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Journal
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THE OKLAHOMA BAR
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THE SOVEREIGNTY SYMPOSIUM
POSTPONEMENT ANNOUNCEMENT

For Thirty-two years, The Sovereignty Symposium has established itself as the premier gathering for the exchange of legal and scholarly discussions regarding and relating to Native American Law. Because this extraordinary event requires months of planning and relies on the generosity of faulty and attendees from all over the world, we must consider the current circumstances surrounding the COVID 19 virus and the attempts to curtail it as soon as possible.

This uncertain time leads us to conclude that The Sovereignty Symposium currently scheduled for June 10-11, 2020, in Oklahoma City, Oklahoma, be postponed until it is safe to travel and hold public gatherings. Safety and health are our priority. Please check back for an announcement as to when it will be rescheduled. In the meantime, stay safe and healthy.

The Sovereignty Symposium was established to provide a forum in which ideas concerning common legal issues can be exchanged in a scholarly, non-adversarial environment. The Supreme Court espouses no view on any of the issues, and the position taken by the participants are not endorsed by the Supreme Court of Oklahoma.

Notice of Judicial Vacancy

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of District Judge for Tulsa County, Fourteenth Judicial District, Office 9. This vacancy is created by the retirement of the Honorable Linda G. Morrissey on April 1, 2020.

Tulsa County District Judge, Office 9 is an at large position. To be appointed to the office of Tulsa County District Judge, Office 9, one must be a legal resident of Tulsa County at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms can be obtained online at www.oscn.net (click on "Programs", then "Judicial Nominating Commission", then "Application") or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC **no later than 5:00 p.m., Friday, April 17, 2020**. Applications may be hand-delivered or mailed. If mailed, they must be postmarked **on or before April 17, 2020** to be deemed timely. Applications should be delivered/mailed to:

Jim Webb, Chairman
Oklahoma Judicial Nominating Commission
c/o Tammy Reaves — Administrative Office of the Courts
2100 N. Lincoln Blvd., Suite 3 • Oklahoma City, OK 73105

OKLAHOMA BAR ASSOCIATION

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SCAD NO. 2020-24

FIRST EMERGENCY JOINT ORDER REGARDING THE COVID-19 STATE OF DISASTER

March 16, 2020

1. Governor J. Kevin Stitt issued Executive Order 2020-07 on March 15, 2020, declaring an emergency in all 77 Oklahoma Counties caused by the impending threat of COVID-19 to the people of the state. This joint order is issued to clarify the procedures to be followed in all Oklahoma district courts and to encourage social distancing and to avoid risks to judges, court clerks, court employees and the public.

2. All district courts in Oklahoma shall immediately cancel all jury terms for the next 30 days and release jurors from service. No additional jurors shall be summoned without approval of the Chief Justice. All civil, criminal and juvenile jury trials shall be continued to the next available jury dockets.

3. Subject only to constitutional limitations, all deadlines and procedures whether prescribed by statute, rule or order in any civil, juvenile or criminal case, shall be suspended for 30 days from the date of this order. This suspension also applies to appellate rules and procedures for the Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals.

4. In any civil case, the statute of limitations shall be extended for 30 days from the date of this order.

5. Subject only to constitutional limitations, assigned judges should reschedule all non-jury trial settings, hearings, and pretrial settings. Emergency matters, arraignments, bond hearings, and required proceedings of any kind shall be handled on a case by case basis by the assigned judge. Judges shall use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules for District Courts, or other means. The use of email, fax and drop boxes for acceptance of written materials is encouraged, except that the use of email may not be used for appellate filings at this time. If any party or counsel objects to a continuance of any matter, assigned judges are encouraged to hold hearings in the same manner as emergency matters.

6. The following persons are prohibited from entering any courtroom, court clerk's office, judges' offices, jury room or other facility used by the district courts:

   a. Persons who have been diagnosed with or have direct contact with anyone diagnosed with COVID-19.

   b. Persons with symptoms such as fever, severe cough, or shortness of breath.

   c. Persons who have traveled to any country outside of the U.S. in the past 14 days, and those with whom they live or have had close contact.

   d. Persons who are quarantined or isolated by any doctor or who voluntarily quarantine.

   e. If you are in one of these categories (a-d) and are scheduled for a court appearance or are seeking emergency relief, contact your attorney, and if you have no attorney, call the court clerk's office in the county where you are required to appear.

7. All courts may limit the number of persons who may enter any courtroom, judges' or clerk's office, jury room or any other facility used by the district courts.

8. This order is subject to extension or modification as necessitated by this emergency.

IT IS SO ORDERED.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 16TH DAY OF MARCH, 2020.

/s/ NOMA D. GURICH
CHIEF JUSTICE

WITNESS OUR HANDS AND THE SEAL OF THIS COURT THIS 16TH DAY OF MARCH, 2020.

/s/ DAVID B. LEWIS
PRESIDING JUDGE

SCAD NO. 2020-26

SECOND EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

March 23, 2020

1. Governor J. Kevin Stitt issued Executive Order 2020-07 on March 15, 2020, declaring an emergency in all 77 Oklahoma Counties caused by the impending threat of COVID-19 to the people of the state.
2. The Oklahoma State School Board on March 16, 2020 ordered all accredited public schools in the state to cease operations for students and educators until April 6 in response to the pandemic COVID-19 novel coronavirus.
3. This SECOND EMERGENCY ORDER is issued to clarify the procedures to be followed in all Oklahoma district courts. This order applies to and clarifies visitation or parenting time schedules in Family/Domestic Relations/Dissolution of Marriage/Paternity/Guardianship and/or any other cases concerning custody and visitation/parenting time of minor children, wherein a school schedule is used to determine visitation and/or custody.
4. For purposes of determining a person's right to custody and visitation/parenting time, the original published school schedule shall control in all instances. Custody and visitation/parenting time shall not be affected by the school's closure that arises from the COVID-19 pandemic.
5. Nothing herein prevents the parties from altering a custody and/or visitation order by written agreement, if allowed by the assigned judge. Written modification agreements will not be enforced unless filed. Based upon courthouse restrictions, it is recommended that the original signed written agreement, including the case number, be mailed to the court clerk's office in the district court which has jurisdiction over the parties.
6. Nothing herein prevents courts from modifying their orders. Courts should use remote access for hearings involving modification of the existing orders, if possible.

IT IS SO ORDERED.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 23rd DAY OF MARCH, 2020.

/s/ NOMA D. GURICH
CHIEF JUSTICE

SCAD NO. 2020-29. March 25, 2020

SECOND EMERGENCY JOINT ORDER REGARDING THE COVID-19 STATE OF DISASTER

1. The First Emergency Joint Order entered on March 16, 2020 remains in effect except as it is modified herein. To the extent the Joint Emergency Orders conflict with local practices, the First and Second Emergency Joint Orders control.
2. On March 24, 2020, Governor J. Kevin Stitt issued the Fourth Amended Executive Order 2020-07 and ordered that additional steps be taken to protect all Oklahomans from the growing threat of COVID-19. This Second Emergency Joint Order joins the Governor in addressing the ever changing situation in the district courts in all 77 counties as well as the appellate courts in Oklahoma and Tulsa Counties. We admonish all Oklahoma judges, court clerks, court employees and staff and the public to follow the guidelines to protect public health set forth in the Governor's Executive Orders, those issued by the Oklahoma Department of Health and the CDC.
3. All district courts in Oklahoma shall immediately cancel all jury terms through May 15, 2020. No additional jurors shall be summoned without approval of the Chief Justice. All civil, criminal and juvenile jury trials shall be continued to the next available jury dockets. If necessary, additional jury terms may be ordered in July and/or August or later in the year.
4. Subject only to constitutional limitations, all deadlines and procedures whether prescribed by statute, rule or order in any civil, juvenile or criminal case, shall be suspended through May 15, 2020. This suspension also applies to appellate rules and procedures for the Supreme Court, the

Court of Criminal Appeals, and the Court of Civil Appeals.

5. In any civil case, the statute of limitations shall be extended through May 15, 2020.
6. All courthouses in all 77 counties shall be closed to the public with exceptions for emergencies as permitted by local order. To the extent that emergency dockets are being held, no more than 10 persons including the judge and court personnel shall be in a courtroom at one time. Judges and other courthouse personnel shall use all available means to ensure the health of all participants in any court proceeding. If judges continue to hold hearings, all of the mandated COVID-19 precautions issued by the CDC and all State and local governments shall be followed. Judges shall continue to use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules for District Courts, or other means.
7. Court clerks and judges shall use email, fax and drop boxes for acceptance of written materials, except for emergencies. All appellate filings shall be made by mail.
8. This order is subject to extension or modification as necessitated by this emergency.

IT IS SO ORDERED.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 27TH DAY OF MARCH, 2020.

/s/ NOMA D. GURICH
CHIEF JUSTICE

WITNESS OUR HANDS AND THE SEAL OF THIS COURT THIS 27TH DAY OF MARCH, 2020.

/s/ DAVID B. LEWIS
PRESIDING JUDGE

2020 OK 18
STATE OF OKLAHOMA ex rel., OKLAHOMA BAR ASSOCIATION, Complainant, v. KENT LEROY SIEGRIST, Respondent.

SCBD 6825. March 24, 2020

ORIGINAL PROCEEDING FOR ATTORNEY DISCIPLINE

¶0 The Complainant, State of Oklahoma *ex rel.* Oklahoma Bar Association, charged the Respondent Kent Leroy Siegrist with two counts of professional misconduct: (1) Respondent's misappropriation of $1,135,000.00 as the Personal Representative of his father's estate, and (2) Respondent's failure to competently and diligently represent another client. The Respondent wholly failed to respond to the Complaint, and failed to appear at the disciplinary hearing, where the facts underlying the Complaint were deemed admitted. The Professional Responsibility Tribunal recommended the Respondent be disbarred from the practice of law and to pay the costs associated with the proceedings. Respondent's actions violate the rules of professional conduct and constitute the commission of acts contrary to prescribed standards of conduct. We hold there is clear and convincing evidence that the Respondent's conduct warrants disbarment. The Respondent is disbarred and ordered to pay the costs as herein provided within ninety days after this opinion becomes final.

RESPONDENT DISBARRED AND ORDERED TO PAY COSTS.

Stephen L. Sullins, Assistant General Counsel, Oklahoma Bar Association, Oklahoma City, Oklahoma, for Complainant.

KANE, J.:

¶1 Complainant State of Oklahoma *ex rel.* Oklahoma Bar Association began disciplinary proceedings pursuant to Rule 6, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011 ch.1, app. 1-A, alleging two (2) counts of professional misconduct against Respondent Kent Leroy Siegrist. The Respondent is an active member of the Oklahoma Bar Association and is currently in good standing. The Complainant's allegations arise in part from the Respondent's mishandling of his father's estate, as the personal representative for that estate, and misconduct towards a separate client. The Complainant alleges the Respondent's actions are in violation of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S.2011 ch.1, app. 3-A, and the RGDP and are cause for professional discipline.

I. PROCEDURAL HISTORY

¶2 On May 10, 2018, Respondent's brother, David Siegrist, filed his grievance (Siegrist grievance) against Respondent with the Oklahoma Bar Association. Thereafter, on August 24, 2018, Brian Paige filed his grievance (Paige grievance) against Respondent with the Okla-

homa Bar Association. Respondent failed to respond to either grievance. On August 15, 2019, a Complaint was filed in this matter by the Complainant against Respondent pursuant to Rule 6, RGDP, alleging two counts of professional misconduct. Respondent failed to file an Answer to the Complaint. On October 1, 2019, Complainant filed a Notice of Service detailing its attempts to serve Respondent with the Complaint and all of the filed materials in this matter. There is no dispute that Respondent was provided with proper notice of the proceedings.[1] On October 8, 2019, Complainant filed an Amended Motion to Deem Allegations Admitted.[2] The motion was sustained by the Professional Responsibility Tribunal (PRT) at the beginning of the disciplinary proceedings on October 9, 2019.[3] Respondent failed to appear at the hearing.

¶3 On November 8, 2019, the PRT issued its Trial Panel Report (Report). The PRT found by clear and convincing evidence that Respondent violated Rules 1.1, 1.3, 1.4, 1.5, and 8.4(a), (c), and (d), ORPC, and Rules 1.3 and 5.2, RGDP, with the recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings.

II. STANDARD OF REVIEW

¶4 In bar disciplinary proceedings, this Court possesses exclusive original jurisdiction. *State ex rel. Okla. Bar Ass'n v. Holden*, 1995 OK 25, ¶ 10, 895 P.2d 707, 711. Our review of the evidence is *de novo* in determining if the Complainant proved its allegations of misconduct by clear and convincing evidence. *State ex rel. Okla. Bar Ass'n v. Bolusky*, 2001 OK 26, ¶ 7, 23 P.3d 268; Rule 6.12(c), RGDP. Clear and convincing evidence is that measure or degree of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. *See State ex rel. Okla. Bar Ass'n v. Green*, 1997 OK 39, ¶ 5, 936 P.2d 947, 949. Our goals in disciplinary proceedings are to protect the interests of the public and to preserve the integrity of the courts and the legal profession, not to punish the offending lawyers. *State ex rel. Okla. Bar Ass'n v. Kinsey*, 2009 OK 31, ¶ 15, 212 P.3d 1186.

¶5 Whether to impose discipline is a decision that rests solely with this Court, and the recommendations of the PRT are neither binding nor persuasive. *See State ex rel. Okla. Bar Ass'n v. Eakin*, 1995 OK 106, ¶ 8, 914 P.2d 644, 648. To make this assessment, we must receive a record that permits "an independent on-the-record-determination of the critical facts" and impose appropriate discipline. *State ex rel. Okla. Bar Ass'n v. Schraeder*, 2002 OK 51, ¶ 6, 51 P.3d 570. The Complainant submitted the record in this case which consisted of: (1) the pleadings filed with the Supreme Court; (2) the transcript of the hearing before the PRT on October 9, 2019; (3) Complainant's Exhibits 1-52; (4) Complainant's Application to Assess Costs in the amount of $2,794.50 filed on November 8, 2019; and (5) the PRT's Report filed on November 8, 2019. We agree that the record before us is complete.

III. THE GRIEVANCES

A. Count I - The Siegrist Grievance

¶6 Respondent's father passed away and a probate was filed on May 5, 2008 in Canadian County, Case No. PB-2008-68. Respondent was named the Personal Representative of his father's estate in 2008. Thereafter, on or about May 3, 2017, David Siegrist, Respondent's brother, hired attorney Richard Fogg to represent him in the probate proceeding, and Mr. Fogg filed a Petition for Accounting. Mr. Fogg also sought to have his client David Siegrist named as the Personal Representative, thereby replacing Respondent as the Personal Representative.

¶7 Mr. Fogg testified that Respondent, as the Personal Representative of his father's estate, failed to file state and federal tax returns for several years. Mr. Fogg attended at least nine court appearances on behalf of David Siegrist in the probate proceeding. Respondent only appeared twice.[4] Respondent, likewise, failed to attend his deposition and the scheduled mediation in the probate proceeding. Mr. Fogg's legal assistant, Katie Reed, testified how she spent an extensive amount of time looking through the estate and Respondent's personal bank accounts trying to determine how much money was taken from the estate and transferred to accounts owned by Respondent.

¶8 On April 25, 2018, a Journal Entry of Judgment was entered by Judge Hatfield which found that Respondent had converted $1,135,000.00 of estate funds while acting as the Personal Representative of his father's estate. Specifically, Judge Hatfield found, in pertinent part, that:

> Respondent should be charged with a statutory enhancement of recovery as a

result of conversion, breach of duty of the Court's Citation and to the Estate, disposition of monies, goods or chattels of the decedent, misappropriation and unauthorized transfers of estate assets for his personal use and enters Judgment against Respondent, Kent Siegrist, to double the present amount of interim Judgment of $1,135,000.00 to a stated interim Judgment in the sum of $2,270,000.00. . . .

Judge Hatfield further found that Respondent was in contempt of court and guilty of conversion, misappropriation, willful breach, and disregard of duty. These judgments were not appealed and stand as final adjudications.

B. Count II – The Paige Grievance

¶9 Brian Paige paid Respondent $800.00 to represent him in his Chapter 13 bankruptcy proceeding. Respondent failed to timely file Paige's amended bankruptcy plan causing the case to be dismissed. Paige testified that he tried to contact Respondent numerous times but was unable to reach him. When Paige finally connected with him, Respondent admitted that it was his fault the amended bankruptcy plan was not timely filed and that he would try and get it reinstated. Respondent also told Paige that he had "relapsed" due to his drinking and was going into "treatment". Eventually, Paige had to have another attorney represent him in his bankruptcy proceeding.

IV. THE RULE VIOLATIONS

¶10 The PRT filed its Report on November 8, 2019. The Report found the Complainant had proven by clear and convincing evidence that Respondent violated Rules 1.1 (Competence),[5] 1.3 (Diligence),[6] 1.4 (Communication),[7] 1.5 (Fees),[8] and 8.4(a), (c), and (d), (Violating Rules of Professional Conduct/Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation),[9] ORPC, and Rules 1.3 (Discipline for Acts Contrary to Prescribed Standards of Conduct) and 5.2 (Investigations),[10] RGDP, with the recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings.

¶11 For conduct to constitute a Rule 8.4, ORPC, violation, the misrepresentation, dishonesty, fraud and/or deceit must be shown by clear and convincing evidence that the declarant had an underlying motive, *i.e.*, bad or evil intent, for making the statement. *See State ex rel. Okla. Bar Ass'n v. Johnston*, 1993 OK 91, ¶ 16, 863 P.2d 1136, 1143. An intent element is required and the complainant must adequately show the attorney had a purpose to deceive. *State ex rel. Okla. Bar Ass'n v. Besly*, 2006 OK 18, ¶ 43, 136 P.3d 590.

¶12 The Complainant asserts in its brief that the Respondent's actions constitute misappropriation of the estate's funds in regards to the Siegrist grievance. This Court has explained many times the three levels of culpability regarding the mishandling of client funds. The three levels are commingling, simple conversion, and misappropriation. *State ex rel. Okla. Bar Ass'n v. Combs*, 2007 OK 65, ¶ 13, 175 P.3d 340. Misappropriation is the most serious offense of the three. It is not merely simple conversion, *i.e.*, the use of a client's funds for a purpose other than that for which they are intended, but additionally involves an element of deceit and fraud. *Id*. ¶¶ 15-16.

¶13 We agree with the Complainant that Respondent's behavior in regards to the Siegrist grievance was dishonest, fraudulent, deceitful, and that he misappropriated the estate's funds for his own personal benefit. We find clear and convincing evidence that Respondent intentionally deceived his brother and the court about the status of his father's estate. Respondent's actions and inactions elevated Respondent's behavior from simple conversion to misappropriation, as Respondent repeatedly failed to respond to inquiries from his brother and his brother's attorney concerning the status of the estate, which forced David Siegrist to hire counsel to request a formal accounting from the estate.

¶14 **We hold that the Complainant has proven by clear and convincing evidence the Respondent violated Rules 8.4(c) and (d), ORPC, and Rules 1.3 and 5.2, RGDP, in regards to the Siegrist grievance. Respondent failed to respond to the Siegrist grievance, failed to answer the Complaint and failed to appear at his own disciplinary hearing.**

¶15 In regards to the Paige grievance, Respondent failed to timely file Paige's amended bankruptcy plan causing the case to be dismissed. After numerous attempts to contact and communicate with Respondent, Paige testified that Respondent admitted that it was his fault the bankruptcy plan was not timely filed and that he would try and get it reinstated. Ultimately, Paige was forced to retain different

counsel to represent him in his bankruptcy case. Respondent's actions show a lack of diligence and failure to communicate with his client. *See* Rules 1.3 and 1.4, RGDP. Respondent did not provide competent representation to Paige, nor did he earn the $800.00 fee he was paid. *See* Rules 1.1 and 1.5, RGDP.

¶16 **We hold Complainant has also proven by clear and convincing evidence that Respondent failed to competently and diligently represent Paige, failed to properly communicate with Paige, failed to earn the fee paid to him by Paige for legal services, and that Respondent's neglect caused an undue prejudice to the administration of justice, all in violation of Rules 1.1, 1.3, 1.4, 1.5 and 8.4(a) and (d), ORPC, and Rules 1.3 and 5.2, RGDP.**

V. DISCIPLINE

¶17 Discipline is imposed to preserve public confidence in the Bar. *State ex rel. Okla. Bar Ass'n v. Phillips*, 2002 OK 86, ¶ 21, 60 P.3d 1030. Our goal is not to punish, but to gauge an attorney's continued fitness to practice law in order to safeguard the interest of the public, the courts, and the legal profession. *Id.* This Court also administers discipline to deter an attorney from similar future conduct and to act as a restraining vehicle on others who might consider committing similar acts. *State ex rel. Okla. Bar Ass'n v. Townsend,* 2012 OK 44, ¶ 31, 277 P.3d 1269. Discipline is fashioned to coincide with the discipline imposed upon other attorneys for like acts of professional misconduct. *Id.*

¶18 The Court has consistently disbarred attorneys for conduct similar to Respondent's. In *State ex rel. Okla. Bar Ass'n v. Kleinsmith,* 2018 OK 5, 411 P.3d 365, this Court found that Kleinsmith should be disbarred due to his deceitful billing practices that resulted in his client paying approximately $57,000 for services rendered that was then misappropriated by respondent for his own benefit. *See id*. ¶ 12. Similar to the facts in the present case, this Court in *State ex rel. Okla. Bar Ass'n v. Arnold,* 2003 OK 31, 72 P.3d 10, disbarred attorney/trustee Arnold based on his conversion of client funds, specifically holding that the harshest discipline should be applied due to the attorney's special relationship as the trustee of the trust/estate. *See id.* ¶ 22. Likewise, in *State ex rel. Okla. Bar Ass'n v. Mayes*, 2003 OK 23, 66 P.3d 398, this Court imposed disbarment as discipline not only because the attorney misappropriated his client's funds, but we also emphasized the significance of his failure to cooperate with the grievance process. *See id.* ¶ 32.

¶19 In the present case, Respondent not only has failed to cooperate, but appears to have taken active efforts to thwart the disciplinary process by evasion of service.[11] These uncontroverted facts, combined with the fact that Respondent failed to respond to either grievance, failed to file an Answer to the Complaint, and failed to even appear for his own disciplinary hearing shows a complete indifference by Respondent to the grievance process, and the legitimate goals advanced by said process.

¶20 In addition to the Respondent's misappropriation of his clients' funds, his other misconduct warrants discipline. *See State ex rel. Okla. Bar Ass'n v. Whitebook,* 2010 OK 72, ¶ 17, 242 P.3d 517 (attorney disciplined and suspended for failure to provide competent representation, failure to act with diligence, failure to keep clients reasonably informed, failure to comply with reasonable requests for information, and failure to charge a client a reasonable fee); *State ex rel. Okla. Bar Ass'n v. Beasley*, 2006 OK 49, ¶ 44, 142 P.3d 410 (attorney disciplined and suspended for failure to act with diligence, failure to communicate with clients, failure to refund unearned fees, and failure to provide information to the bar).

¶21 We agree with Complainant's recommendation that Respondent be disbarred from the practice of law and that he be ordered to pay the costs of these proceedings. Respondent's misconduct is disturbing. It is our difficult duty to withdraw a license to practice law, but we shall if necessary to protect the interest of the public and the legal profession as a whole. Because Respondent has failed to participate at any level in regards to these two grievances and the corresponding Complaint, the record is silent as to Respondent's point of view and thus, we have no choice but to adopt the facts as presented to us by the Complainant. *See* Rule 5.2, RGDP. **We hold that the Respondent's misconduct warrants disbarment. Accordingly, it is ordered by this Court that the Respondent be disbarred and his name be stricken from the roll of attorneys licensed to practice law in this state.**

VI. ASSESSMENT OF COSTS

¶22 The Complainant filed an application to assess costs on November 8, 2019. The total

amount assessed was $2,794.50. Rule 6.13, RGDP, provides in pertinent part:

> Within thirty (30) days after the conclusion of the hearing, the Trial Panel shall file with the Clerk of the Supreme Court a written report which shall contain the Trial Panel's findings of fact on all pertinent issues and conclusions of law (including a recommendation as to discipline, if such is found to be indicated, and a recommendation as to whether the costs of the investigation, record and proceedings should be imposed on the respondent) . . . .

Rule 6.15, RGDP, provides: "(a) The Supreme Court may approve the Trial Panel's findings of fact or make its own independent findings, impose discipline, dismiss the proceedings or take such other action as it deems appropriate." We deem the payment of costs in this matter to be appropriate. Rule 6.16, RGDP, requires a disciplined lawyer to pay the costs of the disciplinary proceeding within 90 days after the Supreme Court's order becomes effective unless the costs are remitted in whole or in part by the Court for good cause shown. The Respondent is ordered to pay the cost of this proceeding in the amount of $2,794.50 within ninety (90) days after this opinion becomes final.

RESPONDENT DISBARRED AND ORDERED TO PAY COSTS.

ALL JUSTICES CONCUR.

1. In this case, Complainant mailed a copy of the Siegrist grievance to Respondent on May 23, 2018, requesting a response within twenty (20) days. Complainant sent a second letter to Respondent, with the Siegrist grievance enclosed, on November 27, 2018, via electronic mail, regular mail, and certified mail, requesting a response within twenty (20) days. Complainant mailed a copy of the Paige grievance to Respondent on August 29, 2018, requesting a response within twenty (20) days. Complainant also sent a second copy of the Paige grievance to Respondent enclosed within the November 27, 2018 letter via electronic mail, regular mail, and certified mail. *See* Rule 13.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S.2011 ch.1, app. 1-A.

On August 15, 2019, a copy of the formal Complaint and entry of appearance was mailed certified mail, return receipt requested, to Respondent at his official roster address as listed with the Oklahoma Bar Association. *See* Rule 6.7, RGDP, 5 O.S.2011 ch.1, app. 1-A.

Additional letters were mailed by the Complainant to Respondent regarding the Siegrist and Paige grievances and the corresponding Complaint, including a letter mailed on August 21, 2019, enclosing a copy of the formal Complaint and entry of appearance to an additional mailing address which Respondent was using when filing documents with the courts and a final letter, mailed September 10, 2019, which contained copies of all of the filed pleadings, was mailed to Respondent's official roster address and to the Respondent's second address. Complainant even went as far as employing a private process server. The private process server, John Lichtenegger, testified he made fourteen attempts to serve Respondent. Twice he testified he saw Respondent and tried to serve him, but was unsuccessful. He testified he believed Respondent was trying to avoid service.

The Complainant went above and beyond the service requirements as set forth in Rule 13.1, RGDP. Despite all of Complainant's efforts, Respondent failed to respond to the grievances, failed to respond to the Complaint when the disciplinary action was filed against him, and failed to appear for his disciplinary hearing.

2. *See* Rule 6.5, RGDP, 5 O.S.2011 ch.1, app. 1-A.

3. *See* Rule 6.4, RGDP, 5 O.S.2011 ch.1, app. 1-A.

4. One of Respondent's appearances was a hearing on his assets.

5. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Rule 1.1, ORPC, 5 O.S.2011 ch.1, app. 3-A.

6. "A lawyer shall act with reasonable diligence and promptness in representing a client." Rule 1.3, ORPC, 5 O.S.2011 ch.1, app. 3-A.

7. Rule 1.4, ORPC, 5 O.S.2011 ch.1, app. 3-A provides:

> A lawyer shall:
> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
> (3) keep the client reasonably informed about the status of the matter;
> (4) promptly comply with reasonable requests for information; and
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional conduct or other law.
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

8. Rule 1.5, ORPC, 5 O.S.2011 ch.1, app. 3-A provides, in pertinent part:

> O. A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) the time and labor required, the novelty and difficulty of the questions involved; and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent.

9. Rule 8.4(a), (c) and (d), ORPC, 5 O.S.2011 ch.1, app. 3-A provides, in pertinent part:

> It is professional misconduct for a lawyer to:
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> ....
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice....

10. Rule 5.2, RGDP, 5 O.S.2011 ch.1, app. 1-A provides, in pertinent part:

> After making such preliminary investigations as the General Counsel may deem appropriate the General Counsel **shall** either (1) **notify** the person filing the grievance and **the lawyer** that the allegations of the grievance are inadequate, incomplete, or insufficient to warrant the further attention of the Commission, provided that such action shall be reported to the Commission at its next meeting, or (2) **file and serve a copy of the grievance . . . upon the lawyer, who shall thereafter make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent's lawyer's alleged misconduct . . . .** Deliberate misrepresentation in such response shall itself be grounds for discipline. **The failure of a lawyer to answer within twenty (20) days after service of the grievance** (or recital of the factual allegations) . . . **shall** be **grounds for discipline.**

(emphasis added).

11. *See*, supra note 1.

2020 OK 19

State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. Carolyn Janzen, Respondent.

SCBD No. 6903. March 27, 2020

ORDER OF IMMEDIATE INTERIM SUSPENSION

¶1 The Oklahoma Bar Association (OBA), in compliance with Rules 7.1 and 7.2 of the Rules Governing Disciplinary Proceedings (RGDP), has forwarded to this Court certified copies of the Information, Affidavits, Plea of No Contest, Judgment, Sentence, and Record of Proceedings, felony, in the matter of *State of Oklahoma v. Carolyn Janzen*, CF-2012-30, in Greer County, Oklahoma. On February 20, 2020, Respondent pled no contest to the following crime, occurring sometime in July 2010: False Pretenses/ Con Game in violation of 21 O.S. § 1541.2, Felony. On February 20, 2020, the Court sentenced Respondent to 8 years in the custody of the Department of Corrections, with all suspended. Respondent was ordered to pay restitution of $7,100, a fine of $1,000, costs and fees.

¶2 The Court notes that Carolyn Janzen's name was stricken from the membership rolls of the Oklahoma Bar Association for failure to pay dues, effective September 20, 2004, and that Janzen is presently not licensed to practice law in the State of Oklahoma. Pursuant to Rule 1.1, RGDP, this Court retains jurisdiction to impose discipline for cause on a lawyer whose name has been stricken from the Roll of Attorneys for non-payment of dues or for failure to complete mandatory continuing legal education.

¶3 Rule 7.3 of the RGDP provides: "Upon receipt of the certified copies of Judgment and Sentence on a plea of guilty, order deferring judgment and sentence, indictment or information and the judgment and sentence, the Supreme Court shall by order immediately suspend the lawyer from the practice of law until further order of the Court." Having received certified copies of these papers and orders, this Court orders that Carolyn Janzen is immediately suspended from the practice of law. This disciplinary interim suspension pursuant to Rule 7.3 will remain effective regardless of any remedy of the prior administrative suspension. Carolyn Janzen is directed to show cause, if any, no later than **May 18, 2020**, why this order of interim suspension should be set aside. *See* RGDP Rule 7.3. The OBA has until **June 2, 2020**, to respond.

¶4 Rule 7.2 of the RGDP provides that a certified copy of a plea of guilty, an order deferring judgment and sentence, or information and judgment and sentence of conviction "shall constitute the charge and be conclusive evidence of the commission of the crime upon which the judgment and sentence is based and shall suffice as the basis for discipline in accordance with these rules." Pursuant to Rule 7.4 of the RGDP, Carolyn Janzen has until **June 17, 2020**, to show cause in writing why a final order of discipline should not be imposed, to request a hearing, or to file a brief and any evidence tending to mitigate the severity of discipline. The OBA has until July 2, 2020, to respond.

¶5 DONE BY ORDER OF THE SUPREME COURT in conference on March 27, 2020.

/s/ Noma D. Gurich
CHIEF JUSTICE

Gurich, C.J., Kauger, Winchester, Edmondson, Colbert, Combs, Kane and Rowe, JJ, concur;

Darby, V.C.J., not participating

Legal Internship Committee Regulation and Interpretation Updates

By H. Terrell Monks, Chair

During the January 20, 2020, Legal Internship Committee meeting the committee approved interpretation 2020-1. The interpretation clarifies that in-court hourly requirements can be met by remote methods. The committee determined that allowing credit through remote means was in keeping with current technological advancements and the likely future developments of the practice of law.

2020-1

"In-court participation" shall include telephonic, video, and all other remote hearings, in the State subject to all other rules, regulations and interpretations herein.

On March 27, the Legal Internship Committee addressed changes in policy relative to the Covid-19 public health emergency. Due to the outbreak Legal Intern Exams were cancelled and could not be rescheduled. The current weather emergency policy was rewritten to allow testing dates to be cancelled or rescheduled in the event of any emergency, with the OBA Executive Director's approval. The committee unanimously voted to approve the amended regulation shown below.

Regulation 3(B)2

~~**(a) Weather Emergency Policy**~~

~~**If there is a weather emergency on any examination date, as determined by the affected College of Law, a substitute examination date shall be set as soon as practicable. The substitute examination date shall be set by the affected College of Law. The affected College of Law shall immediately notify the Legal Intern Coordinator about the change in the examination date. If the weather emergency substitute examination date is outside the dates set forth in Regulation 3(B)(1), the Executive Director or the Legal Intern Coordinator, if authorized by the Executive Director, must approve the substitute examination date.**~~

(a) Reschedule Policy

If there is an emergency on any examination date, as determined by the affected College of Law, a substitute examination date shall be set as soon as practical. The substitute examination date shall be set by the affected College of Law. The affected College of Law shall immediately notify the Legal Intern Coordinator about the change in the examination date. If the substitute examination date is outside the dates set forth in Regulation 3(B)(1), the Executive Director or the Legal Intern Coordinator, if authorized by the Executive Director, shall have the authority to approve the substitute examination date.

(b) Cancellation Policy

If there is an emergency that adversely impacts an entire scheduled examination cycle, as determined by the affected College of Law, administration of the examination may be cancelled. The affected College of Law shall immediately notify the Legal Intern Coordinator about the cancellation. The Executive Director or the Legal Intern Coordinator, if authorized by the Executive Director, shall have the authority to approve the cancellation.

During the March 27 meeting, the committee voted to expand Regulation 7 to include documentation and disclosures that were required on the application form. Previously the rules had been changed to allow academic applicants to complete background reporting with an OSBI fingerprint

based report. The application had been revised to request disclosure of criminal history not shown on the background report. The committee added language to the regulation in support of the application criteria.

Regulation 7

(A) Under Rule 2.1A (1)(g) fingerprint-based and name-based criminal history, sex offender, and violent offender searches are required from the Oklahoma State Bureau of Investigation.

Applicants who have been cited for, arrested for, charged with, or convicted of any violation of any law other than a case which was expunged, resolved in juvenile court, or otherwise set aside, must disclose the same on the application. This disclosure requirement includes all matters that have been dismissed, subject to a diversion or deferred prosecution agreement, or otherwise set aside. Copies of the associated arrest report, complaint, indictment, citation, information, disposition, sentence docket report, and appeal, if any, must be attached to the application.

Applicants who have been cited for, arrested for, charged with, or convicted of any violation of any alcohol or drug-related traffic violation, other than a violation that was expunged, resolved in juvenile court, or otherwise set aside, must disclose the same on the application. This disclosure requirement includes all matters that have been dismissed, subject to a diversion or deferred prosecution agreement, or otherwise set aside. Copies of the associated arrest report, complaint, indictment, citation, information, disposition, sentence docket report, and appeal, if any, must be attached to the application.

You may email comments or questions to Legal Internship Committee Chair Terrell Monks at LLIComments@okbar.org. The deadline for submitting comments is May 11, 2020.

Notice of Judicial Vacancy

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of District Judge for Okmulgee County, Twenty-fourth Judicial District, Office 3. This vacancy is created by the resignation of the Honorable Ken Adair on January 31, 2020.

To be appointed to the office of District Judge, one must be a legal resident of Okmulgee County at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms can be obtained online at www.oscn.net (click on "Programs", then "Judicial Nominating Commission", then "Application") or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC **no later than 5:00 p.m., Friday, April 17, 2020**. Applications may be hand-delivered or mailed. If mailed, they must be postmarked **on or before April 17, 2020** to be deemed timely. Applications should be delivered/mailed to:

Jim Webb, Chairman
Oklahoma Judicial Nominating Commission
c/o Tammy Reaves — Administrative Office of the Courts
2100 N. Lincoln Blvd., Suite 3 • Oklahoma City, OK 73105

2020 OK CIV APP 13

BRAD D. ASHER; KIRBY L. JONES, JR.; ARMANDO BELMONTE; FLOYD KENDRICK; LARRY MARTINEZ; STEVE CARTWRIGHT; KEVIN SMITH; DAVID WALTON; GARY SOUTHARD; MICAH KENDRICK; CALEB BECK; RICKY SPRADLIN; STEVE THOMA; CARSON CLAYTON; ERON GIBSON; JOSEPH CHANDLER; WARREN HARVEY, JR.; JIM SELF; AARON GREGORY; BILLY CAPPS; PATRICK SKAGGS; EDWARD PERKINS; DEREK HOEFGEN; JOHN MILLER; JAMES PATTERSON; RON RENO; TIM NICHOLSON; ERIC MOORE; BILLY SPAIN, JR.; WAYNE BETHANY; STEVE ANDERSON; CRAIG IVY; COUGUN LEDFORD; JESSE GERKEN; ROBERT CALVIN; JASON THOMPSON; LAVELLE COLE; RICKEY CARROLL; SHARON CARWRIGHT; DANIEL "KEVIN" POLOVINA; PHILLIP HUDGINGS; DENZEL CLARK; MATTHEW MOSS; TED ZELLERS; TERRY MATTHEWS; DAVID BRITT; ALLAN SEHER; PERRY CARPENTER; KHAMPHACHANH NASSATH; and JEREMY VOSS, Plaintiffs/Appellants, vs. PARSONS ELECTRIC, L.L.C.; P1 GROUP, INC.; and WHITING-TURNER CONTRACTING COMPANY, Defendants/Appellees.

Case No. 117,203. December 21, 2018

APPEAL FROM THE DISTRICT COURT OF MAYES COUNTY, OKLAHOMA

HONORABLE TERRY McBRIDE, JUDGE

AFFIRMED

Frank W. Frasier, FRASIER, FRASIER & HICKMAN, L.L.P., Tulsa, Oklahoma, for Plaintiffs/Appellants,

Andre' B. Caldwell, OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.,Oklahoma City, Oklahoma, for Defendant/Appellee Parsons Electric, L.L.C.,

Denelda Richardson, RHODES, HIERONYMUS, JONES, TUCKER & GABLE, P.L.L.C., Tulsa, Oklahoma, for Defendant/Appellee P1 Group, Inc.,

Mark Waller, J. David Jorgenson, ALLER JORGENSON WARZYNSKI, P.L.L.C., Tulsa, Oklahoma, and Ronald W. Taylor. VENABLE, L.L.P., Baltimore, Maryland, for Defendant/Appellee Whiting-Turner Contracting Company.

Kenneth L. Buettner, Judge:

¶1 This appeal arises from claims asserted by fifty electrical workers (Plaintiffs) against Parsons Electric, LLC (Parsons), P1 Group, Inc. (P1 Group), and Whiting-Turner Contracting Company (WT). Plaintiffs brought claims for blacklisting against Parsons, P1 Group, and WT, and claims for breach of contract against Parsons and P1 Group. The trial court held (1) Parsons and P1 Group were in a joint venture and the alleged "blacklist" was therefore not published to a third party, (2) there was no evidence of breach of contract by Parsons or P1 Group, and (3) WT had no involvement in creating or disseminating the alleged "blacklist". The trial court granted summary judgment in favor of all three defendants. Because there was no dispute of material fact and the defendants were entitled to judgment as a matter of law, we affirm.

¶2 Plaintiffs' claims arose from work related to a construction projection in Pryor, Oklahoma (the Project). On April 1, 2014, Parsons and P1 Group entered into a joint venture agreement (the Joint Venture) in order to submit a bid for the electrical work for the Project. The general contractor for the Project, WT, awarded the electrical subcontract to the Joint Venture. As agreed, P1 Group managed the manpower, while Parsons provided foremen and equipment for the Joint Venture.

¶3 During the course of the Project, a separate lawsuit arose in which the Plaintiffs alleged blacklisting by Parsons, P1 Group, WT, and other defendants, *Kendrick, et. al. v. Allison-Smith Co., LLC., et al.*, No. CJ-2014-164 (Mayes County filed Sept. 11, 2014) (the *Kendrick* case). On February 13, 2015, Parsons and P1 Group entered a notice of settlement in the *Kendrick* case. WT was not party to the February 2015 settlement and the *Kendrick* case is still ongoing.

¶4 Plaintiffs filed their petition in this case July 3, 2017, bringing new claims for blacklisting and conspiracy to blacklist against Parsons,

P1 Group, and WT. Plaintiffs also brought a claim for breach of contract against Parsons and P1 Group. Plaintiffs' claims in this case stemmed from a July 23, 2015 email from a P1 Group employee to a Parsons employee regarding a list of names generated from P1 employment records (the List). The List indicated those persons who had been terminated from employment on the Project, along with the reasons for termination. Plaintiffs argued that this communication constituted blacklisting and thus a breach of the settlement agreement in the *Kendrick* case.

¶5 P1 Group filed its motion for summary judgment November 13, 2017. P1 Group asserted that summary judgment should be granted because (1) only six of the fifty Plaintiffs were included on the List, (2) P1 Group had never employed thirty-one of Plaintiffs, (3) the email between the P1 Group and Parsons employees was an internal communication and therefore not blacklisting, and (4) even if the communication was between distinct entities, the communication was privileged. P1 Group further asserted that Plaintiffs' claim for conspiracy was without legal support, as the blacklisting statute did not provide for a conspiracy cause of action.

¶6 Parsons also moved for summary judgment November 22, 2017. Like P1 Group, Parsons asserted that forty-four of the fifty Plaintiffs were not named on the List. Additionally, Parsons stated it had never employed any of the Plaintiffs and therefore could not be sued under the blacklisting statute. Parsons also asserted similar legal arguments as P1 Group, stating that because it was in the Joint Venture with P1 Group, the email between the two did not qualify as blacklisting.

¶7 WT filed its motion for summary judgment December 1, 2017. WT maintained that it had never employed any of the Plaintiffs and had not been involved in the creation, dissemination, or receipt of the July 23, 2015 email or the List. WT refuted the conspiracy claim on the same bases.

¶8 The trial court held a hearing on the defendants' motions May 9, 2018, and granted summary judgment June 15, 2018. In its order, the trial court stated that because Parsons and P1 Group were in the Joint Venture, the List had not been published to a third party and did not qualify as blacklisting. The trial court also stated that no evidence had been presented indicating a breach of the settlement agreement by Parsons and P1 Group. Lastly, the trial court found there had been no evidence presented indicating WT's involvement in the creation or sending of the List. The trial court therefore determined that there was no dispute of material fact and that the defendants were entitled to judgment as a matter of law. Plaintiffs appeal.

¶9 Proceedings for summary judgment are governed by Rule 13, Rules for District Courts, 12 O.S. 2011, Ch. 2, App. 1. A trial court may grant summary judgment when there is no dispute as to a material fact and the moving party is entitled to judgment as a matter of law. *Brown v. All. Real Estate Grp.*, 1999 OK 7, ¶ 7, 976 P.2d 1043. Summary judgment is not appropriate where reasonable minds could reach different conclusions based upon the undisputed facts. *Id.* We review the evidence de novo and in the light most favorable to the opposing party. V*ance v. Fed. Nat'l Mortg. Ass'n*, 1999 OK 73, ¶ 6, 988 P.2d 1275.

¶10 On appeal, Plaintiffs claim that the trial court erred by (1) holding that Parsons and P1 Group were a single entity for employment purposes and that the List was therefore an internal communication, and (2) holding that some Plaintiffs were not employees of Parsons or P1 Group and could therefore not bring blacklisting claims against them.

¶11 The first issue on appeal is whether the blacklisting statute should categorize members of a joint venture as a single entity and consequently exclude communications within such joint ventures from the scope of the statute. When interpreting a statute, this Court will look to the legislative intent behind the law. *Cooper v. State ex rel. Dep't of Pub. Safety*, 1996 OK 49, ¶ 10, 917 P.2d 466. In so doing, we look first to the text of the statute. *Id*. Where the text is clear from the plain language, no further inquiry is needed. *Id*.

¶12 Claims for blacklisting are governed by 40 O.S. 2011 § 172:

> No firm, corporation or individual shall blacklist or require a letter of relinquishment, or publish, or cause to be published, or blacklisted, any employee, mechanic or laborer, discharged from or voluntarily leaving the service of such company, corporation or individual, with intent and for the purpose of preventing such employee, mechanic or laborer, from engaging in or securing

> similar or other employment from any other corporation, company or individual.

According to the text of 40 O.S. § 172, a "firm, corporation or individual" may be a defendant under the blacklisting statute. It remains unclear from the text of the statute, however, whether two or more companies in a joint venture constitute a singular entity under the statute. We therefore look to case law.

¶13 Cases interpreting the blacklisting statute are few. *Nichols v. Pray, Walker, Jackman, Williamson & Marler, P.C.*, 2006 OK CIV APP 115, ¶ 17, 144 P.3d 907. The leading case on blacklisting is *State v. Dabney.* 1943 OK CR 98, 77 Okl. Cr. 331, 141 P.2d 303. In *Dabney,* the plaintiff's former employer wrote a letter to the plaintiff's new employer, stating that the plaintiff was a "trouble-maker." *Id.* at 333. In an effort to define the term "blacklist," the *Dabney* court looked to Black's Law Dictionary:

> A list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades-union 'blacklists' workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association.

Id. at 338. The court also looked to Webster's Dictionary, which defined "blacklist" as "[a] list of individuals regarded as suspect or as deserving of censure or adverse discrimination." *Id.*

¶14 The blacklisting statute states that an employer may not blacklist an employee with the intent to prevent that employee "from engaging in or securing similar or other employment from any other corporation, company or individual," indicating that the communication would need to be between distinct entities in order to satisfy the statute. 40 O.S. § 172 (emphasis added). In analyzing whether a joint venture constitutes a singular entity, it is helpful to understand the legal nature of joint ventures. In *Martin v. Chapel, Wilkinson, Riggs, and Abney,* the Supreme Court of Oklahoma explained:

> A joint venture is generally a relationship analogous to, but not identical with, a partnership, and is often defined as an association of two or more persons to carry out a single business enterprise with the objective of realizing a profit. The essential criteria for ascertaining the existence of a joint venture relationship are: (1) joint interest in property, (2) an express or implied agreement to share profits and losses of the venture and (3) action or conduct showing cooperation in the project. None of these elements alone is sufficient. . . . Each member of a joint venture acts for himself as principal and as agent for the other members within the general scope of the enterprise. The law of partnership and of principal and agent underlies the conduct of a co-adventurer and governs the rights and liabilities of co-adventurers and third parties as well.

1981 OK 134, ¶ 11, 637 P.2d 81.

¶15 Where in this case an explicit joint venture agreement has been signed by Parsons and P1 Group, the relevant analysis is easily satisfied by the provisions therein.[1] The question remains, however, whether such a joint venture would constitute a singular "firm" or "company" under the blacklisting statute.

¶16 Because the few cases interpreting the blacklisting statute do not shed light on the question, we must look to related areas of the law. Like blacklisting, the tort of defamation requires that an individual or entity publish a defamatory statement to a third party before the statement becomes actionable. 12 O.S. 2011 § 1442. Where case law on blacklisting is sparse, we look to the more ample case law relating to defamation.

¶17 In *Thornton v. Holdenville General Hospital,* this Court reiterated the rule previously stated by the Oklahoma Supreme Court: "Communication inside a corporation, between its officers, employees, and agents, is never a publication for the purposes of actions for defamation." 2001 OK CIV APP 133, ¶ 11, 36 P.3d 456 (citing *Magnolia Petroleum Co. v. Davidson,* 1944 OK 182, ¶ 35, 148 P.2d 468). There, a doctor alleged defamation by a hospital, claiming that publication of the negative statements occurred when the comments were communicated by hospital employees to employees of a separate company contracted to fulfill staffing needs for the hospital. *Id.* ¶ 12. This Court disagreed with the plaintiff in *Thornton* and ruled that where an agency relationship exists between two defendants, communication between them does not constitute publication for purposes of defamation. *Id*. ¶ 13.

¶18 Applying the same logic here, we hold that the blacklisting statute requires a communication be addressed to a person or entity other than an agent, partner, or joint venturer in order to constitute an actionable offense. Though distinct from the concepts of agency or partnership, a joint venture is largely analogous to those relationships and a similar standard should apply. Based upon the plain language of the statute, paired with the dictionary definitions of "blacklisting" referenced by this Court in *Dabney*, it appears that the legislature intended to prohibit the intentional interference of a former employer with an employee's attempt to seek work elsewhere. If we were to construe the statute to mean that entities engaged in agency relationships, partnerships, or joint ventures could not communicate regarding hiring and firing, we would undermine the legislative intent imbued in the plain text of the blacklisting statute. Accordingly, we hold that the trial court properly held that the List was a communication between joint venturers regarding the business concerns of the venture and was therefore not made to an "other corporation, company, or individual" and did not constitute blacklisting.

¶19 The second issue in this appeal is whether a plaintiff must demonstrate that he or she was once employed by a defendant in order to bring a claim for blacklisting. On this issue we need look no further than the text of the statute. The blacklisting statute states that a company shall not blacklist "any employee, mechanic or laborer, discharged from or voluntarily leaving the service of such company …." 40 O.S. § 172. This provision clearly indicates that a plaintiff must have been employed by a defendant in order to bring a claim under the blacklisting statute. Plaintiffs do not dispute that P1 Group never employed thirty-one of the Plaintiffs, or that Parsons never employed *any* of the Plaintiffs.[2] As such, Plaintiffs' second argument on appeal must also fail.

¶20 The List sent as part of the July 23, 2015 email was a communication between co-venturers regarding business of the Joint Venture and therefore did not constitute blacklisting. Further, the claims of those Plaintiffs who were never employed by the defendants against whom they asserted claims also must fail as a matter of law. Because there remained no dispute as to a material fact and the defendants were entitled to judgment as a matter of law, we affirm the trial court.

¶21 AFFIRMED.

BELL, P.J., and JOPLIN, J., concur.

1. This Court also takes note of the fact that the Joint Venture Agreement provided for the creation of a limited liability company (LLC) with Parsons and P1 Group as the members, and that such an LLC was in fact created. Because the Plaintiffs sued Parsons and P1 Group in their individual entity capacities and not as an LLC, however, and because the defendants do not raise the issue of the formation of the LLC as a defense, we continue our analysis of whether a joint venture constitutes a singular entity under the blacklisting statute.

2. We also agree with the trial court's conclusion that no evidence was presented regarding WT's involvement in the creation or distribution of the List. WT's employment relationship with the Plaintiffs is therefore immaterial, and summary judgment in its favor is also appropriate.

DEADLINE EXTENDED!

With the interruptions caused by COVID-19, dates for review of applicant materials has been rescheduled. As a result, the search committee is allowing any previous applicants to supplement their applications and allowing new applicants to apply on or by May 1.

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 May 1, 2020, to johnw@okbar.org.
All applications will be kept confidential.
The OBA is an equal opportunity employer.

Disposition of Cases Other Than by Published Opinion

COURT OF CRIMINAL APPEALS
Thursday, March 26, 2020

F-2019-489 — Petitioner Taheerah Ayesha Ahmad entered blind pleas of guilty to Assault and Battery by means likely to produce death (Count I) (21 O.S.Supp.2011, § 625(C)); Child Neglect (Counts II and III) (21 O.S.Supp.2014, § 843.5(C)); and Arson in the First Degree (Count IV) (21 O.S.Supp.2013, § 1401(A)) in the District Court of Tulsa County, Case No. CF-2018-2028. The pleas were accepted by the Honorable Dawn Moody, District Judge, on April 16, 2019. On May 16, 2019, Petitioner was sentenced to life imprisonment in each of Counts I, II, and III, and ten (10) years imprisonment in Count IV. The sentences in Counts I, II, and III were ordered to be served concurrently and the sentence in Count IV to be served consecutively to Count I. On May 24, 2019, Petitioner filed a motion to withdraw the guilty pleas. At the conclusion of a hearing held on June 14, 2019, the motion to withdraw was denied. The Petition for a Writ of Certiorari is DENIED. The Judgment of the District Court is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur; Hudson, J., Concur; Rowland, J., Concur.

F-2018-288 — Appellant Merritt Clifford Parker, II, was tried by jury and convicted of two counts of Child Abuse by Injury in the District Court of Tulsa County Case No. CF-2016-5313. In accordance with the jury's recommendation the trial court sentenced Appellant to 25 years on Count I and 10 years on Count II and ordered the sentences to be served consecutively. From this judgment and sentence Merritt Clifford Parker, II, has perfected his appeal. AFFIRMED. Opinion by: Kuehn, V.P.J.: Lewis, P.J.: concur in result; Lumpkin, J.: concur; Hudson, J.: concur; Rowland, J.: concur in result.

Thursday, April 2, 2020

F-2018-1269 — James Bradley Wigley, Appellant, was tried by jury for the crimes of Count 1, burglary in the first degree; Count 2, kidnaping; Count 3, feloniously pointing a firearm; and Count 4, knowingly concealing stolen property, in Case No. CF-2018-162 in the District Court of Carter County. The jury returned a verdict of guilty and recommended as punishment seven years imprisonment on each of Counts 1 and 2, one year imprisonment on Count 3, and two years imprisonment on Count 4. The trial court sentenced accordingly and ordered the sentences be served consecutively. From this judgment and sentence James Bradley Wigley has perfected his appeal. The judgment and sentence is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

F-2018-1263 — Travis Michael Leatherwood, Appellant, was tried by jury for the crime of Murder in the First Degree (Count 1), Possession with Intent to Distribute a Controlled Dangerous Substance (Count 2), Possession of a Firearm During Commission of a Felony (Count 4), Maintaining a Place for Keeping/Selling Controlled Substances (Count 5), and Unlawful Possession of Drug Paraphernalia, a misdemeanor (Count 6) in Case No. CF-2017-106 in the District Court of Kingfisher County. The jury returned verdicts of guilty and set punishment at life imprisonment without the possibility of parole on Count 1, ten years imprisonment on each of Counts 2 and 4, five years imprisonment and a $5,000.00 fine on Count 5, and a $500.00 fine on Count 6. The trial court sentenced accordingly. From this judgment and sentence Travis Michael Leatherwood has perfected his appeal. AFFIRMED. Leatherwood's application for evidentiary hearing on Sixth Amendment claim is DENIED. The district court's Restitution Order is VACATED and the matter is REMANDED for a proper hearing. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs; Lumpkin, J., concurs in results; Hudson, J., concurs.

F-2019-140 — Riley James Lamm, Appellant, was tried by jury for the crime of Domestic Abuse-Assault and Battery Second and Subsequent in Case No. CF-2018-399 in the District Court of Comanche County. The jury returned a verdict of guilty and set punishment at fifteen years imprisonment. The trial court sentenced accordingly. From this judgment and sentence Riley James Lamm has perfected his

appeal. AFFIRMED. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

F-2018-1245 — Appellant Walter Lee Roundtree was tried by jury and found guilty of Trafficking in Illegal Drugs – Cocaine Base (Count I) (63 O.S.Supp.2015, § 2-415); Felonious Possession of a Firearm (Count II) (21 O.S.Supp.2014, § 1283); and Possession of Proceeds Derived from a Violation of the Uniform Controlled Dangerous Substances Act (Count III) (63 O.S. 2011, § 2-503.1), After Former Conviction of Two Prior Convictions, in the District Court of Oklahoma County, Case No. CF-2017-3846. The jury recommended as punishment imprisonment for fifty (50) years in Count I, and ten (10) years in each of Counts II and III. The trial court sentenced accordingly, ordering the sentences in Counts II and III to be served concurrently with each other but consecutive to the sentence in Count I and consecutive to Appellant's existing sentence in Oklahoma County Case No. CF-2017-6657, with credit for time served, in addition to a suspended $25,000.00 fine and various costs and fees. It is from this judgment and sentence that Appellant appeals. In Proposition VI, Appellant argues the cumulative effect of the errors in his case denied him a fair trial. This Court has repeatedly held that a cumulative error argument has no merit when this Court fails to sustain any of the other errors raised by Appellant. *Lee v. State*, 2018 OK CR 14, ¶ 20, 422 P.3d 782, 787. No errors warranting relief were found in this case. This proposition is denied. Accordingly, this appeal is denied. The JUDGMENT and SENTENCE is AFFIRMED. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2020), the MANDATE is ORDERED issued upon the delivery and filing of this decision. Opinion by: Lumpkin, J.; Lewis, P.J.: Concur; Kuehn, V.P.J.: Concur; Hudson, J.: Concur; Rowland, J.: Concur.

F-2019-220 — Appellant, Michael Anthony Mason, was tried by jury and convicted of Possession of Child Pornography, in violation of 21 O.S.Supp.2007, § 1021.2, in Garfield County District Court, Case No. CF-2011-95. The jury recommended punishment of twenty years imprisonment and payment of a $10,000.00 fine. The trial court sentenced Appellant accordingly. From this judgment and sentence, Appellant appeals. After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that under the law and the evidence, Appellant is not entitled to relief. The JUDGMENT and SENTENCE is AFFIRMED. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2020), the MANDATE is ORDERED issued upon the delivery and filing of this decision. Opinion by: Lumpkin, J.; Lewis, P.J.: Concur in Results; Kuehn, V.P.J.: Concur; Hudson, J.: Concur; Rowland, J.: Concur.

C-2019-631 — Jake Levi Few, Petitioner, entered blind pleas of guilty and no contest to Counts I and III, Enabling Lewd Molestation, in Pontotoc County District Court Case No. CF-2018-116. After a sentencing hearing, the trial court sentenced him to life imprisonment on each count and ordered the sentences to run consecutively. Petitioner timely moved to withdraw his pleas, and the district court denied the request after an August 22, 2019 hearing. Petitioner has perfected his certiorari appeal. Petition for Certiorari DENIED. Opinion by: Kuehn, V.P.J.; Lewis, P.J., Concur; Lumpkin, J., Concur in Results; Hudson, J., Concur; Rowland, J., Concur.

RE-2018-1234 — On August 29, 2014, Appellant Austin David Blevins entered a guilty plea to a charge of Grand Larceny in Delaware County Case No. CF-2013-0295. The district court deferred sentencing for five (5) years. In CF-2014-0058, Blevins pled guilty to the charges of two counts of Rape in the Second Degree, Forcible Oral Sodomy, and Lewd Proposals to a Child Under Sixteen. For these charges, Blevins was sentenced to fifteen (15) years imprisonment each in Counts 1 and 2, and twenty (20) years each in Counts 3 and 4, with the entirety of the sentence in each count suspended, subject to terms and conditions of probation. Finally, in CF-2014-0093, Blevins pled guilty to a charge of Burglary in the Second Degree. He was sentenced to seven (7) years imprisonment, suspended, subject to terms and conditions of probation. On May 14, 2015, the State filed an Application to Revoke Blevins's suspended sentences in CF-2014-0058 and CF-2014-0093, alleging he had violated terms of his probation in numerous ways, including having contact with minors, moving without permission, and leaving the state. The State also filed an Application to Accelerate Deferred Sentence in CF-2013-0295, alleging the same violations. On June 17, 2015, in the District Court of Delaware County, the Honor-

able Alicia Littlefield, Special Judge, revoked Blevins's suspended sentences in full and accelerated his deferred sentence in full. Blevins appeals. The revocation of Blevins's suspended sentence is AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs; Lumpkin, J., Concurs; Rowland, J, Concurs.

COURT OF CIVIL APPEALS
(Division No. 4)
Thursday, March 19, 2020

117,503 (Companion with Case No. 116,455) — Monterey Development Company, LLC, an Oklahoma Limited Liability Company, Plaintiff/Appellee, vs. Sand Resources, LLC, an Oklahoma Limited Liability Company and Trinity Resources, Inc., an Oklahoma Corporation, Defendants/Appellants. Appeal from an order of the District Court of Cleveland County, Hon. Thad Balkman, Trial Judge, awarding attorney fees to Monterey Development Company, LLC, pursuant to a Mediation Agreement. We affirm the trial court's order as to its finding that Monterey is entitled to attorney fees against Sand based on the Mediation Agreement, but only as to those fees directly related to the issues covered by the Mediation Agreement. The trial court's decision is reversed as to those fees outside or not directly related to the Mediation Agreement, including its decision that Trinity is jointly responsible for the attorney fee award when Trinity was not a party to the Agreement. We remand the case to the trial court to determine which attorney fees Monterey may recover against Sand under the Mediation Agreement. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS. Opinion from the Court of Civil Appeals, Division IV, by Wiseman, C.J.; Reif, S.J. (sitting by designation), and Thornbrugh, P.J., concur.

Wednesday, March 25, 2020

117,206 — Greg Kent, Amy Kent, Leisha Knight, Richard Knight, Lola Knight, Shelly Knight, Vicki Wallace, Libby Davis, Charles Davis, Petitioners/Appellants, vs. The City of Oklahoma City, Oklahoma, a Municipality, et al., Respondents/ Appellees, and Kilpatrick at Eastern, LLC, an Oklahoma limited liability company, Intervenor. Appeal from an Order of the District Court of Oklahoma County, Hon. Trevor Pemberton, Trial Judge. Petitioners/ Appellants (Petitioners) seek review of trial court orders that denied their petition for a writ of mandamus or prohibition against the City of Oklahoma City (City), and denied Petitioners' motion for leave to amend the petition. Petitioners also challenge trial court's decisions allowing property developers Kilpatrick at Eastern, LLC (Kilpatrick), to intervene in this action, and granting City's motion to consolidate this proceeding with a related case in the court below. On review of the record, the parties' briefs and the applicable law, we reject Petitioners' arguments for reversal of the trial court's orders at issue herein. The court did not abuse its discretion in concluding that mandamus is not an appropriate or available remedy to address City's legislative decision rezoning the area in question, and the evidence does not otherwise support a claim that City acted unreasonably, arbitrarily, or capriciously. We further find the court did not abuse its discretion by allowing case consolidation and intervention of right by the property owner, Kilpatrick, nor did it err by refusing to allow Petitioners to file a second amended petition. Accordingly, the judgment is affirmed in all respects. AFFIRMED. Opinion from the Court of Civil Appeals, Division IV, by Thornbrugh, P.J.; Wiseman, C.J., and Barnes, J. (sitting by designation), concur.

Thursday, April 2, 2020

118,167 — Amanda Byrd, Petitioner, vs. Mazzios LLC, and the Workers' Compensation Commission, Respondents. Proceeding to Review an Order of the Workers' Compensation Commission. Petitioner/Claimant, Amanda Byrd, seeks review of an order of the Workers' Compensation Commission affirming an administrative law judge's decision rejecting Claimant's argument that her permanent partial disability should be rated pursuant to the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition (Guides' Fifth edition), rather than the sixth edition of the same publication (Guides' Sixth edition). We find the issues presented here are the same as were decided by the Supreme Court in *Hill v. American Medical Response*, 2018 OK 57, 423 P.3d 1119, and sustain the Commission's decision. SUSTAINED. Opinion from the Court of Civil Appeals, Division IV, by Thornbrugh, P.J.; Wiseman, C.J., and Barnes, J. (sitting by designation), concur.

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