Silver Lake Road, Bartlesville, 74006 or to Grace Community Church, 1500 King Drive, Bartlesville, 74006.

Robert Eugene Rice of Houston died Feb. 12, 2017. He was born Jan. 28, 1922, in Duncan. **While attending Dartmouth College, Mr. Rice volunteered for service in the U.S. Army during World War II.**

He returned to Dartmouth after the war and went on to receive his J.D. from the University of Michigan School of Law in 1949. Mr. Rice began his law practice in Duncan and was elected county attorney for Stephens County the following year. In 1951, he joined Halliburton Co. where he remained until his retirement in 1987.

John Hugh Roff Jr. of Houston, died Oct. 23, 2019. He was born Oct. 27, 1931, in Wewoka. He graduated as valedictorian of Wewoka High School in 1949 and went on to earn the Freshman Award at OU in 1950. He earned both his B.A. and LL.B. from OU. **Mr. Roff served in the U.S. Army Judge Advocate General's Corps.** In 1958, he left the military and moved his family to Oklahoma City to clerk for Judge Alfred P. Murrah of the U.S. Court of Appeals 10th Circuit. At the end of his clerkship, he joined Southwestern Bell as an attorney in their St. Louis office before moving to New York in 1964. In 1973, he was named general attorney for AT&T. He then went to work for United Energy Resources Inc. in Houston as president and CEO. After leading the company through numerous acquisitions, Mr. Roff started a company with his sons in 1999 named Roff Oil & Gas, Ltd. Memorial contributions may be made to The Salvation Army of Greater Houston, 1500 Austin Street, Houston, Texas 77002.

James Dennis Ryan of Oklahoma City died June 5, 2017. He was born Jan. 25, 1934, in Tulsa. He graduated from Cascia Hall and obtained a bachelor's degree in philosophy from the University of Notre Dame. He received his J.D. from the OU College of Law in 1961.

John H. Santee of Tulsa died Dec. 6, 2016. He was born Jan. 11, 1931, in Skiatook. He graduated from Skaitook High School in 1949 and attended OU on a football scholarship. He was part of the 1950 championship team and worked as a graduate assistant for football coach Bud Wilkinson. He continued coaching throughout law school and received his J.D. from the OU College of Law in 1956. Mr. Santee joined the legal department at National Bank of Tulsa, then served as a federal clerk to Royce H. Savage, U.S. district judge for the Northern District of Oklahoma. In 1958, he started practicing with the firm of Martin, Logan, Moyers, Martin & Hull where he remained until his retirement in 2016. Memorial contributions may be made to Catholic Charities of Eastern Oklahoma, P.O. Box 580460, Tulsa, 74158.

Jimmy E. Shamas of Littleton, Colorado, died June 5, 2017. He was born Nov. 20, 1934, in Bristow. He obtained a bachelor's degree in mechanical engineering from OSU in 1957. Mr. Shamas received his J.D. from the TU College of Law in 1969. In 1982, he was appointed executive vice president of Getty Oil Co. and became the youngest person to hold this position. Memorial contributions may be made to the Boy Scouts of America or Rotary Club International.

Herbert Randolph Taylor of Paris, Texas, died May 13, 2014. He was born Aug. 21, 1941, in Dallas. **Mr. Taylor entered the U.S. Army out of high school and completed a tour in Germany.** Following his service, he began his legal studies at Paris Junior College before transferring to Texas A&M Commerce, where he received his J.D. He opened his law firm in Dallas and practiced there for many years.

Craig Ranson Tweedy of Katy, Texas, died Dec. 4, 2013. He was born Feb. 3, 1938, in Hollis. Mr. Tweedy received his J.D. from the OU College of Law in 1969 and began practicing in Sapulpa where he remained for nearly 50 years.

George H. Williams of Coronado, California, died Oct. 4, 2019. He was born Nov. 30, 1945, in Boston. Mr. Williams graduated from Belmont High School in 1963 and from Syracuse University in 1967. He received his J.D. from OCU School of Law in 1974. Memorial contributions may be made to your favorite charity.

2020 ISSUES

MARCH

Constitutional Law

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

APRIL

Law Day

Editor: Carol Manning

MAY

Gender in 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
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20 Motivational Podcasts

It's February which means many of us are starting to lose, if we haven't lost it already, motivation to stick with any resolutions we set for ourselves for the new year. If that is you, here are 20 motivational podcasts to inspire you and help you take the next steps to reach your goals.

tinyurl.com/20podcasts



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LinkedIn is one of the most underrated social media platforms, however, it can be very beneficial when used properly. Check out these 10 easy ways you can improve your use of LinkedIn and generate results.

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Want to take a trip this year but don't want to spend a lot of money? You're in luck! Travel experts have put together a list of the most affordable places to visit in 2020.

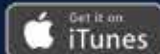
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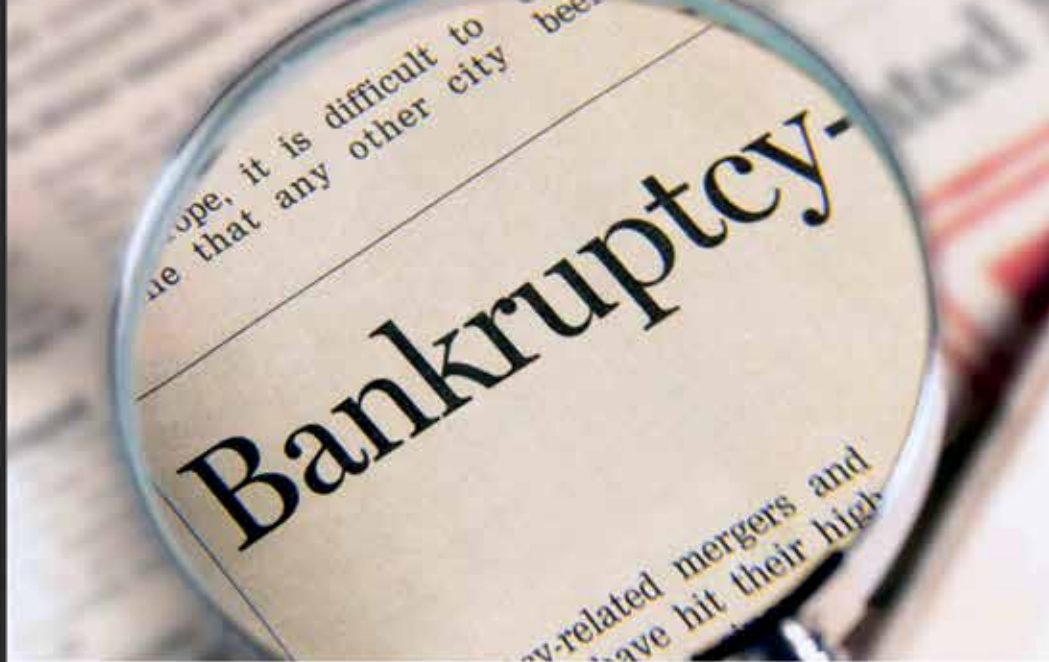
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