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Editor: Luke Adams

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#### From The President

### **New Collections**

By Susan B. Shields

#### THAVE NEVER BEEN MUCH OF A COLLECTOR.

My most extensive collections are kitschy refrigerator magnets from family vacations over the years and a few postage stamps from my childhood. So, what a surprise it has been this year to become a collector of face masks. It is a sign of our times to have face masks stashed everywhere, from the office, to my car, purse and briefcase.

At the OBA, we are doing our best to follow all of the recommended safety precautions and, as you can see from the photos from of one of our recent Board of Governors meetings, that means social distancing and masks.

In addition to my new face mask collection, I have also recently added a new term to my vocabulary -"smizing." According to the internet, it is a term coined by Tyra Banks that means smiling only with your eyes - for example, when your mouth is covered by a face mask. Smile with your eyes – smize. So, while COVID has prevented most face-to-face interactions, I am practicing more smizing, air hugs and elbow bumps than I ever imagined would be possible.

To date 2020 has presented numerous opportunities for learning and for adding to each of our face mask collections. Through it all, I am proud of our bar association and the OBA staff for continuing to provide the member services of the OBA. The safety of our members and the OBA staff is paramount, and if you have been to the OBA building lately, you will see signs of the safeguards in place when

you first walk in the door. I realize we cannot mask the difficulties that many of us

are experiencing in our practices and the impact this virus has had on our clients, families, friends and colleagues. We are not alone.



President Shields practices in Oklahoma City.

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405-552-2311



(continued on page 45)

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## Trial By Jury: Unequal Protection for Oklahoma's Abused and Neglected Children

By Christopher M. Calvert

KLAHOMA IS THE ONLY STATE that specifically provides parents of abused and neglected (deprived) children a constitutional right to a jury when terminating the parent-child relationship (termination).1 The story of how Oklahoma became the only state with such a specific jury right extends over four decades, beginning with the 1960s bribery scandal and ending in a 1997 Oklahoma Supreme Court decision. This article documents the history of that jury right, while also analyzing its impact from the perspective of a deprived child, arguing it violates the federal Constitution's equal protection clause; because among the class of children subject to a termination, deprived children are made a subclass that's afforded less protection since juries lack the experience and mandatory specialized training of juvenile judges.

Originally, the jury right was based on text in the Oklahoma Constitution. After voters removed that text, the court kept the right, requiring it of due process. To date, the court has never analyzed the issue using the modern due process test from *Mathews v*. Eldridge. Other states have, and none require a jury. We perform a similar analysis that separately and specifically considers the private interests of a deprived child. The result argues against the jury right, maximizing parents' due process early in the case before the child's interest in timely permanency becomes paramount.

If children's attorneys put these issue before the court, Oklahoma could end its role as the lone holdout,2 returning the jury question to the Legislature, a place much better suited to consider the competing facets underlying the question, and there are good reasons a legislature would rather put the fate of a deprived child in the hands of a judge rather than a jury.

#### THE BEGINNING: THE BRIBERY SCANDAL **AND SQ 459**

The 1960s Oklahoma Supreme Court bribery scandal led lawmakers and voters to reform Oklahoma's judiciary through a series of state questions. In 1968, voters approved the last of these measures, State Question 459 (SQ 459), which amended the Constitution's article II, section 19 clause (jury clause), adding a list of specific proceedings tried before a jury of six jurors

instead of 12, including "juvenile proceedings."3 Oklahoma's attorney general rejected SQ 459's original ballot title, which was all voters saw on their ballots. The revised title removed "juvenile proceedings," giving voters no indication those proceedings were implicated. It took until 1977 before the court considered whether the amended jury clause afforded parents the right to a jury.

#### I.V. V. STATE - THE COURT'S FIRST IMPRESSION

In J.V. v. State, Dept. of Institutions, Etc.,4 in a 6-3 decision, the Oklahoma Supreme Court rejected arguments a parent had a right to a jury in a termination hearing, finding no support in either the Constitution or statutes.

The court rejected the assertion due process requires a jury right whenever "substantial rights are affected," noting a lack of supporting authority. The court didn't find support in the jury clause, referencing the line of cases holding it merely preserved the jury right existing in common law or at statehood, a time before termination hearings. After considering the statutes, which only provided for a jury at the adjudication and not the subsequent disposition where termination was an option, the court upheld the trial court denying the parent a jury trial, though it reversed and remanded on other grounds.

The dissenting opinion evidences some of the termination statutes' early growing pains, arguing for more formality, but it also evidences a struggle of whether to focus on the parent or child. In *J.V.*, termination was added to the original petition, requiring its readjudication. The dissent argued this latter adjudication, which allowed for a jury, was the termination hearing. But as the majority noted, that contradicted the statutes, which only allowed termination at a disposition. It also overlooked that a deprived petition, and thus its adjudication, was against the child, something true since Oklahoma's first deprived-related statutes in 1905.<sup>5</sup>

After *J.V.*, the cry for more legal protections got louder, the makeup of the court changed and the number of dissenting justices slowly increased. Ten years after *J.V.*, the court reached its critical mass.

#### A.E. V. STATE - THE COURT **CHANGES COURSE**

In 1987, in *A.E. v. State*,<sup>6</sup> the court again took up the jury question and, in a 5-4 decision, recognized the constitutional jury right J.V. rejected. A.E. is a controversial decision that can be interpreted

multiple ways, but for Oklahoma's deprived children, all implicate equal protection.

A.E. is most controversial if it stands for the sole proposition the Oklahoma Constitution provides parents the right to a jury in a termination hearing. The court argued SQ 459's "juvenile proceedings" phrase must necessarily include termination hearings because the Legislature drafted and voters passed SQ 459 contemporaneously with enacting the termination statute in 1968, both taking effect on Jan. 13, 1969, evidencing legislative and voter intent. The termination statute was first enacted in 1965,7 well before SQ 459; the Legislature simply renumbered it in 1968.8 Most notably, in those original termination statutes, the Legislature ensured a parent received both specific notice that termination was a possibility, mentioning it in three different statutes, and a specific termination hearing. The Legislature could've similarly ensured the parent had the right to a jury, as it did for the child at adjudications, but didn't. Looking at how newspapers described SQ 459 to voters, it seems clear public perception associated SQ 459 with judicial reform, not as a tool expanding jury rights. Voter intent is hard to ascertain as voters never saw "juvenile proceedings" on their ballot.

While A.E. has its cynics,<sup>10</sup> we judge it less harshly, seeing it as attempting to overcome early problems with the termination statutes. The A.E. court fell into the same trap ensnaring J.V.'s dissent, using a jury to overcome lessthan-pristine statutes, something well beyond the scope of merely determining facts. The fallout from A.E., as Justice Opala noted in dissent, was to put the court "on the horns of a dilemma," treating a subclass of similarly situated

parents differently, providing some the right to a jury, but not all. Such a result, Justice Opala argued, violated both the federal Constitution's equal protection clause as well as article V of the Oklahoma Constitution. Neither A.E. nor J.V. considered a jury's impact on deprived children. But paralleling Justice Opala's argument, now a class of similarly situated children are treated differently. In termination hearings, the fates of children in adoption cases are left solely to a judge with experience in such cases, while the fates of children in deprived cases may be left to a jury of six strangers. Over 30 years later, the dilemma remains as the court has refused to extend the jury right to all terminations.<sup>11</sup>

#### GRAY V. UPP - THE COURT **DOUBLES DOWN**

The Legislature appeared to rebuke *A.E.*, putting State Question 623 (SQ 623) before the voters, who passed it in 1990, and removing SQ 459's list of specific proceedings, including "juvenile proceedings."12 Given the Legislature and voters removed the phrase on which A.E. was founded, it seemed only a matter of time before the court once again placed the jury question with the Legislature. But the court had a surprise.

In 1997's *Gray v. Upp*, <sup>13</sup> the court held SQ 623 "neither repealed nor negated" A.E.'s constitutional jury right. Of the three cases, we see Gray as the hardest to explain and reconcile. Part of A.E.'s justification was that changing the Constitution changes the law. Gray seemingly uses the opposite logic to reach the same result. The court now also requires the jury right as part of due process, the only state to so hold, despite having never analyzed it using the modern *Mathews* v. Eldridge due process test. The Legislature's response in 2002 was

to move the jury right from the adjudication to the termination.

#### WHAT CHILDREN'S ATTORNEYS CAN DO

Given the implications for deprived children, the jury question should again go before the Oklahoma Supreme Court. Children's attorneys should specifically focus on the deprived child, arguing these children have interests separate from their parents that deserve to be recognized and protected under due process. Overturning the constitutional jury right still leaves the statutory right in place, so opponents may argue the court can't provide relief and, therefore, the issue isn't justiciable. Such an argument would require the political branches to enact legislation that knowingly violates the Constitution before the court could review its prior decisions. One can foreclose the argument by first showing the statutory right is unconstitutional. Enter Justice Opala's "horns of a dilemma."

*Equal Protection – Getting Off the* Horns of a Dilemma

Justice Opala's dissent in A.E. provides a blueprint for arguing why 10A O.S. §1-4-502 violates equal protection, with one caveat. Instead of parents, it's important to show how the statute treats children differently, specifically how among a single class comprised of children subject to a termination hearing, the statute provides less protection to the subclass of deprived children without a rational basis for doing so.

In the Oklahoma Adoption Code, a judge determines facts and best interests in a termination, but for a deprived case under the Oklahoma Children's Code, the statute allows a jury to determine both. The Legislature requires attorneys and judges involved in deprived cases to get continuing, specialized training in complex issues related to such cases.<sup>14</sup> Oklahoma, to the extent its Constitution allows, adheres to the one family-one judge model, which two well-known national guidelines recommend for cases involving children.<sup>15</sup> The idea is one judge becomes the expert in the family and serves as a familiar face, gaining a long-term perspective of the parties that leads to better quality decisions. On the other hand, a jury is composed of six strangers, some of who may not know anything about children or the complex issues underlying a deprived case. Thus, a judge is better positioned to determine facts and especially best interests. As a result, taking the decision from the judge, the specially trained expert in the case, and giving it to a jury affords deprived children less protection, which isn't rationally related to the legitimate government purpose of protecting children.

A possible counter argument is the distinction between the state and private individual petitioning for termination, but two justices in A.E.'s majority later rejected that argument, endorsing Justice Opala's "observation that there is no rational connection between the distinction of classes of parents and the purpose for the classification,"16 giving that view a clear majority among A.E.'s justices.

Lacking a rational basis to afford deprived children less protection makes 10A O.S. §1-4-502 unconstitutional. The requested relief is to ban jury trials in deprived cases until the law protects all children within the class equally,<sup>17</sup> ideally without a jury. Not coincidentally, one of the national guidelines expressly discourages using juries in termination hearings.18

*Due Process – Using the Modern Test* 

The court has never analyzed the jury question using the *Mathews v. Eldridge*<sup>19</sup> due process test, which balances three factors: 1) the affected private interests, 2) the risk of error, in this case without a jury, and 3) the government's interest. Courts in several states have, and none require a jury as part of due process. We perform a similar analysis that specifically considers the deprived child, and the result argues against a jury right in termination proceedings, effectively realigning due process and maximizing it for

Other states. In 2016, the Nevada Supreme Court, like *J.V.*, rejected the blanket argument due process requires a jury whenever a fundamental interest is at stake. Turning to the three factors and acknowledging the compelling

parents at the front end of the case

before the child's need for timely

permanency becomes paramount.

Children's attorneys should specifically focus on the deprived child, arguing these children have interests separate from their parents that deserve to be recognized and protected under due process.



interests, the question turned on the risk of error, which the court found to be minimal because of sufficient alternative fact-finding procedures, such as getting notice, having counsel, confronting and cross-examining witnesses, and applying the higher clear and convincing standard. The court warned adding the jury right also adds its traditional delays, slowing progress and causing backlogs, to a docket where speedy disposition of a child is important and time is of the essence; it also mentioned that juries compromise efforts to maintain a child's anonymity. Thus Nevada joined "the national trend to deny jury trials in termination ... proceedings."20 In 2005 and 2007, the Alaska Supreme Court found judges "well situated to make reliable findings" because of knowing the law and being familiar with a case's prior proceedings, similarly warning juries could delay a child achieving permanency and reduce judicial economy.<sup>21</sup> In 2004, the Wisconsin Supreme Court characterized the jury right as purely

statutory, noting "[j]ury trials are expensive and time-consuming."<sup>22</sup> In 1997, though not expressly using *Mathews v. Eldridge*, the New Mexico Court of Appeals observed its courts "appropriately balance the children's interests with those of the parents." Rejecting the argument judges are biased against the parent, it specifically noted the judge's familiarity with the case and any prior proceedings allows the judge to properly consider all the necessary factors for termination.<sup>23</sup>

Mathews v. Eldridge analysis. We perform a separate Mathews v. Eldridge analysis, specifically considering the deprived child, and show the private interests are compelling, the risk of error without a jury is minimal, and the government's interest is significant; and each of the three factors argues against the right to a jury.

At a termination hearing, parents have a compelling interest in the care, control and custody of their child. Such an interest requires fundamentally fair procedures, so it's best seen as an interest in a *fair* 

decision. A deprived child has a compelling interest in achieving timely permanency24 (i.e., free of unnecessary and unreasonable delay) in a placement promoting healthy development. It's an interest in timely reaching the right decision. The "fair" and "right" distinctions are important because a wrong decision, even if fair, hurts the child. Some may argue that only a jury, one naïve to the case's history, can reach a fair termination decision because a judge's familiarity with the case leads to bias against the parent. Like New Mexico, we disagree. What some call "bias," we believe is better characterized as "context," and it's this context, coupled with the juvenile judge's mandatory specialized training and experience applying the law, that puts the judge in the best position to make a decision that's both *right* for the child and *fair* to the parent.

We rely on the analyses of the United States Supreme Court and the Nevada and Alaska Supreme Courts for concluding accurate fact finding doesn't require a jury,<sup>25</sup> but termination involves more than fact finding; it also includes determining the child's best interests, which can implicate complex questions related to childhood trauma, mental illness, substance abuse, adolescent brain development, etc. Unlike juries, juvenile judges get training in these areas, on top of any expertise gained from prior experience in similar cases. Thus, relying on a judge to determine a child's best interests carries a minimal risk of error compared to a jury.

The government's interest is protecting deprived children in the most judicially economic manner.<sup>26</sup> In 2003, Arizona reformed its Child Protective Services (CPS), and fearing more child removals, its Legislature enacted a jury option. After analyzing its impact,<sup>27</sup> the Legislature let the jury option expire after only three years. Arizona's analysis gives insight into how juries undermine the government's interest, adversely affecting both deprived children and judicial economy, and from our experience, is applicable to Oklahoma.

The high cost of juries goes beyond the direct cost of paying jurors, especially in urban counties with typically higher volumes of cases. Jury trials are held on consecutive days during a limited number of jury terms. Multiple trials are scheduled to increase the odds one is held. Those not held are pushed to a later term, delaying those children's permanency. Because the courtroom is scheduled for the week, if the jury trial takes less than a week or no trial is held, it sits idle. An idle courtroom means fewer hearings for other deprived children, potentially delaying their permanency. Bench trials can be scheduled over nonconsecutive days, giving judges flexibility in busy dockets, increasing courtroom efficiency. Jury trials take longer to conduct because of

voir dire, jury instructions and jury deliberations; and all three provide additional grounds for an appeal, further delaying permanency.

Arizona noted jury trials have higher workload demands for attorneys and CPS workers. More significantly, the analysis indicated a jury is more likely requested when cases involve substance abuse, serious mental health issues, parental involvement in the criminal justice system or when the child has been out of the home the maximum allowed time. This suggests the parents most likely to demand a jury were the ones most likely to lose a termination trial, which is consistent with an Oklahoma legislative interim report.<sup>28</sup> These parents seem to treat the jury trial as a judicial Hail Mary pass, supporting our earlier assertion a judge's perceived "bias" is better characterized as "context."

It's hard to assess juries' value. If termination rates are similar for both juries and judges, what are juries adding? Yet even if the rates differ, it doesn't necessarily mean juries are making the right decision, especially if juries are perceived as "unpredictable."29 In Arizona, juries terminated 88% to judges 92%, but there were far fewer jury trials. Just one additional jury termination raises its rate from 88% to 91%. The Arizona analysis concluded any difference in termination rates "is a very small one," indicating juries give little value for their high costs.

Given the deprived child's compelling interest in timely permanency, it makes sense to maximize parents' due process early in a case when the permanency interest is at a relative minimum, such as making it harder to initially remove children and affording specially trained counsel at the earliest possible time. But once removed, the focus should turn to the child and timely permanency because the child has the most at stake,30 especially infants and

young children.<sup>31</sup> A child only gets one childhood, only one opportunity to develop secure attachments to appropriately responsive caregivers who can positively impact the child's developing brain, laying the foundation for healthy socio-emotional development,32 and most brain development occurs by age five.<sup>33</sup> The absence of such attachments can lead to physical and mental health problems later in life.34 Most of Oklahoma's deprived cases involve young children.35 For them, the right to a jury delays permanency and the secure attachments required to become healthy adults.

#### **CONCLUSION**

A parent decides whether a child is deprived, while it's the child who suffers the abuse and neglect. It's unfair to protect that parent at the child's expense, an ideal some states have put into law.36 We believe Oklahoma's right to a jury in a termination hearing is one such unfair protection. The last two decades of research in childhood trauma and adolescent brain development shows just how high the stakes are for deprived children, so for both equal protection and due process, it's time to look at the jury right from the child's perspective.

#### **ABOUT THE AUTHOR**

Christopher M. Calvert earned his J.D. in 2017 from the OCU School of Law, also completing the OUHSC's Center on Child Abuse and Neglect Interdisciplinary Training Program. He volunteers through Oklahoma Lawyers for Children and as a permanency mediator and is a former CASA volunteer. He's also a meteorologist/ software-engineer with the National Weather Service.

#### **ENDNOTES**

- 1. Texas interprets its Constitution's article V, section 10, as providing "the right to have a jury resolve fact questions in all causes brought in the district courts." Barshop v. Medina Cty. Underground Water Consrv. Dist., 925 S.W.2d 618, 636 (Tex. 1996). Unlike Oklahoma, Texas's right is not exclusive to deprived proceedings.
- 2. Currently, Texas also provides a constitutional right, but it's not tied to the state Constitution's due process clause.
- 3. H.R.J. Res. 559, 31st Leg., 2d Sess. (Okla. 1968), available at www.sos.ok.gov/documents/ questions/459.pdf; A.E. v. State, 1987 OK 76, ¶6, 743 P.2d 1041, 1050, (Opala, J., dissenting).
- 4. J.V. v. State, Dep't of Insts., 1977 OK 224, 572 P.2d 1283, overruled by A.E. v. State, 1987 OK 76, 743 P.2d 1041.
- 5. Okla. Stat. ch. 11, §§687-98 (1908); 1905 Okla. Sess. Laws pp. 201-09.
  - 6. A.E. v. State, 1987 OK 76, 743 P.2d 1041.
- 7. Okla. Stat. tit. 10, §§471-75 (1965); 1965 Okla. Sess. Laws pp. 1046-47.
- 8. Okla. Stat. tit. 10, §§471-75 (1965) became Okla. Stat. tit. 10, §§1130-34 (1968) essentially verbatim, except for a paragraph added to §1131 describing when a father or putative father was not entitled to notice.
- 9. "Those Six State Questions," The Daily Oklahoman, Sept. 15, 1968, at 23 (discussing SQ 459 only in terms of the monetary value triggering the jury right). "Light Turnout Likely Today as State Votes," The Daily Oklahoman, Sept. 17, 1968, at 51 (State Question 459 would eliminate the trial by jury requirement in cases involving less than \$100.). "Voters Reject Sneed Plan of Court Reform," The Altus Times-Democrat, Sept. 18, 1968, at 1 (describing SQ 459 as "eliminating the requirement of jury trial in certain cases").
- 10. Edward L. Thompson, "Protecting Abused Children: A Judge's Perspective on Public Law and Deprived Child Proceedings and the Impact of the Indian Child Welfare Acts," 15 Am. Indian L. Rev. 1, 112 (1990) (characterizing A.E. as a "judicial fiat").
- 11. In re Termination of Parental Rights, 1993 OK 10, ¶6, 847 P.2d 768, 769.
- 12. S.J. Res. 17, 42nd Leg., 1st Sess. (Okla. 1989), available at www.sos.ok.gov/documents/ questions/623.pdf.
- 13. Gray v. Upp, 1997 OK 98, 943 P.2d 592 (per curiam).
  - 14. Okla. Stat. tit. 10A, §1-8-101 (2013).
- 15. Admin. Child. & Fams., Guidelines for Public Policy and State Legislation Governing Permanence for Children, IV-4 (1999), available at ia802607. us.archive.org/20/items/guidelinesforpub00dugu/

- guidelinesforpub00duqu.pdf; Nat'l Council Juv. & Fam. Ct. Judges, Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, 34 (2016), available at www. ncjfcj.org/wp-content/uploads/2016/05/NCJFCJ-Enhanced-Resource-Guidelines-05-2016.pdf.
- 16. In re Termination of Parental Rights, 1993 OK 10, ¶¶3, 7, 847 P.2d 768, 771-72. (Simms, J., dissenting).
- 17. Some states avoid the issue by having a single termination process, regardless if for adoptions or deprived cases. See 40 R.I. Gen. Laws §40-11-12.1(e)(3) and 15 R.I. Gen. Laws §15-7-7.
- 18. Admin. Child. & Fams., Guidelines for Public Policy and State Legislation Governing Permanence for Children, VI-8 (1999), available at ia802607. us.archive.org/20/items/guidelinesforpub00duqu/ guidelinesforpub00duqu.pdf.
- 19. Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976)
- 20. In re M.F., 132 Nev. 209, 213-16, 371 P.3d 995, 998-1000 (Nev. 2016).
- 21. Alyssa B. v. State, Dep't Health & Soc. Servs., 123 P.3d 646, 649-50 (Alaska 2005), and, 165 P.3d 605, 613 (Alaska 2007).
- 22. In re Alexander V., 2004 WI 47, ¶¶34, 43, 271 Wis. 2d 1, 678 N.W.2d 856.
- 23. State ex rel. Children, Youth & Families Dep't v. B.J., 1997-NMCA-021, ¶12, 123 N.M. 99, 934 P.2d 293.
- 24. See Kimberly Barton, "Who's Your Daddy?: State Adoption Statutes and the Unknown Biological Father," 32 Cap. U.L. Rev. 113, 143 (2003) (A child's need for permanence and stability, like his or her other needs, cannot be postponed. It must be provided early.); Lehman v. Lycoming Cty. Children's Servs. Agency, 458 U.S. 502, 513-14 (1982) (describing a prolonged lack of permanency as "detrimental to a child's sound development").
- 25. McKeiver v. Pennsylvania, 403 U.S. 528, 543 (1971); M.F., 132 Nev. at 213, 371 P.3d at 998; Alyssa B., 123 P.3d at 649-50.
- 26. See In re I.B., 933 N.E.2d 1264, 1269-70 (Ind. 2010) (noting case delays "can impose significant costs upon the functions of government as well as an intangible cost to the life of the child involved").
- 27. Gene C. Siegel & Michele Robbins, Termination of Parental Rights by Jury Trials in Arizona A Second Year Analysis (2005), available at www.azcourts.gov/ Portals/46/Publications/tpr\_jury\_trial.pdf.
- 28. H.R. Judiciary Comm., Interim Stud. Rep., H.R. 53-11-009, at 1 (Okla. 2011) (Most termination cases are not borderline.), available at www.okhouse.gov/Documents/ InterimStudies/2011/11-009%20report.doc.

- 29. Siegel & Robbins, supra note 27, at 18. 30. Nat'l Sci. Council Dev. Child, The Timing and Quality of Early Experiences Combine to Shape Brain Architecture: Working Paper No. 5, 6
- (2007) (The window of opportunity for remediation in a child's developing brain architecture is timesensitive and time-limited.).
- 31. Early-childhood adversity can alter a gene's chemical markers, leading to "poor physical and mental health outcomes" and "impairments in future learning capacity and behavior." Nat'l Sci. Council Dev. Child, Early Experiences Can Alter Gene Expression and Affect Long-Term Development: Working Paper No. 10. 5 (2010).
- 32. Joan L. Luby et al., "Maternal Support in Early Childhood Predicts Larger Hippocampal Volumes at School Age," 109 Proc. Nat'l Acad. of Sci. 2854, 2858 (2012). See also Frank W. Putnam, "The Impact of Trauma on Child Development," 57 Juv. & Fam. Ct. J., No. 1, 2006, at 1, 7 (listing "a healthy, secure, and loving relationship with a primary caregiver" as one of "three basic components" that "ensure optimum psychosocial development").
- 33. Erica J. Adams, Just. Pol. Inst., "Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense," 2 (2010), available at www.justicepolicy.org/images/ upload/10-07\_REP\_HealingInvisibleWounds\_ JJ-PS.pdf.
- 34. Ctr. Dev. Child Harv. U., The Foundations of Lifelong Health Are Built in Early Childhood, 8 (2010)
- 35. In 2018, 10% of foster children were under one, and 42% were between one and five. The Annie E. Casey Foundation KIDS COUNT Data Center at datacenter kidscount.org, looking by topic at Out of Home Placement data.
- 36. See Wash. Rev. Code §13.34.020 (2018) (stating child's rights should prevail over parents' legal rights if in conflict); Tenn. Code Ann. §37-2-401(c) (2018) (When the interests of a child and those of an adult are in conflict, such conflict is to be resolved in favor of a child ..."); S.C. Code Ann. §63-7-2620 (2018) (The interests of the child shall prevail if the child's interest and the parental rights conflict.); In re M.L.M., 682 P.2d 982, 990 (Wyo, 1984) (concluding when parent's and child's rights collide, "the rights of the parent must yield"); L.M. v. Dep't of Children & Families, 946 So. 2d 42, 46 (Fla. Dist. Ct. App. 2006) ([T]o the extent the mother's due process rights were affected ..., those rights must yield to the needs of the children.).

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#### CHILDREN & THE LAW

# Highlights from the Interim Report:

Oklahoma Task Force on the Uniform Representation of Children and Parents in Cases Involving Abuse and Neglect

By Tsinena Bruno-Thompson

N JULY 22, 2019, THE OKLAHOMA SUPREME COURT approved the establishment of a task force to study and report on legal representation of children and parents in legal proceedings set forth in the Oklahoma Children's Code, 10A O.S. 1-1-101 et seq.¹ The task force was required to produce an interim report² in February of this year. The following are highlights from that report.

Over the course of five meetings, the task force focused on gathering information and data regarding current legal representation practices in Oklahoma deprived cases as well as receiving information from other selected states' representation agencies regarding their models, structure, compensation, training, supervision and caseloads.

In its attempt to gather information and data regarding legal representation practices, the task force emailed surveys to Oklahoma judges presiding over juvenile dockets as well as attorneys representing parents and children in deprived proceedings. Thirty-eight judges and 43 attorneys responded. Focus groups were also conducted at the 2019 annual Court Improvement Program statewide conference. Forty-five judges, attorneys and Department of Human Services (DHS) Child Welfare employees participated.

#### ELEMENTS OF HIGH-QUALITY REPRESENTATION

The Family Justice Initiative<sup>3</sup> published "Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings" that set forth, in part, the following:

#### Attorney Attributes:

- Competent legal advocacy;
- Out-of-court advocacy including active engagement with clients;
- Expansion in scope
   of representation to
   include potential ancil lary legal issues that
   would assist the client's
   efforts to be in compliance with the case plan;
- Conduct independent investigations;
- Approach cases with a sense of urgency;

- Engagement in case-planning; and
- Diversity/Cultural humility.

#### Attorney Attributes:

- Adequate compensation;
- Reasonable caseloads;
- Use of interdisciplinary teams;
- Early appointment of attorneys;
- Adequate support for and oversight of attorneys;
- Accountability for quality legal representation; and
- Diversity/Cultural humility.

The task force also recognizes the important role the judiciary plays in ensuring high-quality



representation, including supporting the role of attorneys as zealous advocates for their clients.

#### **OVERVIEW OF LEGAL** REPRESENTATION OF **CHILDREN AND PARENTS** IN OKLAHOMA

Currently, Oklahoma lacks a structure and adequate funding that ensures high-quality representation for parents and children across the state that includes recruitment, contracting, training, adequate compensation, supervision and accountability.

Fifty counties' court funds contract with approximately 200 attorneys annually to provide legal representation for parents and children (contract counties). The remaining 27 counties' court funds compensate attorneys at either an hourly rate or by case (exempt counties). Oklahoma

and Tulsa counties rely on the public defender's office as well as Oklahoma Lawyers for Children and Tulsa Lawyers for Children to exclusively provide legal representation for children and rely on contracted private attorneys to provide legal representation for parents. Sparsely populated rural counties have extreme difficulties recruiting attorneys willing to contract or receive appointments for representation of parents and children in deprived cases.

Additional resources such as social workers, investigators and experts are not generally utilized by the contracted or court-appointed private attorneys. Investigators are employed by the two public defender offices and are made available to the assistants assigned to the deprived dockets.

The burden of recruiting, compensating, supervising and training the court-appointed private attorneys falls upon the local trial courts. For the task force, this creates two immediate concerns. First, there exists an apparent conflict because attorneys practice before the very courts that are responsible for their supervision, training and most importantly, compensation. Second, the current system does not permit a uniform, statewide process to train, supervise and compensate, resulting in dramatically inconsistent practices.

#### **IDENTIFIED BARRIERS** TO HIGH-QUALITY REPRESENTATION IN **OKLAHOMA**

The following are the areas the task force identified as barriers to high-quality representation in Oklahoma:

- Compensation: The inadequate compensation rate (whether by contract, per hour or per case) is viewed by the task force, as well as the respondents to the surveys and focus groups, as being one of the primary barriers to recruiting and/or maintaining attorneys who can provide high-quality representation for parents and children in Oklahoma's deprived cases.
- Training: The task force and the judges and attorneys that responded to the surveys are in agreement that more than six hours of annual training of attorneys is needed. Both comprehensive initial training as well as training in appellate advocacy should be provided, if not mandated.
- Caseloads: The task force believes that reasonable caseloads are critical to the ability to provide high-quality representation for parents and children and will continue to study caseload management and make recommendations in its final report.
- Appeals: Of great concern to the task force is the lack of attorneys (and appropriate compensation) for parents' and children's attorneys to competently initiate, pursue and complete appeals. Although attorneys are always appointed to appeals, when asked about initiating and completing appeals for their clients, the majority of responding parents' attorneys advised that they "rarely" continued to represent their clients in appeals. The majority of children's attorneys (still less than

- 40%) responded that they "always" continued to represent their clients in appeals.
- Multidisciplinary support: Unlike the offices of the district attorneys and public defenders that may provide resources for their assistants assigned to the deprived dockets such as investigators, interns, paralegals and expert witnesses (budget permitting), parents' and the majority of children's attorneys have little to no multidisciplinary support systems available to them to dispute the state's evidence.

The focus groups conducted by the task force resulted in an enthusiastic response by DHS and parents' attorneys for parent advocates/mentors with the children's attorneys strongly endorsing the multidisciplinary model as being supportive of the

- required out-of-court activities and thereby allowing the attorneys to better focus on the legal issues.
- Timing of appointments: Except when the provisions of ICWA are applicable, appointment of counsel for children and parents at the time of the emergency custody hearing is discretionary with the trial court. However, the Oklahoma Children's Code mandates appointment of counsel when the deprived petitions are filed for indigent parents and all children parties to the deprived action.4

The task force's survey indicated that the majority of parents' and children's attorneys are appointed post-petition, i.e., generally after the child has been removed from the home on an emergency basis and an emergency custody hearing has already been held.



- Children's attorneys are more apt to be appointed prior to the emergency custody hearing whereas parents' attorneys are appointed prior to or during the adjudication hearing. The task force strongly believes that all parties should be appointed counsel prior to the initial hearing.
- Support from the judiciary: The task force also believes that judges throughout the state, but especially within judicial districts, should work together to limit delays or long waiting times for hearings in juvenile deprived cases. Judges, attorneys and caseworkers have described lengthy waits in many courtrooms before the juvenile docket can start. This occurs when the district judge or another judge who does not oversee juvenile cases prioritizes other hearings and cases over juvenile deprived cases.

#### MODELS IN OTHER STATES FOR HIGH-QUALITY REPRESENTATION

The task force assessed various models/structures of representation used nationally or endorsed by standard-setting organizations. Three organizations were specifically studied: Colorado Office of Respondent Parents' Counsel, Massachusetts Committee for Public Counsel Services' Children and Family Law Division and Still She Rises, Tulsa Inc., a project of The Bronx Defenders. Each organization reflected two of the three generic recognized models for parent and child representation<sup>5</sup>:

> Contract Model (Colorado): panel of trial and appellate contract attorneys, as well as contracted social workers,

- overseen by a staffed central office that provides training, technical support, consistent statewide contracts, multidisciplinary resources, appellate support and oversight by mandating education requirements and practice standards
- Hybrid Model (Massachusetts): panel or list of contract attorneys who handle the majority of trial and appellate representation and a state or county office with full-time staff who may handle direct representation, oversee admission onto the panel, provide and oversee attorney education, and administer an attorney review process
- Institutional Model (Still She Rises Inc./Bronx Defenders)6: offices with full-time staff of attorneys, social workers, peer parent advocates and investigators

#### **INTERIM** RECOMMENDATIONS

- 1. The task force should continue to study early appointment (prior to initial hearing) of attorneys for parents and children.
- 2. The task force should prioritize the implementation of critical initial and ongoing quality education for attorneys and judges.
- 3. The task force recommends that the AOC expeditiously continue to research the feasibility of Title IV-E funds either going through the AOC or other appropriate entities.
- 4. The task force should gather more information about the financing of high-quality legal representations from other states.
- 5. In addition to the pursuit of supplemental federal funds, the task force recommends that the final report provide comprehensive

information about financing and therefore believes the following information is necessary. The task force requests the chief justice require all court clerks in counties that are on the KellPro system, by April 1, 2020, to supply the AOC the following:

- Number of deprived cases filed in calendar years 2019 and 2020;
- Number of guardianship cases filed in calendar years 2019 and 2020 and
- Number of mental health and indirect contempt cases filed in calendar years 2019 and 2020.

The task force also requests the chief justice to require all attorneys in the 50 counties with contracts with the court to provide the following by April 15, 2020:

- Cases appointed in Fiscal Year 2020 through March 30, 2020;
- Number of current open cases regarding the representation of:
  - Deprived parents;
  - Deprived children;
  - Mental Health;
  - Guardianship;
  - Adoption;
  - Contempt and
  - Other.

Receiving this information will allow the task force to better estimate the number of cases attorneys are handling and the amount being paid and for each case type to allow for an estimation of Title IV-E funds from these expenses.

6. The task force recommends the Supreme Court adopt practice standards for legal representation of children, similar to the standards for parent representation found in Attachment E-2.

- 7. The task force recommends that the chief justice discuss with the presiding judges the issue of prioritizing juvenile deprived cases, and suggest they collaborate with their colleagues to address these concerns and identify and implement solutions.
- 8. The task force will continue to determine reasonable caseloads for parents' and children's attorneys, including defining caseload.
- 9. The task force should continue to determine adequate compensation for parents' and children's attorneys that will reinforce high-quality legal representation in both trial and appellate courts. This should include compensation for out-of-court advocacy at least at the same level of compensation for in-court work.
- 10. The task force should keep apprised of other states' progress in claiming and receiving Title IV-E funds as well as studying the impact of collecting IV-E reimbursements in Oklahoma.
- 11. The task force should prioritize implementation of the multidisciplinary model of representation when deciding on the statewide model.
- 12. The task force should prioritize implementation of critical initial and ongoing training for trial and appellate attorneys that includes and emphasizes the practice of cultural humility and respect within the child welfare system.
- 13. The task force should gather information about any ethical conflicts and resolutions thereof from other states when considering the recommended structure of the legal representation agency/agencies.
- 14. The task force should continue to think creatively about improvements to the Oklahoma legal representation model while not losing sight of financial realities.
- 15. The task force recommends 10A O.S. 1-4-306 be amended to

additionally allow parents' attorneys reasonable compensation for mileage if the attorney is required to travel to a district court location other than his or her county of business. The current statute only allows for reimbursement of children's attorneys to be compensated for mileage.

#### TASK FORCE MEMBERS

The members of the task force are Judge Michael Flanagan (chair, Cotton County), Judge Rebecca Gore (Mayes County), Judge Mark Morrison (Choctaw Nation, Bryan County), Robert Ravitz (Oklahoma County public defender), Corbin Brewster (Tulsa County public defender), Ronald Baze (Department of Human Services), Donna Glandon (advocate general, Oklahoma Office Juvenile Affairs), Tsinena Thompson (president and CEO, Oklahoma Lawyers for Children), Michael Figgins (executive director, Legal Aid Services of Oklahoma), Lisa Bohannon (attorney, Mayes County), Holly Iker (attorney, Cleveland County), Gwendolyn Clegg (attorney, Tulsa County) and Tim Beebe (attorney, Garfield County). The non-voting members are Judge Doris Fransein (retired, Casey Family Programs consultant), Sharon Hsieh (Administrative Office of the Courts), Felice Hamilton (Court Improvement Program director), Julie Rorie (staff attorney for Justice Kauger), Susan Weiss (Casey Family Programs) and Mimi Laver (American Bar Association).

Special thanks to Judge Fransein for being the main drafter of the Interim Report. Judge Fransein was a judge for 24 years and retired as district judge over the Tulsa Juvenile Bureau in January 2019.

Author's note: All task force members contributed to the content of the report summarized in this article.

#### **ABOUT THE AUTHOR**

Tsinena Bruno-Thompson is president/CEO of Oklahoma Lawyers for Children Inc. as well as the founder and chair of the Juvenile Law Section. She is a founding board member of the Count Me in 4 Kids Coalition and serves on the Juvenile Court Improvement Task Force and the Supreme Court Task Force on High-Quality Legal Representation for Parents and Children in Deprived Proceeding.

#### **ENDNOTES**

- 1. SCAD 2019-65.
- 2. This is a condensed version of the full Interim Report.
- 3. The Family Justice Initiative (FJI) is a collaboration of the ABA Center on Children and the Law, the Children's Law Center of California (CLC), the Center for Family Representation (CFR) and Casey Family Programs (CFP).
  - 4. 10A O.S. 1-4-306(A)(1)(a).
- 5. ABA Center on Children and the Law, Summary of Parent Representation Models, 2009.
- Still She Rises is a duplicative model of The Bronx Defenders located in Bronx, NY, one of the interdisciplinary parent representation agencies studied in the aforementioned Casey Family Programs' commissioned study.



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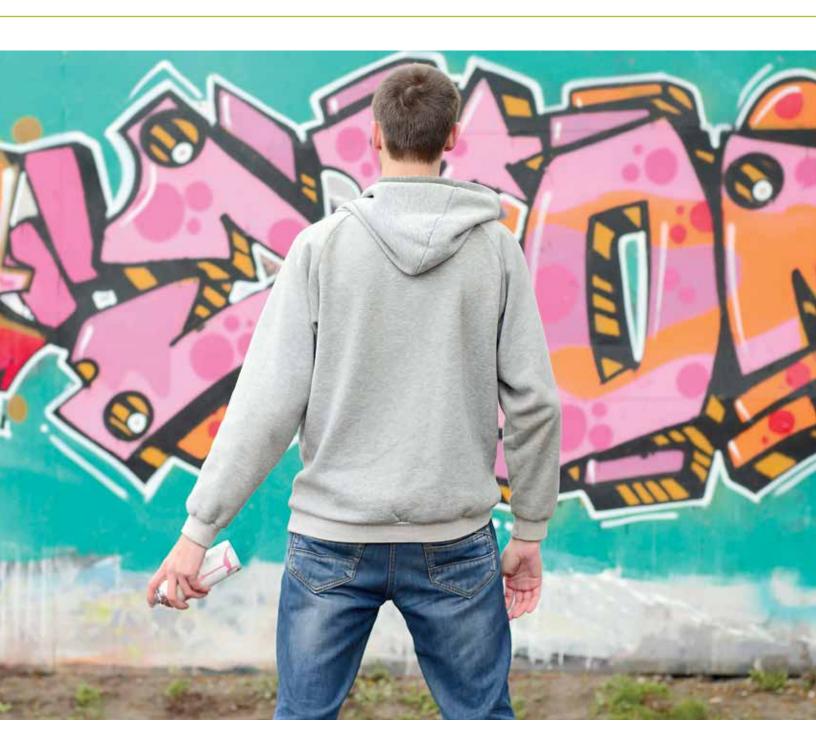
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#### CHILDREN & THE LAW

# Changes Affecting Deprived and Delinquent Proceedings

By Judge Trevor S. Pemberton



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AWS APPLICABLE TO DEPRIVED AND DELINQUENT MATTERS are ever changing, →albeit often in nuanced ways. A full understanding of deprived cases requires judges, attorneys, caseworkers and other court partners to appreciate the intermingling of legislation and case law governing foster care, adoptions, the Department of Human Services (DHS), mental health treatment and more. While delinquent dockets employ a different set of laws, a similar complex analysis is required to reach proper results. This article provides legislative and case law updates to the areas of deprived and delinquent law.1

#### DEPRIVED LAW UPDATES

Recent Legislation 10A O.S. §§1-4-709 and 1-4-906. Until recently, a parent whose parental rights to a child had been terminated could later become a permanent guardian of the same child. Effective Nov. 1, 2019, an amendment to Section 1-4-709 prohibits this result.2 In the same vein, Section 1-4-906 was amended to prevent DHS from "recommend[ing] a parent who has had his or her parental rights terminated to seek guardianship of a

Notably, these recent changes do not altogether quash a child or parent's hope that they might one day reestablish a legal relationship with each other after parental rights are terminated. For instance, a child who is at least 14 years old may seek reinstatement of a parent's parental rights, subject to certain statutorily outlined conditions, such as the child not having achieved permanency.4

child in the custody of [DHS]."3

Also, upon filing of a motion, the court may set aside a parent's permanent relinquishment or consent to adoption, subject again to the establishment of certain statutorily outlined criteria.5

**10A O.S.** §**1-4-811.** Deprived court practitioners know that courts are required to adopt permanency plans for every child placed in outof-home custody.6 Prior to a recent statutory amendment, courts could do so without children at issue having been consulted. Effective Nov. 1, 2019, however, permanency plans "shall be developed in consultation with the child and, at the option of the child, with up to two members of the permanency planning team to be chosen by the child, excluding the foster parent and caseworker for the child," subject to certain provisions.7 Therefore, permanency hearings should now include the court's inquiry as to whether children have been consulted and whether such consultation was compliant with conditions set out in Section 1-4-811(A)(5). If those boxes have

not been checked, the court should perhaps contemplate whether the DHS has utilized reasonable efforts or active efforts, where applicable, to reunify families.8

Case Law Updates Matter of O.R., 2019 OK CIV **APP 58, 459 P.3d 245.** In this case, the Oklahoma Court of Civil Appeals (COCA) addressed whether a foster parent must object within five days after removal of a child from the foster home due to an emergency pursuant to 10A O.S. §1-4-805. Except in emergencies, 10A O.S. §1-4-805(A) (1)(a) requires that DHS give a foster parent five days' notice before removing a child from the foster placement. After receipt of notice, a foster parent has five days to file an objection.9 Otherwise, the objection is waived. The statute does not require written notice be provided to foster parents when children are removed from a placement as a result of an emergency.

After learning that law enforcement seized drugs from a foster home, DHS removed O.R. from the home and did not provide written notice of the removal. Two months after the removal, the foster parent filed with the court an objection to the removal. The trial court found that the objection was not timely filed and therefore denied it.10 COCA reversed, holding in part that the motion was not timebarred because Section 1-4-805 is silent as to when a foster parent must file an objection after a child is removed in an emergency situation.11 COCA expanded that "establishing time periods for requiring action such as filing an objection is a Legislative function."12

Matter of Z.M.Z., 2019 OK CIV APP 78, 454 P.3d 777. Here, DHS removed two children, Z.M.Z. and Z.C.Z, after the biological mother intentionally dropped Z.C.Z. on his head. The mother later relinquished her parental rights. After waiving his right to a jury trial, the father's rights were terminated at a bench trial based on the trial court's findings that the father had failed to correct conditions and that the children had been in foster care too long. The father appealed.

Throughout much of the deprived case, the father maintained a relationship with the mother, his wife, who was found criminally not guilty by reason of insanity. The conditions the trial court and DHS expected the father to correct in order to be reunified with his children centered on his relationship with the mother.<sup>13</sup> There was a period during the deprived case in which the mother was out of the father's home, and by the commencement of the father's bench trial, the mother had been permanently out of the home for two months. Although the father expressed no intention of allowing his wife to return to the home, he subjectively believed she did not present a threat to the children.

COCA reversed the trial court's determination that the state established by clear and convincing evidence the father failed to correct conditions resulting in the removal of the children and termination was warranted for length of time in foster care. COCA reasoned the father's subjective belief that the mother was suitable to care for the children did not make his home unsafe and that he may have corrected conditions by having permanently removed the mother from the home. As succinctly stated in the appellate opinion, "Father's opinion about Mother [was] not a condition to be corrected."14

The holding in this case reminds us there is a delicate balance between hyper-focus on parents' subjective beliefs and the potential existence of a safety threat stemming from subjective beliefs. In other words, parents are not required in all instances to adopt an adversarial or otherwise hostile mindset toward another parent whose rights have been terminated, so long as objective safety can be established.

Matter of Adoption of L.F., 2019 OK CIV APP 40, 445 P.3d **1264.** In the *Matter of Adoption of* L.F., prospective adoptive parents (former foster parents) filed a separate action for adoption during the pendency of a deprived case. They did not first seek the deprived court's consent. The deprived court dismissed both the adoption petition and an application to set the matter for a best interests hearing. It found that, pursuant to 10A O.S. §1-4-101(A)(1), (2)(c-e),15 the adoption court lacked subject matter jurisdiction over children while a deprived matter was pending, absent the deprived court's consent. The deprived court further determined the prospective adoptive parents lacked standing to bring a separate adoption action. The petitioners should have instead sought to intervene in the ongoing deprived matter. The appellate court affirmed. The lesson is straightforward: Good intentions (adoption) coupled with wrong procedure (separate adoption action) will not be rewarded.

#### **DELINQUENT LAW UPDATES**

Recent Legislation

#### Oklahoma House Bill 1282.

Representatives Mark Lawson and Chelsea Branham co-authored House Bill 1282, which amended 10A O.S. §§2-3-101 and 2-7-401, and will become effective Nov. 1, 2020. The additions to Section 2-3-101 are summarized here:

- A prohibition against children 12 years and under being held in a juvenile detention facility unless all other alternatives have been exhausted and the youth is charged with an offense categorized as a felony if committed by an adult and
- A prohibition against 13- and 14-year-old children being placed in detention unless no alternatives exist, the juvenile is charged with an offense classified as a felony if committed by an adult and a risk-assessment indicates the child requires detention.

The amendments to Section 2-7-401 will require OJA to reimburse 100% of approved operating costs "for [children] in the custody of [OJA] after adjudication and disposition who [are] held in a juvenile detention facility when the child[ren] [are] pending a placement consistent with treatment needs as identified by [OJA]." Historically, OJA has been required to reimburse only 85% of approved operating costs for such youth, and counties have been responsible for the remaining 15%.

#### Case Law Updates

G.W. v. State, 2018 OK CR 36, 433 P.3d 1283. This case addresses. in part, a juvenile's effective waiver of jury trial. At the conclusion of a bench trial, the court adjudicated the youth delinquent. The record did not contain evidence the court advised the youth of his right to a jury trial. On appeal, the youth argued that he did not knowingly and intelligently waive his right to a jury trial.

Unlike criminal proceedings involving adults, the right to a jury trial in the delinquent context is a creation of statute, not the Constitution. The Court of Criminal Appeals in G.W. held, "by the language of Section 2-2-401,16 the juvenile's failure to demand a jury trial after being advised of his or her right to one and his or her acquiescence to a bench trial operates as an adequate and valid waiver of this right." Therefore, juveniles do not have to expressly waive their right to jury trial. G.W. reverses prior case law that required a juvenile's waiver of jury trial to be made "in open court on the record" and to have been made "competently, knowingly and intelligently."17

J.M.F. v. State, 2018 OK CR 29, **427 P.3d 154.** This case addresses the effect of jury sequestration being broken despite an objection. During a jury's deliberation in a delinquent trial, the trial judge broke sequestration at about 10:45 p.m. over defense counsel's objection. The jury adjudicated the youth delinquent, and the youth appealed.

The Court of Criminal Appeals reversed and held that once the jury has been charged, 22 O.S. §857, requiring sequestration, controls. The appellate court explained that, when sequestration is broken over defense objection, prejudice is presumed and the burden falls to the state to prove there was no harm done. According to the appellate

court, "[a]bsent inquiries made of the jurors upon their return the next morning, there can be no showing the error [in this case] was harmless." If a court opts to break sequestration in a delinquent trial, it should ensure 1) jurors are questioned upon their return and 2) the court is satisfied the jurors' answers prove they have not been prejudiced as a result of the violation of Section 857.

#### **CONCLUSION**

This article reflects the smorgasbord of issues addressed by juvenile judges and attorneys. Although a variety of attorneys and court partners work to implement the laws and advocate for different individuals within each case, there remains a common mission – the betterment of human lives and restoration of people. You, too, undoubtedly have an opportunity to engage in this mission, whether as an attorney, a volunteer advocate for children or a support for a struggling mother or father.

The Masai warriors of Africa have long greeted each other by asking, "Kasserian Ingera," which means, "And how are the children?" If one responds "The children are well," the greeter understands the community as a whole to be well. As you assess your community, your role within the juvenile court system or potential changes to the law, you might ask, "How are the children?" If your answer is not an emphatic "The children are well," consider how you might work toward that end.

#### **ABOUT THE AUTHOR**

Judge Trevor S. Pemberton has been an Oklahoma County district judge since January 2018. Currently, he is the chief district judge of the Oklahoma County Juvenile Division. He received his J.D. from the OCU School of Law.

#### **ENDNOTES**

- 1. The updates are not exhaustive and are intended to be objective, without any personal opinions of the author.
- 2. 10A O.S. §1-4-709(C)(3) provides: "A permanent guardianship pursuant to Subsection A of this section shall not be permitted if ... [t]he prospective guardian is the parent of the child and has had his or her parental rights terminated."
  - 3. 10A O.S. §1-4-906(C).
  - 4. 10A O.S. §1-4-909.
  - 5. 10 O.S. §7503-2.7.
  - 6. 10A O.S. §1-4-811(A).
  - 7. 10A O.S. §1-4-811(A)(5).
- 8. At every review hearing in a deprived case, the court must include in its order "whether reasonable efforts have been made to provide for the return of the child to the child's own home.' 10A O.S. 1-4-807(D)(1)(g). When the Indian Child Welfare Act applies to a deprived proceeding, the court must be satisfied that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that [those] efforts have proved unsuccessful." 25 U.S.C.A. §1912(d) (emphasis added).
  - 9. 10A O.S. § 1-4-805(C)(2).
  - 10. Id. at ¶2.
  - 11. Id. at ¶4.
  - 12. Id. at ¶5.
- 13. As statutory reasons for termination, the state alleged the father had failed to correct conditions and that the children had been in foster care too long. Both related to the father's relationship with his wife and her presence in the home.
- 14. Matter of Z.M.Z., 2019 OK CIV APP 78, ¶14, 454 P.3d 777.
- 15. 10A O.S. §1-4-101(A)(1): Upon the filing of a petition, the assumption of the custody of a child, or issuance of an emergency custody order pursuant to the provisions of the Oklahoma Children's Code, the district court shall obtain jurisdiction over any child who is or is alleged to be deprived. Jurisdiction shall also be obtained over any parent, legal guardian, or custodian of [sic] any other person living in the home of such child who appears in court or has been properly served with a summons pursuant to Section 1-4-304 of this Title. 10A O.S. § 1-4-101(A) (2)(c-e): When jurisdiction has been obtained over a child who is or is alleged to be a deprived child: c. all other action then pending or thereafter commenced within the county or state that concerns the custody, support, or visitation of the child shall be automatically stayed unless after notice to the parties in the deprived action, the written consent of such court is obtained and filed in the other proceeding; provided, a child's delinquency action may, in the discretion of the court, proceed pursuant to the Oklahoma Juvenile Code, d. all orders entered in the deprived proceeding concerning the custody, support, or visitation of a child shall control over conflicting orders entered in other actions until such time as the jurisdiction of the court in the deprived proceeding terminates, and e. the judge presiding over a deprived action shall have the authority to make a final determination in the matter and preside over any separate action necessary to finalize a child's court-approved permanency plan including an adoption, guardianship, or other custody proceeding.
- 16. 10A O.S. 2-2-401: "In adjudicatory hearings to determine if a child is delinquent or in need of supervision, any person entitled to service of summons or the state shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on the judge's own motion may call a jury to try any such case. Such jury shall consist of six persons.'
  - 17. See, D.M.H., 2006 OK CR 22, 136 P.3d 1054.

# Through the Looking Glass of Child Welfare Services in Oklahoma

By Charlie C. DeWitt

Terretain Hoover Once SAID, "Children are our most valuable resource." Title 10A of the Children and Juvenile Code is the statutory authority and the Oklahoma Department of Human Services (OKDHS) is the agency that helps protect these "valuable resources." OKDHS was created in 1936 during the Great Depression. It was first called the Department of Public Welfare, with a nine-member commission and a director to carry out the mission stated in Article XXV of the Oklahoma Constitution: "the relief and care of needy aged persons who are unable to provide for themselves, and other needy persons who, on account of immature age, physical infirmity, disability, or other cause, are unable to provide or care for themselves..."

Before attending law school, I was a Child Protective Services (CPS) investigator for OKDHS, and during my law school career, an intern with two district attorney's offices aiding with child welfare matters. One thing I have found over the last few years is that most people do not understand how or why OKDHS does what they do when it comes to children. This article gives readers an explanation of a deprived child case correlated with Title 10A and coupled with OKDHS policy. My hope is that you will see the importance and need for this agency and the juvenile district attorneys who oversee these cases and apply the law to juvenile matters. For purposes of this article, we will not be exploring every facet of Title 10A,

as it is a lengthy statute; we will only be diving into some of the portions to provide an explanation of what a deprived case entails.

## OVERVIEW OF THE DEPARTMENT OF HUMAN SERVICES

OKDHS is the largest agency in Oklahoma, with offices in all 77 counties and more than 7,000 employees.<sup>3</sup> The original constitutional mandate is still reflected by OKDHS as their mission is to help individuals and families in need help themselves lead safer, healthier, more independent and productive lives. The department's vision is to provide help and offer hope to vulnerable Oklahomans "through stronger practices, involved communities, and a caring and engaged workforce."<sup>4</sup>

The OKDHS Annual Report states that in 2019, there were 81,249 reports of alleged child abuse and/ or neglect, 138,907 children that were alleged victims and 15,809 child victims confirmed as to abuse, neglect or both. At the beginning of the 2019 fiscal year, there were 8,440 children removed from their homes due to abuse and/or neglect (with carryover from 2018). There were 4,416 children who had entered outof-home care, 4,889 children exiting out-of-home care and 7,927 children that had been removed by the end of the 2019 fiscal year.<sup>5</sup>

### LEGAL AUTHORITY COUPLED WITH DHS POLICY

Title 10A of the Children and Juvenile Code is the legal authority that directs OKDHS, the courts and district attorneys on procedural matters concerning child welfare. Section 10A-1-1-102 begins with recognition of duties, rights and interests, or "Legislative Intent." This section of the law lays out exactly what Oklahoma's Legislature intended when dealing with deprived children. It discusses the best interests of a child, the rights of children and the interests the state has in protecting its citizens from abuse and neglect. The reality is, children are the most vulnerable individuals in society and the Oklahoma Legislature recognizes that there is an immediate need to protect these children from any abuse and neglect that may happen at home. The guiding theme throughout this section of the law is the best interests of the child. Believe it or not, children play a role in what happens when they are removed from the home. This is such an important factor to the Oklahoma Legislature that the statute directs for children in deprived cases to be appointed a lawyer who represents their interests in court.6

Another theme throughout section 1-1-102 is permanency. It is the goal of the court and the department to give children



permanency.7 This means either to return home to their own family or for a parent's parental rights to be terminated and a child to be adopted. In my experience, courts typically terminate rights of parents when a child has been out of the home for a certain amount of time, which is directed by statute, and there is a family who is looking to adopt. This is not always the case, however, when you have children removed from a home for shocking and heinous abuse, the state may go ahead and file a Termination of Parental Rights petition since there is no world in which a child may return home to such an environment where shocking and heinous abuse was present.

To bridge this section of Title 10A to OKDHS policy, we start with the Child Welfare Services (CWS) mission, purpose, scope and legal basis. The OKDHS Child Welfare Services mission is, with the aid and support of community partners, to promote safety, permanency and well-being for Oklahoma families whose children are abused or neglected. The policy then goes into purpose and legislative intent which is similar to §10A-1-1-102, but adds that the CWS purpose is to identify, treat and prevent child abuse and neglect ensuring reasonable efforts are made to maintain and protect the child in the child's own home. When this is not feasible, CWS provides a placement that meets the child's needs.8

The next section identifies the scope and states that OKDHS is the designated state agency mandated to protect the child who is alleged or adjudicated deprived. CWS is 1) directed toward child safety, permanency and well-being; 2) to focus on the family, defined as one or more adults and child related by blood or law residing in the same household, as an integral part of the child's well-being; and

3) is provided to assist the parent develop protective capacities and ability to care for the child. This section is particularly important as the department's core principles are designed around this explanation of the scope of OKDHS. It defined what a family is according to the department while also presenting the most important part of an OKDHS case: protective capacities.9 The department's employees are trained to assess the protective capacities of a parent or person responsible for a child (PRFC) and court cases are hinged on PRFC's demonstrating protective capacities. More will be discussed regarding this subject later, but if a parent is not what the department and the state refer to as "protective," there is no way a child may return home with that parent. In some circumstances, one parent may be protective whereas another is not, but we can cross that bridge when we get to those protective capacities and what exactly that phrase entails.

The next relevant section is §10A-1-1-104 – Jurisdiction to Enforce Oklahoma Children's Code. It states, "The Attorney General, the district attorney of the appropriate district and any other law enforcement official having jurisdiction shall have the authority to bring civil actions against any person, officer or department, board, commission or other entity, to enforce the provisions of the Oklahoma Children's Code, or to enforce any of the laws of this state protecting or applying in any way to a child removed from the custody of the lawful parent of the child by a disposition order of the court."10 The takeaway from this section is identification of those involved in abuse or neglect cases besides DHS, and the idea of jurisdiction.<sup>11</sup> The district attorney represents the interests of the state. There is a vast array of procedures for district attorneys to follow in Title 10A and

much of it is self-explanatory. Title 10A provides grounds for filing a Deprived Petition as well as how long a district attorney has to file the petition with the court.

When analyzing the department's relationship with other entities, OKDHS policy 340: 75-3-110(b) states the following:

CPS functions as a component of the multi-faceted system established to protect children from abuse and neglect that includes law enforcement, the court system, other social services agencies and organizations. CPS is a component of the child welfare services continuum that includes preventive and protective services, voluntary family-centered services, foster care and placement services, and adoption services.12

All of these agencies must work together to protect children as reflected in the statute and OKDHS policy. When there is a "rift" between these agencies or a lack of communication, it is easy to identify the problems that will develop while conducting the duties of an agent of the court, a law enforcement official or an employee of the department. Procedure must be followed to ensure adequate protection of children since there are so many different agencies and multiple parties involved in deprived cases. Communication is the most important facet of what has been said here. If a CWS worker is not in some form of communication with a district attorney about what is going on with a case, it puts significant strain on that case. When something major happens in a case, a CWS worker should always stop and take a minute to make some attempt to contact the district attorney and the child's attorney

The child's attorney represents the child's expressed interests unless the child is very young, unable to express an interest, or incapable of judgment and meaningful communication.

letting them know before the court date so adequate preparation and arrangements can be made before everyone is back in front of a judge for a case review. In essence, deprived cases are a collective effort of a group of people who advocate for protecting children.

This section of OKDHS policy continues with the relationship of the department to the court, the state and law enforcement. It begins with the role of CPS as typically the first ones "on the ground" when a case starts and the role of law enforcement since officers are often involved in the investigation period before the court even hears about a new case. The role of CPS is to evaluate reports of child abuse or neglect, assess child safety and the risk of future maltreatment and the need for protective services, and provide and coordinate services. It is the job of a CPS investigator to make the first contact with the family after being assigned a report from the hotline. Policy outlines when appropriate for law enforcement to be contacted and states the role of law enforcement is to investigate reports of child abuse as a crime.<sup>13</sup> Another way law enforcement and CPS work

together is when officer(s) request a joint response by CPS. This occurs when a law enforcement officer has responded to a call or conducted a traffic stop in which a child is present and conditions are determined to be unsafe for that child to remain in the custody of the parent or individual accompanying the child and law enforcement officials place the child in protective custody. CPS is contacted directly by an officer and requested at the scene. CPS then makes a determination upon investigation at the scene as to whether a child should remain with the person who is typically engaged in some type of criminal behavior in the presence of a child, or if there is somewhere safe the child can go with an appropriate adult. Either way, there is now an open investigation as the result of law enforcement requesting the services of the department.

The next section of OKDHS policy is an explanation of the district attorney's role in deprived matters and criminal prosecutions. It is the district attorney's responsibility to determine if the information obtained during the CPS investigation warrants filing a petition alleging the child to be deprived. OKDHS

makes recommendations to the district attorney regarding deprived proceedings but not for criminal prosecution. The district attorney has the responsibility to decide if criminal charges are filed against the alleged perpetrator of child abuse and neglect. The CPS investigation recommendation is limited to the action necessary for child safety.14

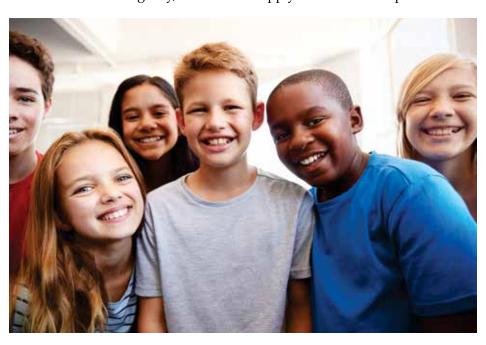
Policy continues with an explanation of the role of the child's attorney. OKDHS policy references this section of the law and states the child's attorney is independent of and not selected by the district attorney, the child's parent, legal guardian or custodian.15 The child's attorney represents the child's expressed interests unless the child is very young, unable to express an interest, or incapable of judgment and meaningful communication.<sup>16</sup> It is common for the child's attorney to express different interests to the court, contrary to the state and OKDHS. The child's attorney is there to represent the child only. When reading through the intent of the Legislature regarding the best interest of the child being an integral part of this process, the child does have a voice in these proceedings when you have an attorney who is there to represent

what that child is saying and what that child would like to see happen in the case. As you can imagine, most children often want to go home to their parents, but sometimes that is not possible.

Per section 1-4-201, the judge in deprived cases may, upon application by the district attorney, issue a court order to place the child in emergency custody when the child is in need of immediate protection due to an imminent safety threat. After a deprived petition is filed, the judge hears the evidence presented during the adjudication hearing and decides if the child is adjudicated a deprived child. When the child is adjudicated deprived, the judge decides if the child is placed in the custody of the PRFC, a relative, OKDHS or another agency, and

"come back when you have a little more" or "you can stop, I've heard enough to sign your order." As a CWS worker, if you go to the district attorney, then a judge for emergency custody, it's best to have all your ducks in a row since Title 10A provides in section 1-4-202v1(B)(1) that a judicial hearing, known as a "show cause hearing," is to be held within two days following the child being taken into emergency custody to determine whether evidence or facts exist that are sufficient to demonstrate to the court there is reason to believe the child is in need of protection due to abuse or neglect.18

An interesting fact to note here about show cause hearings is that the rules of evidence do not apply. Reasonable suspicion is all



may order the PRFC and child to participate in a court-ordered individualized service plan.<sup>17</sup>

Contrary to popular opinion, judges do not just sign orders for emergency custody. A district attorney and a caseworker and/ or a supervisor have to present a judge with some material findings in order to remove a child from the custody of a parent. There are times when judges simply say,

that has to be shown at a show cause hearing in order for a judge to keep a child in custody and allow the department to continue investigating. The idea or policy reasons behind this is that children are incredibly vulnerable. The department has a policy to "listen to the voices of children," 19 so at show cause hearings, there is testimony presented by a CPS investigator that is often what the

child has disclosed, which as a matter of evidence is hearsay. This is a clear explanation as to why the rules of evidence do not apply at this stage. A preliminary determination of safety must be made in front of a judge and that requires testimony of all evidence OKDHS has gathered thus far, before submitting the final report of findings to the district attorney's office.

Section 10A-1-2-105 – Investigation of Child Abuse or Neglect-Assessment of Family-Immediate Removal of Child – is fairly lengthy but provides for statutory direction on conducting investigations of abuse and neglect. It states:

Any county office of the Department of Human Services receiving a child abuse or neglect report shall promptly respond to the report by initiating an investigation of the report or an assessment of the family in accordance with priority guidelines established by the Department. The Department may prioritize reports of alleged child abuse or neglect based on the severity and immediacy of the alleged harm to the child. The Department shall adopt a priority system pursuant to rules promulgated by the Department.<sup>20</sup>

This priority system is identified under DHS policy. A Priority 1 investigation requires two initial face-to-face attempts to locate a child the first day the investigation is sent to the proper county and then one attempt a day until that child is found and a safety decision is made. A Priority 2 investigation requires two face-to-face attempts to locate the child upon the due date of case initiation; this due date is usually 3-5 days. The decision of whether cases are Priority 1 or Priority 2 is left up to the hotline. The cases then are sent to the county the children are

reportedly in and then assigned to a CPS investigator. That investigator follows protocol as to when contact has to be made with a victim on the case. The case has a due date of initiation and will be posted for the CPS investigator to manage her time efficiently to ensure she does not miss initiation protocol.21

Section 10A-1-2-105 then states:

The investigation or assessment shall include a visit to the home of the child, unless there is reason to believe that there is an extreme safety risk to the child or worker or it appears that the referral has been made in bad faith. The visit shall include an interview with and examination of the subject child and may be conducted at any reasonable time and at any place including, but not limited to, the child's school. The Department shall notify the person responsible for the health, safety, and welfare of the child that the child has been interviewed at a school. The investigation or assessment may include an interview with the parents of the child or any other person responsible for the health, safety, or welfare of the child and an interview with and examination of any child in the home.<sup>22</sup>

Along with this statutory authorization to interview potential victims of abuse and neglect, OKDHS policy specifically directs face-to-face interviews with the alleged victim(s), other children in the home, PRFCs and the alleged perpetrator. Interviews with other witnesses or "collaterals" can be over the phone. Policy also directs the CWS worker to observe the physical and cultural environment of the home including the home's physical setting, sleeping arrangements for all family members, degree to which the house is safe and healthy for the child, physical appearance of

all PRFC(s) and the child, including hygiene, affect, and injuries, and differences in culture of lifestyle which may affect the response of the family to the department.<sup>23</sup>

Section 10A-1-2-105 is the relevant legal portion regarding details of an investigation. This portion of the law directs the department on investigation protocol, retrieving behavioral health and medical records, reports of sexual abuse and physical abuse and what to do when the department determines the immediate removal of a child is necessary. Section 10A-1-2-105(E) states, "The Department shall make a complete written report of the investigation. The investigation report, together with its recommendations, shall be submitted to the appropriate district attorney's office. Reports of assessment recommendations shall be submitted to appropriate district attorneys." Concerning the investigation report, there is a specific document in which the department directs CWS workers to fill out in the KIDS system when submitting a report to the district attorney.<sup>24</sup> This document is called an "Assessment of Child Safety (AOCS)". It provides a wealth of information with regard to the CWS specialist's report including the family demographics and, circumstances and behaviors or conditions surrounding the alleged maltreatment, including intent, explanation(s) given, acknowledgment, attitude, history, or pattern of maltreatment so as to provide for<sup>25</sup> what happened, why it happened, has it happened before and, without intervention, is it likely to happen again. Ultimately, the CWS worker provides a brief, detailed statement of why the child is or is not safe to remain in the home and then makes a safety decision, approved by a supervisor that indicates the plan in regard to the child. The AOCS document is available on the okdhs.org website.<sup>26</sup> It is public information

in order to provide whoever may inquire into how the documentation process of a CPS investigation is conducted. This document is submitted to the district attorney, whether intervention services are requested or not. If intervention services are requested, this document is provided to the court in order for a judge to evaluate the document while managing the case along with the state and OKDHS. If you practice in this area, the AOCS document is a must read.

Once emergency intervention is established, section 10A-1-4-904 provides the next steps. Notification to a parent, legal guardian or custodian must be made. The written notice provides the following or substantially similar language: "Failure to respond to this notice or to appear at the emergency custody hearing means your child will stay or be placed in emergency custody. Your failure to respond or cooperate means you may lose custody of this child or your rights as a parent may be terminated." The statute continues with procedural direction of the show cause hearing. It must take place within two judicial days. The rest of the statute addresses what the court should do at the emergency hearing, whether or not to release the child from emergency custody or to continue the emergency custody. The court also directs the department to address all adult relatives to the child within 30 days.<sup>27</sup>

Section 10A-1-4-102 provides the evidence which is to be collected. OKDHS has 30 days to submit its report to the district attorney and the statute directs the district attorney to file a petition within three days of receiving a report or to notify the court if the state is not going to file a deprived petition.<sup>28</sup>

If a district attorney determines further intervention is necessary, according to 10A-1-4-301, the district attorney may file a petition.

The statute states,

The petition shall be verified and may be upon information and belief. The petition shall set forth: with particularity, facts which bring the child within the purview of this chapter..., and the relief requested including, but not limited to, or where applicable: an adjudication that the child is deprived, a termination of parental rights, the entry of an order for child support, and a judicial determination of the child's paternity. <sup>29</sup>

The statute also directs the parties in the case to be served the petition with summons.

After the parties in the case (typically the parents, but legal guardians or custodians may also be parties) are served the petition, an adjudication hearing is put on the docket. At the adjudication hearing, it is the job of the district attorney to prove that the allegations in the deprived petition are supported by a preponderance of the evidence if a parent contests them. The adjudication hearing shall be held no more than 90 calendar days after the filing of the petition. A parent then has the option to stipulate to the allegations in the hearing or to request a bench trial in which the district attorney must call witnesses and prove by a preponderance of the evidence the allegations alleged in the petition are true.<sup>30</sup> After the court makes a determination that the allegations in the petition are supported by a preponderance of the evidence, the court declares it is in the child's best interest to be declared deprived and makes the child a ward of the court.<sup>31</sup>

At this point in the case, the department's role has generally shifted from a CPS worker to a permanency worker. Permanency planning services to families

include assessing the needs and strengths of the child, involving family members as participants in their own treatment plan, consulting with service providers to evaluate the effectiveness of the services, providing placements for children which will meet their medical, educational, and physical needs, returning children to their own homes as soon as their needs can be met in their parent(s) home and arranging a permanent plan when return to the home is not possible. The permanency worker conducts a family functional assessment (FFA) with the PRFCs. An initial in-depth family assessment begins as soon as possible and is completed within the first 60 calendar days using the earliest date: after the child's removal, the filing of the petition or the signing of the family service agreement. This assessment process identifies and evaluates the family's strengths, resources, protective factors and underlying causes of behavior that create the unsafe conditions.32

It is the job of the permanency worker, as directed by policy to visit with the children and PRFC(s) on the worker's caseload once a month.33 The child must be seen alone in which the permanency worker can ask questions freely and the child can reply freely. The permanency worker also prepares the individualized service plan (ISP) that must be provided to the parents and the court and other interested parties.<sup>34</sup> Permanency workers attend every court hearing, but if they are not available, either the supervisor of the worker or a fellow team member is sent to provide the court with updates on the case. These workers and the information they provide the state and the court play such an important role in the case throughout the remainder of the child being in OKDHS custody.

Section 1-4-807 of Title 10A provides that a review hearing is to take place no more than six months after the child being removed from the home and no greater than every six months before the child achieves permanency or the court terminates jurisdiction. This section of 10A also provides what is on review during these hearings including the parents' progress in the case and placement for the child(ren).35 Though the statute allows for a period of up to six months, it is common for courts to set review hearings for 30 or 90 days out. This is an effort to allow the parents adequate time to work on services required by the ISP and to help move the achievement of permanency for the child along faster.

A permanency planning worker also facilitates visitation with parent(s) and child(ren). DHS policy requires a minimum of one visit during the first 90 calendar days of the child being removed from the home, and then a frequency of two visits per month between parent and child after that initial period. Separated siblings are to receive one visit per calendar month.36 According to 10A-1-7-105, a child shall have a right to communicate and to visit with his or her family on a regular basis, and to communicate with persons in the community provided the communication or visitation is in the best interests of the child.37 As a general rule, unspoken in law or policy, the department schedules visitation between PRFC and child(ren) one time a week, an hour at a time. For newborn babies, the visitation is more frequent as the department will set up either twice a week visitation or once a week for two hours at a time.

Section 10A-1-4-904 is the statutory portion that directs termination of parental rights in certain situations. It provides that a court may direct the termination of

parental rights if the child has been adjudicated deprived, termination is in the best interest of the child or if a parent voluntarily consents to the termination of their rights. The list for termination of parental rights provided for in 10A-1-4-904 is vast demonstrating the clear intent of Oklahoma lawmakers to protect children as much as possible.

Section 1-4-902 of Title 10A provides for the timeframe in which a district attorney may file a termination petition. It provides a termination petition may be filed in any of the following circumstances:

- Prior to the end of the fifteenth month when a child has been placed in foster care by OKDHS for 15 of the most recent 22 months
- No later than 60 days after a child has been judicially determined to be an abandoned infant
- No later than 60 days after a court has determined that reasonable efforts to reunite are not required due to a felony conviction as addressed in the previous paragraph
- No later than 90 days after the court has ordered the individualized service plan if the parent has made no measurable progress in correcting the conditions which caused the child to be adjudicated deprived.<sup>38</sup>

The more common time among district attorneys to file a termination petition is around the one-year mark of a deprived case. However, there are circumstances in which a district attorney will file at the 90-day mark, as granted by statute.

#### WHY WE NEED OKDHS

Children are the most vulnerable individuals in society. Children cannot fight or fend for themselves

and they must be cared for, sometimes by those who are not their parents or guardians. OKDHS and the training the agency provides to CWS specialists is because of a legislative mandate to protect the next generation. As a previous CPS worker, I was not immune to the safety threats or imminent danger children face, but I had no insight into life existing the way it does for some of these children until I came into contact with them. The reality is there are children who are being preyed on by predators around them who they often refer to as mom, dad, aunt, uncle, grandma or grandpa. OKDHS is an agency that strives every day, 24 hours a day and seven days a week, to stop abuse and neglect of Oklahoma's children. This is why Oklahoma needs the Department of Human Services.

Does OKDHS always get it right? No, but for Oklahoma's largest agency that has functioned since the 1930s, somebody has to be doing something right. I hope you do not read my words and think I believe OKDHS should get a free pass, or OKDHS is perfectly incapable of dropping the ball. That is not my position at all. It is my position that OKDHS needs to follow the law and their own policy without deviations. The department is exactly as it sounds, a service. Oklahoma will continue to see a brighter future because of the sacrifices the agents of the department make every day working long hours and overtime to ensure Oklahoma's children are cared for properly.

#### **ABOUT THE AUTHOR**

Charlie DeWitt is a recent graduate of the OCU School of Law and sat for the bar exam in July. She hopes to continue her work with the juvenile court system upon passing the bar.

#### **ENDNOTES**

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- 3. "Executive information," www.okdhs.org/ aboutus/exec/Pages/exechome.aspx (last visited
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  - 6. 10A OK Stat §10A-1-1-102 (2014).
- 8. "Child Welfare Services mission, purpose, scope, and legal base," 340:75-1-2, www.okdhs. org/library/policy/Pages/oac340075010002000. aspx (last visited Oct. 31, 2019).
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  - 13. Id.
  - 14. Id. 15. Id.
  - 16. Id.
  - 17. Id.
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  - 22. 10A OK Stat §10A-1-2-105 (2014).
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  - 24. 10A OK Stat §10A-1-2-105 (2014).
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# Attachment: The Foundation of Relationships and the Impact of Trauma in the Lives of Children

By Angela Wheeler

REBECCA, A HEALTHY 35-YEAR-OLD FEMALE, received prenatal care throughout her pregnancy and chose an adoptive family for her baby. She is a successful and independent person who chose not to raise her child as the father was not involved. At 40 weeks, she delivered a healthy baby boy, who was immediately held and loved on by his soon-to-be adoptive mother and father. They named the baby Sam. Sam is a child of trauma.

Alex and Beth lived with their mother and father until recently when, after months of fighting and arguing, their parents decided to file for divorce. Both children love their parents and are torn about where they wish to live. Both parents reassure the children that they are loved, assuring them this decision has nothing to do with them, and they will never have to choose sides. Alex and Beth grieve the loss of their family and are now, if not before, children of trauma.

Jennifer is a young, 36 weeks pregnant female. She received no prenatal care and is currently involved in a domestic violence relationship. She admitted to using drugs and alcohol during the first half of the pregnancy, as she was unaware that she was carrying a child. Jennifer gave birth to a baby girl who was immediately taken to the NICU, where she received care for two weeks. The newborn was then placed with her soon-to-be adoptive mother and father. They

named the baby Jillian. Jillian is a child of trauma.

Macy is a 3-year-old girl living in a foster home. She has been placed in five different homes since birth. She has had weekly visitation with her biological parents but is still unable to live with them. Macy is a child of trauma.

Joseph is a happy-go-lucky 5-year-old who enjoys kindergarten. He was taken home from the hospital by an adoptive family at 2 days old. He has been nurtured and cared for, lacking for nothing. His adoptive parents are highly intelligent, well-respected members of their community. This kindergartner has been afforded the opportunities of great preschool programs, quality medical care and a stable family environment. As the school year unfolds, Joseph begins to show signs of anger, anxiety and behaviors not exhibited before. His parents are confused and concerned, unsure of what is happening. Joseph is a child of trauma.

Each of these stories is different and yet still the same: a child that has experienced early childhood trauma, which can be defined as "a psychological, emotional response to an event or an experience that is deeply distressing or disturbing."

Professionals within the mental health field find themselves managing the effects of trauma daily, but for those within the legal community: paralegals, attorneys and judges, as well as investigators and court-appointed advocates, there is often little training provided to assist in identifying or managing trauma. To best serve our clients, it is imperative that we place importance on the ways in which life begins, and the trauma and experiences occurred both in utero and the early stages of development.

For those in the judicial realm to best advocate for the youngest of clients, there needs to be an understanding that babies, while resilient, still suffer trauma that can potentially stay with them



for life; children carry within them stories that need to be heard and understood. Whether advocating for the children within the deprived docket, children of divorce or babies caught in an adoption battle, the ways in which these cases are managed legally, have a huge impact on development and attachment. Having an understanding that trauma begins early, and carries with it a lifelong sentence, can assist in the legal strategy of cases.

When we think of childhood trauma, we often find ourselves assuming the worst: heinous abuse, neglect, violence. The understanding of trauma and its impact is constantly evolving. For example, trauma can begin in utero, carried throughout the pregnancy and continue through the early months of a child's life.2 To a developing fetus, the mother's womb provides

everything needed for growth and development. The foundation for healthy brain development is crucial throughout this time. How a mother feels about being pregnant, and how she cares for herself throughout the pregnancy can affect the child. For example, "If the mother has a healthful lifestyle, her uterus will share that with the growing child. But if the mom suffers from chronic stress, consumes toxins such as alcohol and drugs or doesn't eat properly, the fetus is exposed to those dangers right along with the mother. An infant's neurochemistry reflects his or her very first home - the uterus."3

Co-author of The Connected Child and founder of the methodology referred to as Trust Based Relational Intervention (TBRI), Dr. Karyn Purvis discusses a study that discovered 1-month-old infants born to mothers who suffered from high stress throughout pregnancy had imbalanced neurochemistry. Birth mothers who experienced depression and anxiety during the last trimester had children showing abnormal brain activity.<sup>4</sup> During this optimal developmental period, if a child's brain misses key opportunities, some deficits may occur, such as critical thinking skills, ability to process information and focus issues. These impairments can then become hardwired, predisposing the child to possible developmental delays and/or behavior problems later in life.<sup>5</sup> If a child in utero experiences trauma and is placed in a home where they are not stimulated, curiosity and learning are not encouraged and there is a lack of nurturing, this child may continue to show

deficits and struggle both academically and socially.

Let us consider Eli, a 10-monthold male who has lived with his biological mother since birth. She loves her baby and minimally meets his basic needs of food, clothing and shelter but is unable to provide stability, consistency and nurturing with attachment opportunities. Due to this, he is removed from his birth mother by the state agency and placed with a loving family that has educated themselves in trauma. They understand that Eli needs to experience a healthy attachment. Consequently, the foster or adoptive mother must spend weeks treating this young toddler as a newborn in an attempt to retrain his brain into developing appropriate attachment and healthy coping skills. Eli grows up loving his adoptive parents but demonstrates signs of anxiety, does not like to be left alone and has sleeping issues. At the age of 4, he is often angry, yelling at his adoptive parents that he hates them, and they are not his real parents. He asks questions about his first 10 months, inserting memories with what he has been told, and filling in the blanks with what he believes to be true. Dr. Bessel Van der Kolk revealed, "Being traumatized is not just an issue of being stuck in the past; it is just as much a problem of not being fully alive in the present."6 Eli is a child of trauma.

With the emergence of the infant mental health field, we now know that early childhood experiences impact child development and that just nurturing a child does not make the trauma go away. In his book, *The Body Keeps* the Score, Van der Kolk theorizes although a child may not be able to remember or describe early experiences, their body does not forget, stating, "The job of the brain is to constantly monitor and evaluate what is going on within

Addressing broken attachments and ruptured relationships requires a multi-disciplinary team approach. Judges, attorneys, mental health professionals and human services professionals all play a vital role in this process.

and around us."7 Smells, sounds and environments help our bodies create memories of events, and it is those same senses that trigger memories as well. For example, Michael, a 47-year old male, has an aversion to the smell and taste of apple pie but does not have any reason as to why. In therapy, he recalls that his mother baked apple pies every Sunday throughout his early childhood. Sundays were the days that his father was home from work and would consume large amounts of alcohol, followed by angry outbursts where he would yell and lash out physically at child and mother. Michael's brain was unable to physically tell him why the smell of apple pie left him feeling anxious and angry, but his body "kept score" and he avoided apple pie. Trauma impacts brain development and can cause long-term issues for children and adults. Children may appear outwardly that they are fine, but cognitively and emotionally, there may be impairments that cannot be seen.

An example of all that appears well on the outside are drugs consumed in utero that are now impacting early education for the child. In utero, the baby was exposed to the sounds of screaming and now

presents as an overly anxious and easily frightened child. The child that moves from home to home, unable to develop trust that the same person is going to meet their needs, is now a child of a ruptured relationship. These ruptures tend to impact a child's ability to develop adequate attachment. When a child experiences trauma or a break-down of attachment, research tells us that brain development and critical thinking skills are impaired.8

"Twenty years of medical research has shown that childhood adversity literally gets under our skin, changing people in ways that can endure in their bodies for decades. It can tip a child's developmental trajectory and affect physiology."9 Dr. Burke Harris writes that when a child's stress response is activated too frequently, they lose the ability to self-regulate, and much like a broken thermostat that allows heat to blast continuously, their bodies become flooded with cortisol as their stress thermostat fails. The basic skills (i.e. breathing, temperature regulation, the fearflight-freeze response) all originate in the lower brain, or what is commonly referred to as the downstairs brain.<sup>10</sup> When a child experiences trauma, Dr. Bruce Perry's sequence of engagement and processing tells

us that the child does not have access to and is unable to develop their upper brain, which is where higher functions of learning occur. It is also in this limbic system that attachment occurs, and yet this cannot happen if the child constantly lives in their downstairs brain simply trying to survive.

The theory of attachment is credited to John Bowlby and Mary Ainsworth.<sup>11</sup> Throughout his work, Bowlby began to believe that attachment was more an evolutionary process with the child having an innate drive to form an attachment.12 "The central theme of attachment theory is that primary caregivers who are available and responsive to an infant's needs allow the child to develop a sense of security."13 Attachment begins as a dance between caregiver and infant. Primary caregivers are most often the mothers, and the process of attachment begins at birth. When a mother holds her infant, gazing into their eyes, providing food, nurturing and responding to the child's needs, the attachment dance continues. The amount of trust a child has in a caregiver begins when the child's needs are met. The child is put down; the child cries because they are hungry; the mother returns and meets the physical and emotional needs of the child. This is how trust is built.

It is in forming this connection that fosters a child's development of self-regulation; the understanding that they can experience the dysregulation of being hungry, needing a diaper change or the necessity of other primary needs to be met, and then comes the person to meet these needs, reassuring them they are safe. This creates a feeling of "felt-safety," 14 and over time, a child develops the ability to self-regulate due to the notion of felt-safety even in the dysregulated state, knowing at some point, their person is

coming. This is an example of a securely attached child. Because the child is securely attached to their primary caregiver, they can then expand their attachment to secondary caregivers and other family members. The foundation for healthy relationships has thus successfully been established.

There are four styles of attachment: ambivalent, avoidant, disorganized and secure.<sup>15</sup> An ambivalent child might demonstrate characteristics of anxiety, clinginess and an inability to easily soothe. These children often seek relationships, only to then push people away, or they may be too overwhelmed with their emotions to seek out others. With avoidant attachment, a child may present as emotionally distant, unable to recognize emotions and choosing autonomy over being with others. The third style of attachment, disorganized, often lacks empathy, is aggressive with others and has little to no regard for rules. These children struggle with emotional closeness in relationships. A child that demonstrates a secure attachment is trusting and open to relationships with others. They manage emotions well, are empathetic and loving.

These attachment styles develop throughout the first three years of life16 and are attributed to the behaviors and interactions between child and caregiver responses. When the attachment style is one of the first three listed, we find children with an inability to trust or believe they are important or loved. They demonstrate higher anxiety, anger and disinterest in forming relationships. In his book, The Boy Who Was Raised as a Dog, Perry states, "The truth is, you cannot love yourself unless you have been loved and are loved. The capacity to love cannot be built in isolation."17 When a child is afforded the opportunity of a

securely attached relationship cycle, they understand their caregiver loves them and can leave, but will return; they can self-regulate and feel loved. Overall, these children have developed a higher level of trust. The first three years of a child's life, and the style of attachment to which they are exposed, is a great indicator of future behavior and relationship patterns. Perry also states, "Connectedness is the key. Your history of connectedness is a better predictor of your health than your history of adversity."18

As judges, attorneys and mental health professionals, the children we most frequently encounter have experienced ruptured relationships or may not have been afforded the opportunity to develop securely attached relationships. Parents with their own broken attachments, mental health issues and substance abuse addictions often cannot provide the necessary environment to care for and nurture their infants and young children. This requires child protective services to intervene, removing the child(ren) from what they know, even if what they know has been unhealthy. This creates trauma.

When parents get divorced, and what was once routine for the child(ren) is now unstable and unpredictable, we see signs of trauma. Trauma occurs with the child placed in an adoptive home appears well attached, but their biological parents have reversed consent for adoption. The child is now required to have visitation with "strangers," resulting in uncertainties of scheduling and care providers, as lengthy court battles ensue, leaving the child struggling to manage emotions. This is trauma.

Addressing broken attachments and ruptured relationships requires a multi-disciplinary team approach. Judges, attorneys, mental health professionals and human services professionals all play a vital role in this process.

Factors that influence outcomes include the length of time a child is in custody, custodial schedules within divorce agreements, parenting styles and willingness to work with children of trauma, as well as the timing and severity of the child's trauma. In an effort to minimize the effects of trauma or to provide the optimal situations for attachment to occur, it is important to have open lines of communication between foster parents, court systems and mental health professionals. Early intervention with therapeutic services, providing skills and resources to promote healthy relationships is imperative.

Children in state custody deserve permanency, which in turn fosters stability and security, allowing a child to begin healing from their trauma. Oklahoma, at the end of the 2019 fiscal year, had 8,631 children in custody, with less than 1,400 in trial adoption or trial reunification status, leaving over 4,000 children without permanency.<sup>19</sup> Establishing higher expectations of treatment plans by the biological parents and more expedient termination of rights should these expectations not be met, provides the children in care the opportunity to move forward.

In the family court system, where Oklahoma ranks in the top five for highest divorce rates,<sup>20</sup> it is imperative that parenting classes are encouraged with the filing of separation and that custody arrangements are looked at by multiple factors, such as the age of the child and who has been the primary caregiver, as a cookiecutter approach is not always in the best interest of the children. Early education for parents on the trauma of divorce and the benefits of co-parenting could bring relief to many families as they endure this highly stressful and emotional time. It is the youngest members of society that suffer the greatest

traumas as they experience broken attachments, abuse and neglect.

At Kaiser Permanente, the Adverse Childhood Experiences (ACE) Study determined there is a direct correlation between divorce, abuse, neglect, household dysfunction, incarceration of relatives and the overall well-being of adults. Having an ACE score of two or more doubles someone's likelihood of developing an autoimmune disease.<sup>21</sup> In her practice, Harris also found patients with four or more ACEs were twice as likely to be overweight or obese and 32.6 times as likely to have been diagnosed with learning and behavioral problems.<sup>22</sup> While there are the Cinderella stories in which people overcome great adversity, childhood trauma leaves a longlasting impact that is carried into adulthood.

It is not necessarily our circumstances that determine if an event is traumatic, but more so the ways in which our body reacts to the experience. In the ACE study, we learn that the higher number of adverse traumatic experiences a child has, the more likely they are to have an increase of depression, anxiety, suicidal tendencies – even obesity, heart disease and diabetes. Being able to minimize the trauma a young child experiences can result in an overall increase of emotional, physical and mental well-being.

For all who choose to work with children and families, it should be the utmost priority to understand trauma and attachment and how it affects the littlest people of society. Judges and attorneys are required to make recommendations and decisions daily that affect the future of these children before them. Look: see the trauma through the lens of the child who deserves our best. Listen: hear the stories that cannot be spoken. Speak: be their voice of protection and in rewriting their

future. "If we can communicate to our children: It's you and me against your history we have a strong place to begin."<sup>23</sup>

#### **ABOUT THE AUTHOR**

Angela Wheeler is a licensed professional counselor, a registered play therapist and TBRI practitioner. Her practice, Connections, focuses on trauma, attachment and reunification. She works with families in litigation, assisting children and parents with reunification and is frequently asked to testify as an expert in adoption/trauma cases.

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# Guardianship of Minors: A Summary of Title 10 and Title 30 Guardianships

By Monica A. Dionisio

THIS ARTICLE COVERS GUARDIANSHIPS permitted in Title 10 and Title 30 of the Oklahoma Statutes. For information on custody and guardianship actions filed pursuant to Title 43, please see 43 O.S. §112, et seq. For information on guardianships made pursuant to the Children and Juvenile Code, please see 10 O.S. §1-4-709, et seq.

## GUARDIANSHIP BY POWER OF ATTORNEY

Section 10 O.S. §700 allows a parent or legal custodian to sign a power of attorney that delegates the powers regarding care and custody of his or her child. A statutory form considered "legally sufficient" is provided in 10 O.S. §701.

There are certain exceptions to the powers that can be delegated, namely that the attorney-in-fact cannot consent to the child's marriage or adoption, cannot consent to an abortion on or for the child and cannot consent to any termination of parental rights to the child. Interestingly, Subsection A also provides the delegation cannot deprive the parent or legal custodian of any authority, indicating that the parent and attorney-in-fact share the rights to custody, care and decision-making for the child or children.

The delegation must be made for a period of more than 24 hours and is effective for up to one year. Compensation of an attorney-in-fact is not permitted by law. The delegation automatically terminates upon the expiration of that period. Practitioners and parents wishing to extend the time period should remain aware of the necessity of executing new forms prior to its expiration. A parent or legal custodian can revoke or withdraw the power of attorney at any time.

As another way to promote the use of the power of attorney mechanism, the Legislature ensured that those exercising the power of attorney will not be found to have abandoned their children unless they fail to maintain contact or execute a new power of attorney after the expiration of the one-year time limit. <sup>1</sup>

While this statutory implementation has likely reduced the necessity of court involvement, inherent problems do exist. The relationship between the effect of this statute and custodial orders made by the district courts was largely ignored. Therefore, the statute does not require any notice to the other

parent of a child at issue nor is the power of attorney required to be filed with the district court. The statute also fails to contemplate conflict between a power of attorney executed pursuant to 10 O.S. §700(D) and a district court order.

Unlike district court orders made pursuant to other custody-related statutes, the statute governing the power of attorney does not address any application of the Indian Child Welfare Act. The statute does not provide any limitation on persons to whom the power of attorney can be delegated and therefore does not exclude persons based on certain criminal convictions, capacity, etc.

Finally, the statute does not make mention of child support. This is especially problematic in cases where a district court order requires payment of child support to a parent or legal custodian. Section 43 O.S. §109.5 creates a presumption the person with physical custody of a child should receive that support. Similarly, 10 O.S. §700



does not address claiming the child or children as a dependent(s) for income tax purposes (though presumably, the Internal Revenue Service regulations would apply in the absence of a district court order to the contrary).

Section 30 O.S. §2-101 provides for the appointment of a guardian for a minor child or children when it appears necessary or convenient. These proceedings are only appropriate when there is no prior order concerning the child at issue.2 Guardianship proceedings cannot be utilized to disrupt intact families.3

#### Convenience

Guardianships of convenience are agreed upon guardianships that do not require a court to make a finding that the parent(s) is affirmatively unfit. Guardianships of convenience can be terminated when the reasons that served as a basis for the guardianship no longer exist, and guardianship is not necessary.4 If no impediments were listed in the order for guardianship, it may presumably end at the will of the parent or legal custodian. Termination of a guardianship of convenience may be effectuated by either party on motion or by the court itself.

#### Necessity

When a parent objects to the appointment of a guardian, the court is required to find the parent "affirmatively unfit." This finding is required because the constitutional rights of parents to the care, custody and control of their children have been long recognized. The standard for the finding of affirmative unfitness is clear and convincing. What constitutes affirmative unfitness exceeds the scope of this article, but case law is informative on the subject.

Prior to appointing a permanent guardian, the court may receive a home study.9 Except where guardians are appointed on an emergency basis, the court is required to receive a background check of the prospective guardian, as well as a search of the Oklahoma Department of Corrections' files and the results of a search of the child abuse and neglect information system maintained by the Department of Human Services. 10 Practitioners should remain aware the court may be required to extend temporary letters of guardianship during the pendency of a case to allow time for all background checks to be completed.

Before a permanent guardian is appointed, notice must be given to the living parents of the minor child or children if they are 14 or older.11 If no parent is living, the statute requires notice to be given to one of the child's living grandparents (who is not a party petitioning for guardianship and not married to a person petitioning for guardianship).<sup>12</sup> If the child or children have no living parent or grandparent as required by the statute, notice is required to be given to any adult relative in the county where the guardianship petition is filed. Any notice required by the statute must be mailed at least 10 days prior to the hearing on the guardianship petition.<sup>13</sup>

Parties who may be nominated as a guardian for a child or children are set forth in 30 O.S. §2-103. The court is permitted to name and appoint guardians for children under the age of 14. Children who have reached or exceeded the age of 14 may nominate a guardian for themselves. If that nominated party is approved by the court, they are required to be appointed; otherwise, the court may do so.14 In appointing a guardian for a minor, 30 O.S. §1-203 mandates the court be guided by 43 O.S. §112.5, but the Court of Civil Appeals has determined that the order of preference provided in §112.5 is not binding upon the court.<sup>15</sup> Parents not otherwise found unsuitable or disqualified by law are entitled to guardianship of children under 14, and a natural parent who is married and living with the other parent must have his or her consent. Parents separately seeking guardianship are subject to the court's determination on who is most competent to preserve the child's interests.16

Guardians are entitled to support for the child, which may be paid by income assignment. Further, where custody or support orders have been previously made in district court and public assistance is provided, the Department of Human Services is a necessary party.<sup>17</sup> The power given to guardians over financial actions taken on behalf of the minor is largely governed by 30 O.S. §2-110 through §2-112.

All guardianships ordered pursuant to 30 O.S. §2-101 are subject to review each year, as well as period reviews as the court determines necessary to serve the child's best interests. The power of a guardian ceases upon the removal of the ward, the marriage of the ward or the ward reaching the age of majority; however,

guardians are not entitled to discharge until one year after the child reaches the age of majority unless otherwise released by the minor after a final accounting.<sup>19</sup>

#### CUSTODY BY ABANDONMENT

The final avenue provided in Title 30 for guardianship of a minor child is a petition for custody by abandonment. A form for the petition is included in 30 O.S. §2-117.

The court may grant custody to a qualified relative where a child has been abandoned as defined by 10A 1-1-105. 30 O.S. §2-117(A). A qualified relative is defined in 30 O.S. §2-117(B). The court requires that the child be residing with the qualified relative on a full-time basis and that the relative contributes the majority of support of the child.<sup>20</sup> Further, the qualified relative must show they are unable to contact the parent or legal custodian of the child or that the person having legal custody refuses to take back physical custody after a written request of the relative to do so pursuant to 30 O.S. 2-117(A)(2). The statute vests any qualified relative who is awarded custody by abandonment with the same rights of custody, care and control given to other guardians, but it does prohibit said relative from consenting to adoption of the child or children.<sup>21</sup>

In determining custody pursuant to 30 O.S. 2-117, the court is required to base its findings and determinations on the child's best interest and the factors set forth in Subsection (J)(2), including the duration of abandonment, the child's integration into the relative's home, the minor's preference (if of sufficient maturity), the child's mental and physical health and other factors necessitated by the circumstances.

Section 30 O.S. §2-117(F) provides for notice provisions identical to those of a guardianship brought under 30 O.S. §2-101. If a qualified

relative is awarded custody, they are required to receive the letters of custody by abandonment detailing his or her authority for the care, custody and control of the child.<sup>22</sup>

Most notably, this avenue provides a time limit in which parents may reclaim their children absent a court order. Any child who is 24 months of age or less and is abandoned for at least six months may not be reclaimed except through court order. A child 24 months of age or older who has been abandoned for 12 of 14 months may not be recovered except through court order.<sup>23</sup> During the pendency of the action, a child is allowed to remain with the qualified relative unless the court finds it contrary to his or her best interests.24 Even when children are ordered to be returned, the court is allowed to provide a transitional period for their return.<sup>25</sup> Qualified relatives are required to notify the court if the child ceases to live with them or if custody by abandonment is terminated.26

#### AFTER THE GUARDIANSHIP

If a child has assets, a guardian will be required to file an inventory shortly after the letters of guardianship are issued.27 After the letters of guardianship are entered, all guardians can expect to submit annual accounting to the court (or request an order waiving the same).28 Periodic reviews will be set by the court to assess the status of the case and whether the continuation of the guardianship is appropriate.<sup>29</sup>

#### **CONCLUSION**

In advising clients seeking guardianship, it is important for practitioners to carefully assess not only the facts at hand but the guardian candidates themselves. Ensuring the guardians understand their responsibilities and the duties conferred upon them

by the court will serve to minimize disruption to the lives of minor children over whom guardianship is sought. Where parental fitness is lacking, guardianships play an important part in protecting their children while avoiding the necessity of state custody. Practitioners are encouraged to review the statutes frequently to ensure ongoing knowledge of the legal and procedural requirements associated with guardianship matters.

#### ABOUT THE AUTHOR

**ENDNOTES** 

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#### **Nominating Petition** Deadline: 5 p.m. Friday, Sept. 4, 2020.

#### **President-Elect**

Current: Michael C. Mordy, Ardmore

(One-year term: 2021)

Mr. Mordy automatically becomes

OBA president Jan. 1, 2021

Nominee: Vacant

#### Vice President

Current: Brandi N. Nowakowski,

Shawnee

(One-year term: 2021) Nominee: Vacant

#### **BOARD OF GOVERNORS**

#### **Supreme Court Judicial District One**

Current: Brian T. Hermanson,

Newkirk

Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers,

Washington counties

(Three-year term: 2021-2023)

Nominee: Vacant

#### **Supreme Court Judicial District Six**

Current: D. Kenyon Williams Jr., Tulsa

Tulsa county

(Three-year term: 2021-2023)

Nominee: Vacant

#### Supreme Court Judicial **District Seven**

Current: Matthew C. Beese,

Muskogee

Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee,

Wagoner counties

(Three-year term: 2021-2023)

Nominee: Vacant

#### Member At Large

Current: Brian K. Morton, Oklahoma City Statewide

(Three-year term: 2021-2023)

Nominee: Vacant

#### **SUMMARY OF NOMINATIONS RULES**

Not less than 60 days prior to the annual meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the executive director, a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such judicial district, or one or more county bar associations within the judicial district may file a nominating resolution nominating such a candidate.

Not less than 60 days prior to the annual meeting, 50 or more voting members of the OBA from any or all judicial districts shall file with the executive director a

signed petition nominating a candidate to the office of member at large on the Board of Governors, or three or more county bars may file appropriate resolutions nominating a candidate for this office.

Not less than 60 days before the opening of the annual meeting, 50 or more voting members of the association may file with the executive director a signed petition nominating a candidate for the office of president-elect or vice president, or three or more county bar associations may file appropriate resolutions nominating a candidate for the office.

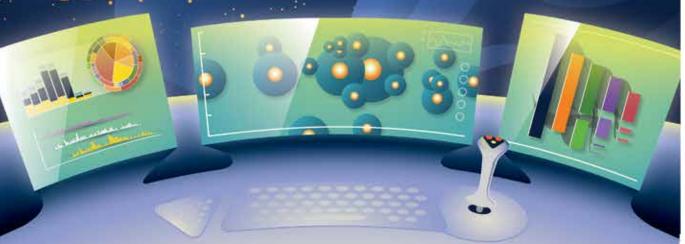
If no one has filed for one of the vacancies, nominations to any of the above offices shall be received from the House of Delegates on a petition signed by not less than 30 delegates certified to and in attendance at the session at which the election is held.

See Article II and Article III of OBA Bylaws for complete information regarding offices, positions, nominations and election procedure.

Elections for contested positions will be held at the House of Delegates meeting Nov. 6, during the Nov. 4-6 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2020.

Nomination and resolution forms can be found at www.okbar. org/governance/bog/vacancies.





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## From the Executive Director

## **COVIDeo**

### By John Morris Williams

**S WE STARTED** into the shut down in March, I researched our archived materials and found no real information on the Spanish Flu pandemic of 1918. I even went so far as to read all the Supreme Court opinions from that year. The only case I found of some interest was a case involving a disorderly dancing establishment that obviously was void of social distancing. In fact, it appears the lack of distance between some of the customers was of grave concern.¹ Meanwhile, we are doing much better in social distancing by using video technology.

Absent any real roadmap for most of us, the COVID-19 pandemic has been an opportunity for some creative thinking and the use of alternative means to communicate and meet. A recent national online meeting I participated in stated that from March to May of 2020 the legal profession propelled itself a decade forward in the use of video technology. At the OBA we continue to explore new ways to assist our committees and sections to meet online. For the short term we have some creative ways to allow sections and committees to conduct continuing legal education programs outside of our CLE Department's online capabilities. Currently, we are exploring new avenues for our CLE Department to use its online broadcasting technologies to assist sections and committees to streamline their

CLE programs, allow a greater number of participants and assure better attendance recording.

In July we welcomed Janet Johnson as our new director of educational programs. Janet is already in the process of finding ways our sections and committees can better partner to continue the excellent online programs that were developed during the shutdown in March and April. If your section or committee is wanting to do online programs, I encourage you to explore how our CLE Department can assist you. As of now, we anticipate very limited in-person CLE classes for the remainder of the year.

#### ONLINE VIDEO CLE POPULAR

During the first half of this year, we have had record participation by OBA members using our online video programs. Between the free CLE programs the OBA has presented and the work of our sections and committees, most everyone should have had an opportunity to get all their CLE credit early this year. This included the mental health program presented by Laura Mahr that qualified for an hour of ethics.

The Laura Mahr presentation had more than 500 participants and received such rave reviews we are having her back for the Annual Meeting. Planning for the Annual Meeting requires us to have a contingency plan in the

event the public health situation does not improve. Once again, video technology will allow us to present a virtual Annual Meeting with great programs online if we are forced to go to Plan B. We have also obtained an order from the Oklahoma Supreme Court to conduct the OBA House of Delegates in a modified way, if necessary, so that we can conduct elections by mail. It's not what we want, but it is part of the creativity and use of technology, including video, that will allow us to get the association's business done if we can't meet in person.

Although the use of video technology has helped some, we at the OBA understand these are hard and difficult times for many of our members. It is our desire to be a resource and a help in any way we can. Please reach out to us if we can be of any assistance. Wishing you good health and abundance.

John Mari William

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

#### ENDNOTE

1. In Hoover v State ex rel. Selby Co. Atty, 1918 OK 683.

## From the President

(continued from page 4)

The legal profession nationally has been negatively affected in many ways. My promise to you as your OBA president is to continue to find ways to unmask the best in our profession and that your bar association is always ready to listen and help where it can.

One of my favorite shows is CBS Sunday Morning and a recent story

concluded with the statement that, "We can look back at the Spanish flu of 1918, and realize that what came next were the Roaring '20s. This will end." That sentiment gives me hope. Even though many of us and our loved ones are hurting and at times it feels like we are running a marathon but don't know what mile we are on, we know it will end. We will not

be staying in our homes and cut off from each other and wearing face masks forever. Let's all do our best to continue to get through this time together so that we can move on to our new Roaring '20s soon.

I hope you are doing well and staying well. As always, please do not hesitate to contact me with your questions, comments and suggestions at susan.shields@ mcafeetaft.com.

## **AUGUST WELLNESS TIP**

Wash your hands, maintain physical distance and keep wearing those face masks of your choice!





Board of Governors members observe COVID-19 safety precautions during a recent meeting at the Oklahoma Bar Center.

### LAW PRACTICE TIPS

# A Videoconferencing Guide for Oklahoma Lawyers

By Jim Calloway

#### 020 HAS BEEN A TIME of change.

One change generated by the increase in working from home was an explosion of videoconferencing. Many people whose prior videoconferencing experience had been limited to a few online seminars or product demonstrations were soon having multiple videoconferences each day. Online clothing distributors reported sales of tops, but not complete outfits, surged. Jokes abounded about attending meetings without pants. Terms like "Zoom Fatigue," "Zoombombing," "virtual happy

hours" and others entered our business vocabulary.

As much as we long for life to "return to normal," it doesn't take a crystal ball to predict that this videoconferencing adoption is a new, permanent feature of our professional lives.

There will now be times it is preferable to videoconference, and most lawyers now have experience with using the tools to accomplish that. You may have an elderly client whose health situation is very high risk who wishes to limit possible exposure to COVID-19 or a lawyer may have similar concerns,

but there are other reasons to employ this communications method. A day of heavy rain and minor flooding might convince you to change an in-person conference to a videoconference. A longterm client who is a busy business owner may agree that eliminating the 15-minute drive across town between your offices is a better plan for routine meetings.

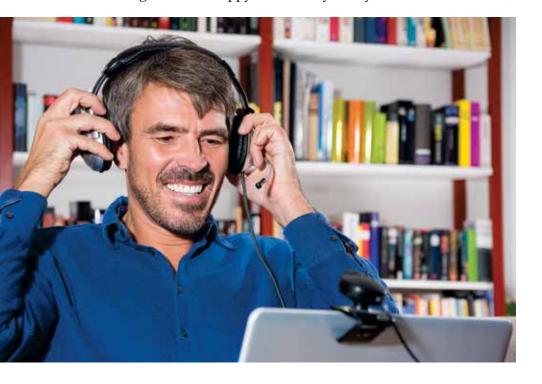
Setting up a videoconference is a basic skill for most lawyers. Larger law firms may have staff assigned to set up and manage the videoconferencing, but even in that setting, a lawyer must be able to do it themselves on short notice when required.

So, let's briefly cover the tools a lawyer needs to consider for the new reality of videoconferencing today.



I've long advocated for lawyers using laptops for their primary computer. When "work from home" materialized, many lawyers without laptops purchased them. Having a dedicated law practice computer that others in your quarantine were not allowed to use was a good plan for client data security and other reasons.

Therefore, a good businessclass laptop is the foundational piece of hardware. Those shopping



for Windows 10 laptops will be well served to get a solid-state hard drive (SSD) and at least 16 GB of memory. The business-class laptop will likely have a decent webcam built in and upgrading to a more powerful video card will have benefits for videoconferences.

Next, we cover a few topics for the legal profession that read like some lecture in film school.

#### **YOUR CAMERA**

In March and April, online supplies of webcams sold out as those working from home embraced videoconferencing. The question of "What's the best webcam?" gave way to "Where can I buy a webcam?" Supplies are being replenished, but there are still many potential buyers, so choices may be limited.

A business-class quality laptop purchased within the last several years undoubtedly includes a pinhole webcam built into the monitor. These are generally high-quality cameras that do a great job. If you have a cheap laptop however, you may also have a cheap built-in webcam.

Either way, most lawyers will now want to buy at least one additional external webcam. The most persuasive reason is that videoconferencing is now a mission-critical activity. Therefore, you must have

backups and at least two ways of doing everything. Buying a higher quality camera will give you many additional options, including better autofocus than your computer's camera. If you're using a laptop, you want a webcam with a stand that also hooks over the top of the laptop monitor.

You need not break the bank, but you shouldn't buy the cheapest webcam available. The availability of certain models may be limited. If you don't like the first camera you purchase, you shouldn't hesitate to buy another one.

#### **SOUND**

Some have created full-length feature films only with an iPhone for recording videos. They probably



used many advanced video tools that most lawyers don't. One reason their videos "look" better than ours is that they used good external microphones rather than relying on the built-in microphone in the phone.

While the camera built into your laptop may be a good camera, the microphone built into your laptop is probably a lower grade. In addition, it is not situated well for video production. We've seen many examples of someone speaking who turned their head away from the computer and their voice was lost.

Therefore, you will definitely want to buy at least one external microphone or headset including a microphone. I like the Snowball line from Blue Microphones,1 but many lawyers think it is too prominent and noticeable in the law office and choose something like the MXL Conference microphone.2 Make certain to buy a microphone that plugs into the USB port.

#### **HEADSET**

A nice headset with a microphone will be the solution for many. It is the choice of many professional broadcasters. There are several advantages to using a headset. Having just one device for broadcasting and listening makes life simple. By using a

headset there's also no external sound, so no one else can hear what is being said if you are working from home, for example. There's also no chance of the microphone picking up the speaker's sound and creating a disturbing feedback loop.

Personally, I prefer a fairly substantial headset with padded foam ear covers and a boom style microphone built in. Some people hate headsets and they are certainly incompatible with certain hairstyles, but day in and day out, I'd rather have something on my ears for hours while I'm working than inside my ears. Headsets also solve one problem that we've seen in several online CLE presentations as the speaker turns away from the microphone and their voice can no longer be heard.

There are many headsets available. You can find a decent headset for under \$100, but because of the popularity of online gaming there are many options for high-performance gaming headsets.<sup>3</sup>

We should add "I can rattle papers loudly on my desk without others hearing or the camera focusing on me because of the papers' noise" to that list of advantages of using headsets as opposed to the laptop's built-in microphone.

#### **LIGHTING**

I've participated in many videoconferences. Those attending lawyer videoconference meetings in March were just happy if they had a webcam and microphone as others did not yet have those tools. There was no real judgment as to picture quality. There were always a few attendees whose setup had them bathed in an eerie blue monitor glow, and there were several lawyers who positioned their camera so you saw the top of their head and their ceiling. Others had distracting backgrounds in their

videos because their home office was not designed to be a video production studio, after all.

Now that videoconferencing is becoming institutionalized, you may want to consider improving your conferencing quality if you are communicating with clients or doing virtual court appearances. Buying a good camera is the first step but lighting cannot be ignored. You do not want a brightly lit window behind you, so avoid that if you can, or at least close the blinds. Some lighting will greatly improve your appearance. There are many inexpensive ring lights made for use with smartphone recording or sometimes taking the shade off a lamp or having a white piece of poster board reflecting some light on you can help. Sure, you are a busy lawyer, but you can spend an hour figuring out the setup that makes you, as your client's representative, look good, even if you don't turn the lighting on for every videoconference.

#### VIRTUAL BACKGROUNDS AND GREEN SCREENS

Pay attention to your background. You have the option of a physical or virtual background, but you want to make certain that your actual physical background is not too distracting. Now we see many celebrities and analogies live broadcasting from their homes. Some have obviously staged their backgrounds and sometimes reorganize the books and decorative items between appearances. Did you know that there is a Twitter account, Room Rater, with almost 250,000 followers that posts reviews of videoconferencing backgrounds of famous and not-so-famous people?

A poor background can be distracting. Zoom and other videoconferencing solutions allow one to use a photo or video as a background.

A lawyer whose job involved many videoconferences joked that by the first week or so of April, every Zoom conference began with each attendee showing off their latest Zoom background. Star Wars, Broadway and other entertainment franchises got into the act by providing images people could use to put themselves in a favorite fantasy or theatrical location.<sup>4</sup>

There are drawbacks to virtual backgrounds. They use precious bandwidth. So, if you are having video or sound issues on a call, turning off a virtual background may help. As we have already seen, the virtual backgrounds are not perfect and quick motions may reveal parts of your actual location as well as creating other odd video effects.

Some law firms have no doubt already created plain backgrounds with the law firm logo for their lawyers to use for videoconferencing.

Green screens are used in moviemaking to create special effects. It is how Superman flies across the skyline of Metropolis and how nearly every movie or TV scene you have watched with characters talking and driving provides the images of traffic around the car. The first rule of using a green screen is to wear nothing green. There are many online explanations of green screen technology.<sup>5</sup>

Some law firms may invest in green screen technology. Most lawyers won't see the need to purchase a physical green screen, although larger law firms setting up dedicated videoconferencing locations will likely consider this. For example, a lawyer who presents many online CLEs might use a green screen to create the effect of the lawyer being visible on one-third of the screen and the presentation on the other two-thirds. This would showcase the lawyer better than the tiny thumbnail of

A lawyer whose job involved many videoconferences joked that by the first week or so of April, every Zoom conference began with each attendee showing off their latest Zoom background.

the presenter that would be the default view for many attendees.

One friend and professional colleague, Craig Ball, on his Ball in Your Court blog, gave a great stepby-step explanation of how this works in his post on the Advanced Zoom "Weather Map" Technique.6 This green screen technique is the same as used by your local TV weather broadcaster.

#### VIDEOCONFERENCING **SOFTWARE**

There are several videoconferencing packages and as videoconferencing increases, a smart lawyer will have accounts set up with more than one service to have appropriate redundancy just in case.7

Oklahoma lawyers are reminded that Rule 34 of the Rules for District Courts of Oklahoma, Videoconferencing in the District Courts, should be consulted when considering videoconference hearings of any kind. The Third **Emergency Joint Order Regarding** The COVID-19 State of Disaster (SCAD no. 2020-36) issued by the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals reaffirms that Zoom is disallowed from the district court

computer systems. If you want to schedule a video court hearing or want to include a district court judge in a meeting, you cannot use Zoom.

Having said that, Zoom is the most popular and, in the opinion of many, easiest to use videoconference tool. There is a free version. After some initial criticism. Zoom has made several security upgrades and added true end-toend encryption. But lawyers who plan to handle hearings and other aspects of litigation in the state district courts will likely only consider Zoom as a secondary videoconferencing tool.

Microsoft Teams is an option. Microsoft Office 365 is being rebranded as Microsoft 365. Subscribers receive access to Microsoft Teams, which includes a videoconferencing tool designed to work with the other 365 tools, like Outlook. To me, it is somewhat surprising that even the lowest tier subscription, Microsoft 365 Business Basic at \$5-6 per month, provides that a subscriber can "host online meetings and video conferencing for up to 250 users." (We still suggest Microsoft 365 Business Standard or Premium for lawyers since those subscriptions include Microsoft tools like Word,

Outlook and PowerPoint.) If you are not a 365 subscriber, you can sign up for a free one-year subscription to Teams.

Other videoconferencing service providers include WebEx, GoToMeeting, BlueJeans, Adobe Connect and Skype. Google's G Suite Meet (formerly known as Hangouts Meet) is free. Each service has various strengths and weaknesses. I would encourage you to pay for a monthly subscription for the first few months before committing to an annual contract for a commercial service.

For example, I don't like that BlueJeans only shows the videos from nine people in the meeting, even when there are more participants. It does automatically display the video of anyone speaking (or rattling the papers on their desk too loudly) and I have seen confusion more than once as someone thought another lawyer left the meeting because they were not featured in the favored nine. Other lawyers may believe they will never host a meeting with more than three or four participants and have no concern about that. Many Oklahoma lawyers are more familiar with BlueJeans since the OBA uses it for video meetings.

We are also seeing the emergence of new videoconferencing solutions targeted to the legal profession. We will monitor that. But for now, great ideas for improving videoconferencing will be incorporated by most platforms and the case for "legal specific" videoconferencing does not seem compelling.

## FINAL VIDEOCONFERENCING TIPS

The first rule of a good videoconference broadcast is to set the camera at eye level. (That's also the second and third rule!) There's really no exception to this rule. Whatever it takes, make this happen. Lower or raise the height of your office chair. Put the camera on a stack of books. Your face should be centered in the screen. No one wants to hold a serious conversation with you while the camera shows the inside of your nostrils or the top of your head.

Consider paying for a subscription as opposed to just using the free level of service. One advanced feature lawyers will want to have available is the ability to record the videoconferences and save the recording, which may not be available on free accounts. Suppose you want to document a client giving you authority to accept a settlement offer or take another action, or perhaps you just worked out a hardfought settlement agreement by videoconferencing mediation. You will want a written, signed agreement, but video documentation while everything is fresh in memory can also be very handy. If a potential witness gives you a valuable statement over a video connection, the next step, if appropriate, may be to ask if you can record them making that statement.

If you are using video recordings to document something, always begin the recording by reciting the date and time, all participants in the conversation and asking all participants to acknowledge they understand you are now recording this communication.

The Oklahoma Rules of Professional Conduct provide in Rule 1.6 Comments 16 and 17 that a lawyer "act reasonably to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision." This is not a strict liability situation, but the lawyer should pay attention to whether the service offers end-to-end encryption and its suggested best security practices, like requiring passwords for meeting attendees.

#### **CONCLUSION**

Videoconferencing is here and will have a big impact on business operations for the fore-seeable future. While it is quite simple (most of the time) to attend a videoconference that someone else sets up and invites you to attend, the majority of Oklahoma lawyers should be able to schedule their own videoconferences when needed and should have good hardware and software tools to use with videoconferencing.

Mr. Calloway is OBA Management Assistance Program director. Need a quick answer to a tech problem or help solving a management dilemma? Contact him at 405-416-7008, 800-522-8060, jimc@okbar. org. It's a free member benefit.

#### **ENDNOTES**

- 1. www.bluedesigns.com/products/snowball.
- 2. http://www.mxlmics.com/microphones/web-conferencing/.
- https://en-us.sennheiser.com/ gaming-headsets.
- 4. www.starwars.com/news/star-wars-backgrounds, www.broadwayworld.com/article/Improve-Your-Conference-Call-Game-with-These-Broadway-Zoom-Backgrounds-20200420.
- 5. https://infocusfilmschool.com/filming-green-screen-guide/.
- 6. https://craigball.net/2020/07/02/advanced-zoom-weather-map-technique/.
- 7. Murphy's Law of Videoconferencing states the more critical a videoconferenced meeting or hearing is, the more likely your normally well-functioning videoconferencing software will mysteriously quit. Yes, I made that rule up, but you still want to have two videoconferencing services you can use in case you have to go to Plan B.

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### ETHICS & PROFESSIONAL RESPONSIBILITY

# **Attorney Discipline Decisions**

By Gina Hendryx

#### RIMINAL CONVICTIONS,

embezzlement of estate funds and neglect of client matters have resulted in serious discipline for Oklahoma attorneys. The Oklahoma Supreme Court has recently issued attorney discipline opinions that ranged from disbarment to lengthy suspensions in these 2020 disciplinary cases.

#### STATE EX REL. OKLA. BAR ASS'N V. SIEGRIST, 2020 OK 18

Broken Arrow attorney Kent Siegrist was named the personal representative of his father's estate in 2008 and was removed as the personal representative in 2017. In 2018, the probate judge found that Siegrist had misappropriated \$1,135,000 in estate funds for his personal use. The judge further found that Siegrist was in contempt of court and guilty of conversion, misappropriation, willful breach and disregard of duty. The Oklahoma Supreme Court agreed with the OBA's recommendation that Siegrist should be disbarred from the practice of law. In doing so, the court stated:

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. 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.1

#### STATE EX REL. OKLA. BAR ASS'N V. MILLER, 2020 OK 4

The Oklahoma Supreme Court disbarred Oklahoma City attorney Laurie Miller due to several rule violations that included misappropriation of a client's settlement funds and neglect of clients' cases. In discussing the discipline to be imposed, the court stated:

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. The record is laden with inconsistent statements and unbelievable explanations. Most disturbing of which is the Respondent's difficulty in discerning the truth. Her testimony that the false statements she made to her client were somehow true at the time she made them is incredulous. A mistaken statement may be made; however, truth is not malleable. Honesty in the performance of a lawyer's professional activities is the foundation upon which his or her license stands. We hold the sum of the Respondent's misconduct warrants disbarment. Accordingly, it is ordered by

this Court that the Respondent be disbarred and her name be stricken from the roll of attorneys licensed to practice law in this state.2

#### CRIMINAL CONVICTION **REVIEWS**

In separate matters, the court reviewed the criminal convictions of two Oklahoma attorneys. In State ex rel. Okla. Bar Ass'n v. Ezell, the court suspended Edmond attorney Julia Ezell after her plea of guilty to the misdemeanor crimes of using a computer to violate Oklahoma statutes and falsely reporting a crime. Upon her conviction in 2019, the Supreme Court entered an immediate order of interim suspension of her law license and assigned the matter for a discipline hearing on the issues of mitigation and recommendation of attorney discipline. Ezell was the general counsel for the Oklahoma State Department of Health (OSDH) when she began sending threatening emails from a fictitious email address to her own official government email address that appeared to be authored by proponents of the medical marijuana referendum. Over a five-day period, Ezell sent 10 emails to herself from the fictitious account each with intimidating and escalating threats to her safety.

The OSDH requested OSBI assistance to investigate these email threats that had been made against a public official. The investigating agent believed the threats

to be credible and took immediate actions to ensure the safety of Ezell. Ezell's workplace and home were placed under surveillance. She was driven home from work by the Edmond Police Department, and her personal vehicle was checked for a GPS device. The OSBI placed pole cameras in her neighborhood to monitor traffic in and out of the neighborhood as well as to monitor her house. Ezell also provided the OSBI with a list of individuals that she believed could have been the source of the emails. When confronted with forensic evidence that the emails were sent from an account that had been created on her cell phone, Ezell admitted to being the source of the bogus threats. The Oklahoma Supreme Court found Ezell's conduct reflected adversely on the

legal profession and suspended her from the practice of law for one year, effective the day of her interim suspension.

On June 8, the court entered an emergency interim suspension of Tahlequah attorney Haskell Doak Willis' license to practice law after he failed to respond to a show cause order stemming from a federal court conviction. Willis had pled guilty to felon in possession of a firearm and was awaiting sentencing. As a part of his plea agreement, Willis had agreed to contact the OBA to withdraw his status as an active member. He failed to do so and vacated his law office with no notice to several clients. The court found that Willis' conduct posed an immediate threat of substantial and irreparable public harm and therefore issued the immediate

suspension of his law license. On June 30, Willis began serving his federal prison sentence.<sup>3</sup>

#### FREE ETHICS ADVICE

Should you have an ethics question, take advantage of obtaining informal advice and interpretations of the rules of attorney conduct from Ethics Counsel Richard Stevens. It's a free member benefit. Advice given is memorialized through a confidential and protected database. You'll find more information at www.okbar.org/ec.

Ms. Hendryx is OBA general counsel.

#### **ENDNOTES**

- 1. Siegrist at ¶19.
- 2. Miller at ¶40.
- 3. State ex rel. Okla. Bar Ass'n v. Willis, 2020

STANGE LAW FIRMPE Stange Law Firm, PC is looking to hire lawyers in Resume their Oklahoma City & Tulsa Offices Attorneys at Stange Law Firm, PC are dedicated to achieving the best possible results and helping individuals put their lives back together when they are facing a divorce, legal separation, a paternity action, or monerous other issues that affect fam Law Firm 500 has recognized Stange Law Firm as one of the fastest growing law firms in the country. Opportunites include a competitive starting salary, signing bonus, an outstanding benefits package, employer-matched 401K after one year, paid time-off and other incentives To apply, send your resume, cover letter, references and writing sample to stangelawfirm@stangelawfirm.com. 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

## BOARD OF GOVERNORS ACTIONS

# **Meeting Summaries**

The Oklahoma Bar Association Board of Governors met remotely on Friday, April 3.

#### REPORT OF THE PRESIDENT

President Shields reported she attended OBA Day at the Capitol and meetings with legislators, the Law Day Awards Ceremony for Law Day contest winners with Justice Gurich and Law Day Chair Ed Wunch at the Supreme Court courtroom at the Capitol, UBE Advisory Committee meeting, OBA CLE Director Search Committee teleconference meeting, EPPT working group meetings and participated in communications regarding remote notaries in addition to multiple and ongoing teleconferences and meetings regarding the OBA COVID-19 response, issues impacting the OBA and Oklahoma lawyers and communications to OBA members. She also filmed a video with Lawyers Helping Lawyers Assistance Program consultant Deanna Harris for the OBA Facebook page on attorney wellness issues.

#### REPORT OF THE PRESIDENT-ELECT

President-Elect Mordy reported he attended Day at the Capitol, the **CLE Director Search Committee** teleconference and Oklahoma Attorneys Mutual Insurance Co. Board of Directors meeting.

#### REPORT OF THE **EXECUTIVE DIRECTOR**

**Executive Director Williams** reported he appeared on several video interview shows hosted by Scott Mitchell, participated in phone conferences with President Shields and others including Justice Rowe, NABE weekly conference call meetings on bar strategies for COVID-19 closures and working remotely and finalized work on the dismissal of the lawsuit and communications regarding budgeting for next year. He attended the CLE Director Search Committee meeting, Bar Association Technology Committee meeting and Estate Planning Probate and Trust Section planning group meetings.

#### REPORT OF THE PAST PRESIDENT

Past President Chesnut reported he attended the meeting regarding the CLE director search, Day at the Capitol programs at the bar center and walked to the Capitol, where he met with various representatives and senators.

#### **BOARD MEMBER REPORTS**

Governor Beese reported he attended Day at the Capitol and meetings of the Legal Internship Committee and Muskogee County Bar Association. Governor **DeClerck** reported he attended Day at the Capitol. He spoke to two representatives and a senator and made tentative hotel arrangements for the Board of Governors meeting in Enid. Governor Edwards reported

he attended Day at the Capitol and met with several representatives and senators. Governor Garrett reported she attended Day at the Capitol. Governor Hermanson reported he attended the Day at the Capitol morning program. That afternoon he visited with and delivered items to many senators and representatives. He attended the Bar Association Technology Committee meeting by phone, a Kay County Bar Association special meeting to address whether to go forward with the spring jury term and numerous meetings in person, by phone and teleconferences regarding courthouse COVID-19 issues impacting the Kay and Noble county courthouses. Governor Morton reported he attended the Day at the Capitol programs at the bar center and walked to the Capitol, where he met with various representatives and senators. Governor Williams reported he participated in a virtual special meeting of the Tulsa County Bar Association's Board of Directors to amend TCBA's bylaws to allow electronic participation to conduct association business and formalities. He also participated in a telephone/ videoconference meeting of the Tulsa County Bar Foundation's Board of Trustees.

#### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Haygood asked board members to mark their calendars for the Kick It Forward Tournament on Saturday, Sept. 26.

#### PERSONAL REPORTS

Each officer and board member shared their recent experiences dealing and coping with COVID-19.

#### REPORTS OF OBA DIRECTORS

Each department director reported on current practices to continue productivity while working remotely.

#### REPORT OF THE **GENERAL COUNSEL**

General Counsel Hendryx reported a written report of PRC actions and OBA disciplinary matters for March was submitted to the board for its review.

#### BOARD LIAISON REPORTS

Governor Rochelle said the Access to Justice Committee is working on goals and looking at a bench book for judges. As research, they are reviewing other books done in other states. He also said the **Bar Association** Technology Committee is looking at how the OBA can help the Tulsa County Bar Association and others offer online CLE. **Executive Director Williams** said using the TCBA as a permanent location for CLE is being discussed. Executive Director Williams said on behalf of the Solo & Small Firm Conference Planning Committee a decision will be made around May 1 on whether to cancel the June conference. Executive Director Williams said he has talked to Disaster **Response & Relief Committee** 

Chair Molly Aspan. He shared the history of the committee's creation and said committee members are being recruited in case FEMA gets involved with the pandemic. Some questions will require lawyers with expertise in certain areas such as employment. Information is still forthcoming. Governor Beese said as a result of courts closing due to COVID-19, the Legal Internship Committee requested, and the Oklahoma Supreme Court granted a temporary suspension of the rule requiring licensed legal interns to complete a minimum of four hours in court each month. Governor Hermanson said the Law Day Committee has eliminated the two phone banks for Oklahomans to call in to get free legal advice but will be able to offer the statewide community service via email. The link to volunteer to help

answer questions will be sent to board members. Past President Melissa DeLacerda will serve as the Ask A Lawyer TV show host. President Shields said the Lawyers Helping Lawyers Assistance Program Committee discussion groups have transitioned to online gatherings. Executive Director Williams reported on behalf of the Legislative Monitoring Committee that Day at the Capitol was well attended for a year with no specific issues. President Shields thanked board members who participated.

#### **COVID-19 UPDATE**

**Executive Director Williams** said board members just heard reports from department directors. He shared that with the closing of the bar center to the public a doorbell was installed at the front door. He has been in contact with Justice Rowe, the OBA's Supreme Court

Governor Rochelle also said the Bar Association Technology Committee is looking at how the OBA can help the Tulsa County Bar Association and others offer online CLF.

liaison, who is concerned about lawyer welfare. The Supreme Court continues to hold conferences. He said the Estate Planning Probate and Trust Section has been busy by offering at least one drive-by will signing. Legislative Liaison Clay Taylor helped with lawyers being included in the designation as essential. Executive Director Williams thanked President Shields for her extra efforts in shaping how the association is supporting its members during the pandemic and keeping them informed. He said overall the OBA is doing well working with a skeleton crew at the bar center. An app was made available for employees working remotely that shows their calls as coming from the OBA, masking their cell phone numbers.

#### LAWSUIT UPDATE

**Executive Director Williams** said an appeal was filed yesterday, and the lawsuit may move to the 10th Circuit.

#### **LEGISLATIVE SESSION REPORT**

Governor Pringle said the Oklahoma Legislature's primary concern is about the budget shortfall. **Executive Director Williams said** the governor called a special session mainly to address issues related to healthcare. He has received requests from lawyers requesting changes to will-signing procedures, which is not a policy issue.

#### **SEARCH FOR DIRECTOR OF EDUCATIONAL PROGRAMS**

President Shields said the search committee met, and the application deadline has been extended. Executive Director Williams said there have been additional applicants.

#### **OBA MEETINGS**

**Executive Director Williams** said President Shields will send out information to all section and committee leaders encouraging them to meet remotely.

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, May 15.

#### REPORT OF THE PRESIDENT

President Shields reported she participated in the Director of Educational Programs Search Committee conference call and review of resumes, calls with the Family Law Section chairperson, conference calls with Chief Justice Gurich and Justice Rowe and communications with other presidents of the Southern Conference of Bar Presidents regarding responses to COVID-19 in other states. She attended the Calm in the Storm CLE regarding wellness issues for attorneys during COVID-19 and several virtual meetings with the Estate Planning, Probate and Trust Section. She taped video messages for new bar admittees and the OCU School of Law graduation, spoke at the virtual 2020 OBA Leadership Academy graduation, wrote president's messages for the May Oklahoma Bar Journal and eNews, did planning regarding upcoming meetings and cancellations/postponements of OBA events, worked on issues with the executive director regarding the reopening of the bar center and security issues and volunteered for the OBA Law Day Ask a Lawyer free legal advice email project.

#### REPORT OF THE VICE PRESIDENT

Vice President Nowakowski reported she attended the Oklahoma Bar Foundation board meeting.

#### REPORT OF THE PRESIDENT-ELECT

President-Elect Mordy reported he attended the Oklahoma Bar Foundation board meeting, **OBF Court Grant Subcommittee** meetings and Search Committee meetings for the OBA Director of Educational Programs position.

#### REPORT OF THE **EXECUTIVE DIRECTOR**

**Executive Director Williams** reported he participated in numerous National Association of Bar Executives Zoom meetings regarding various operational issues facing the legal profession and organizational issues related to the pandemic, a conference call regarding the Director of Educational Programs search, conference calls with Chief Justice Gurich and Justice Rowe in addition to numerous calls on the legislative session. He spoke at the Leadership Academy video graduation. He attended the Legislative Monitoring Committee meeting, Bar Association Technology Committee meeting, CLE webinar on practicing from home and CLE webinar on mental health during COVID-19, several Zoom meetings with the Estate Planning, Probate and Trust Section and YLD board meeting.

#### REPORT OF THE PAST PRESIDENT

Past President Chesnut reported he attended the Calm in the Storm CLE regarding wellness issues for attorneys during COVID-19, virtual meeting of the Estate Planning, Probate and Trust Section and one of their Lunch and Learn sessions. He participated in the search committee conference call and review of resumes for the Director of Educational Programs position and volunteered for the OBA Law Day Ask A Lawyer email program.

#### **BOARD MEMBER REPORTS**

**Governor Beese** reported he attended the Muskogee County Bar Association meeting, a meeting with the Muskogee County judges regarding the reopening of the courthouse, Legal Internship Committee meeting, Legislative Monitoring Committee meeting and participated in an International Municipal Lawyers Association COVID-19 response conference call. Governor Davis reported he attended a briefing hosted by the Association of Title IX Administrators on the new Title IX regulations and a meeting of the OBA Law Schools Committee. Governor Edwards reported he attended the Understanding Domestic Violence to Ensure the Best Interest of the Children webinar and volunteered to answer email questions for the OBA's Law Day Ask a Lawyer program. Governor Garrett reported she attended the Women in Law Committee meeting. Governor **Hermanson** reported he attended the OBA Legislative Monitoring Committee meeting, OBA Law Day Committee meeting, many District Attorneys Council executive meetings and District Attorneys Council board meeting. He took part in a conference call with Chief Justice Gurich and judges across the state on the opening of Oklahoma courthouses, signed up to volunteer for Ask a Lawyer and continues to work on finding an attorney to run for the District 1 Board of Governors position. Governor Hutter, unable to attend the meeting, reported via email he participated in the Cleveland County Bar Association Ask A Lawyer email project. Governor Morton reported he participated in the Law Day free legal advice project. He attended the Member Services Committee meeting and Military Assistance Committee meeting. Governor

Pringle reported he chaired the Legislative Monitoring Committee meeting and volunteered for the Law Day Ask A Lawyer project. Governor Rochelle reported he attended the Bar Association Technology Committee meeting. Governor Williams reported he attended the Tulsa County Bar Association Board of Directors virtual meeting, Diversity Committee meeting and participated in an OBA Professional Responsibility Tribunal videoconference to coordinate upcoming hearings and the PRT annual meeting. He volunteered for the TCBA/OBA Law Day Ask A Lawyer free legal advice project.

#### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Haygood, unable to attend the meeting, reported via email he chaired the YLD board meeting, participated in a YLD Kick It Forward Tournament planning meeting and volunteered for the Ask A Lawyer project. Vice President Nowakowski said the division will be doing a Wills for Heroes event for first responders on the third Saturday in July. The location is pending, and they are looking at virtual options. Volunteers are being recruited. President Shields suggested they coordinate with the Estate Planning, Probate and Trust Section. Executive Director Williams added the YLD is working on the Kick It Forward Tournament that will take place this fall. It was noted the division has developed a form for YLD directors requesting donations for not-forprofit organizations, other events and fundraisers to provide details on how the donation aligns with the OBA's Keller Policy. The form will be required when a request for funding is presented to the YLD Board of Directors. Executive Director Williams shared the form with board members.

#### REPORT OF THE **GENERAL COUNSEL**

General Counsel Hendryx briefed board members on two pending civil litigation matters. Wallace v. State of Oklahoma et. al. has been dismissed with prejudice, and the second matter has motions to dismiss pending. A written report of PRC actions and OBA disciplinary matters for April was submitted to the board for its review.

#### **BOARD LIAISON REPORTS**

Governor Rochelle shared an access to justice situation, not related to the Access to Justice Committee, that was occurring in Comanche County involving a high rate of COVID cases at the detention center and the lack of utilization of remote access to the courts. It was decided to contact Justice Rowe, Supreme Court Board of Governors liaison, to discuss the situation with him. Vice President Nowakowski said Awards Committee Chair Kara Smith sent out an email reminding committee and section chairpersons the awards nominations deadline is July 1. It was emphasized all materials must be received by the deadline. An article in the May Oklahoma Bar Journal contains all the details. She encouraged board members to submit nominations.

On behalf of the Bar Center Facilities Committee, Executive Director Williams said work to increase security within the building continues. Security rules have been created and distributed to staff members. Administration Director Combs shared more details including issues with subcontractors not showing up and the national pandemic causing problems with supply availability. Governor Davis said the Law Schools Committee is developing a report for the

The OBA is looking ahead to Annual Meeting and is watching what other associations are doing. President Shields said the OBA will plan on an in-person November Annual Meeting but will have a backup plan.

board, and visits to all three law schools are done. On behalf of the Solo & Small Firm Conference Planning Committee, Educational Programs Director Damron noted the conference has been cancelled. Management Assistance Program Director Calloway said participants were surveyed before making the decision to cancel rather than make it a virtual event. President Shields said the **Disaster Response and Relief** Committee has not been engaged to take action. Governor Williams said the Diversity Committee cancelled its summer CLE and is organizing its award presentation event as part of the OBA Annual Meeting. Nominations for diversity awards are due July 31. Governor Hermanson said the Law Day Committee Ask A Lawyer TV show aired on April 30 and free legal advice was given to about 500 people via email. Governor Morton said the Lawyers Helping Lawyers **Assistance Program Committee** offered a Calm in the Storm CLE webinar on May 5 and about 500 people attended. Governor Morton said the **Member Services Committee** heard a presentation

from Docket to Me that searches www.oscn.net several times a day. Questions were asked of the vendor, and they will come back to the committee with more information. The Military Assistance **Committee** cancelled its May CLE seminar and will reschedule. The committee is reviewing its webpage, working on selecting a speaker for Annual Meeting and is considering changing eligibility requirements for people helped by the Oklahoma Lawyers for America's Heroes Program. Governor Garrett said the Women in Law Committee is working on its upcoming fall conference set for Oct. 16 in Oklahoma City. Potential speakers are being discussed. Governor Garrett described additional programs that will supplement the keynote speaker. Educational Programs Director Damron said a contract has been signed with a new Embassy Suites Hotel.

**PROPOSED NEW RULE 7.9** AND AMENDMENTS TO **REGULATIONS 3, 5 AND 7 OF** THE RULES OF THE SUPREME **COURT ON LICENSED LEGAL INTERNSHIP** 

Legal Internship Committee Chair Terrell Monks said the committee is withdrawing a proposed amendment to Regulation 7 and is presenting amendments to Regulations 3 and 5 for informational purposes. The changes to Regulation 3 delete a weather emergency policy for changing the date of the exam and replace it with a reschedule policy and cancellation policy. In Regulation 5 the two changes are to application deadlines. Committee Chair Monks presented proposed new Rule 7.9 for the board's approval. Executive Director Williams raised a concern with a phrase. Discussion followed. The board approved the new rule with an amendment to delete three words at the end. The amended version is:

Rule 7.9 Representation by the Licensed Legal Intern in administrative hearings is limited in the following manner:

- When the supervising attorney represents a party adverse to the state agency, the supervising attorney must be present at all stages of the administrative proceeding.
- When the supervising attorney represents the state agency, the Licensed Legal Intern may appear at any stage of the administrative proceeding as authorized by that agency.

The proposed new rule will be submitted to the Supreme Court for its consideration.

#### **CLE 2019 ANNUAL REPORT**

**Educational Programs Director** Damron reviewed the annual report for the Continuing Legal Education Department. She noted as of Jan. 1, 2019, MCLE rules changed allowing members to obtain all 12 of their required hours from on-demand formats. Net sales totaled \$488,856 for more than 200 offerings in various areas of the law. The OBA's partnership with InReach allows the OBA to sell its content to other state providers and share in their content, which generated more than \$33,000 in net revenue. She said competition continues with free CLE programs, and the total number of CLE providers is over 800. The OBA remains the largest CLE provider for Oklahoma attorneys; however, the percentage continues to decrease. The department has a few partnerships with sections offering seminars in the fall, and revenue for spring 2020 is doing okay even with all the COVID changes. She said wellness webinars are coming up, which should be popular. The board congratulated Director Damron and her team.

#### **BUDGET COMMITTEE**

The board approved President-Elect Mordy's appointments of the following people to the Budget Committee:

Members of House of Delegates: D. Ken Williams, Tulsa; James R. Hicks, Tulsa; William H. Hoch, Oklahoma City; James Bland, McAlester; and Roy D. Tucker, Muskogee

Board of Governors: Susan B. Shields, Oklahoma City; Charles W. Chesnut, Miami; Michael Davis, Durant; Joshua A. Edwards, Ada; and Brian T. Hermanson, Ponca City

Attorney Members: Jordan Haygood, Oklahoma City; April Moaning, Oklahoma City.

#### **LEGISLATIVE SESSION REPORT**

Governor Pringle said the Legislative Monitoring Committee met and will offer its Legislative Debrief on Aug. 19 at 2 p.m. He said there will be fewer bills to review this year, and they are deciding whether it will be a live program or a virtual format. He briefed the board on recent legislative actions. Questions were asked. Executive Director Williams updated the board on pending issues.

#### **UPDATE ON OBA AND COVID-19 RESPONSE**

**Executive Director Williams** reviewed the plans for the bar center to be opened to the public on Monday following CDC guidelines. Staff members working in the building are being alternated and phased in for the next two weeks. He described signage within the building and the supply of masks at the entrance. On June 1 whether to

move to phase 3 will be considered. The OBA is looking ahead to Annual Meeting and is watching what other associations are doing. President Shields said the OBA will plan on an in-person November Annual Meeting but will have a backup plan.

#### **NEXT MEETING**

The Board of Governors met in June and July. A summary of those actions will be published in the Oklahoma Bar Journal once the minutes are approved. The next board meeting will be Friday, Aug. 28.



# Oklahoma Bar Foundation Funds Statewide Pro Bono Portal

By Candice Pace and Katie Dilks

THE OKLAHOMA ACCESS

It is funded through an OBF grant and a matching grant from the George Kaiser Family Foundation.

The goal of the portal is to serve as the pro bono hub for Oklahoma nonprofits that provide and facilitate legal assistance for clients in need. In the U.S., nearly 50% of people who try to access pro bono legal help are turned away due to lack of funding and resources. Now, in the face of economic disruption from the pandemic, legal needs are skyrocketing above normal levels.

In a recent survey of its grantees, the OBF learned there is an overwhelming need for legal services from pro bono lawyers from Oklahoma nonprofits. OBF Executive Director Renée DeMoss explained, "Our grant recipients consistently tell us that pro bono assistance is crucial to making our goal a reality and requests for legal services have surged with the recent pandemic." This made the decision to fund the project an easy one for the OBF Board of Trustees. "The Oklahoma Bar Foundation is committed to ensuring access to the justice system for all Oklahomans, and we support nonprofits across the state in that mission. We enthusiastically participated in this exciting project knowing that increased pro bono engagement will greatly benefit Oklahomans in need of critical legal services," DeMoss said.

"Our grant recipients consistently tell us that pro bono assistance is crucial to making our goal a reality and requests for legal services have surged with the recent pandemic. We enthusiastically participated in this exciting project





knowing that increased pro bono engagement will greatly benefit Oklahomans in need of critical legal services."

The project is managed by the Oklahoma Access to Justice Foundation, which supports the priorities of the Oklahoma Access to Justice Commission, including encouraging and expanding pro bono activities with the private bar. The portal centralizes and streamlines pro bono opportunities in a real-time, statewide database that is free for all Oklahoma attorneys and law students to use. It makes it easy for lawyers to search, learn about and volunteer for matters suitable to their interests and skills and connects them directly with legal services organizations. It also empowers legal services organizations to manage and track pro bono interests and engagement in real-time.

The organizations can post their opportunities to the nationwide American Bar Association-led Disaster Relief Portal to extend reach for COVID-19-specific pro bono work. The portal is powered by the justice technology company, Paladin, which has helped other states and cities set up dynamic portals to match attorneys with pro bono needs.

In the first 30 days, the Pro Bono Opportunities Portal has already received 63 opportunities from 10 legal services organizations. The site also received its first testimonial from Sara Bobbit, an employee of Catholic Charities, who obtained a new intern from using the portal. Ms. Bobbit said, "The intern who just started came with excellent recommendations and seems great so far. I don't think she would have found her way to us if not for this site! I also just had an attorney reach out to see if he could volunteer with us. He wasn't the best fit for our needs but could be great somewhere else, so it was nice to be able to refer him to the site."

Oklahoma attorneys interested in pro bono work can browse the needs of local nonprofits through the portal at www.okprobono.org. "Think of it as a virtual coffeehouse bulletin board. Lawyers can search for opportunities based on time commitment, areas of practice and remote opportunities. Our biggest need now is for more volunteers to express interest in projects listed on the portal," said Katie Dilks, Oklahoma Access to Justice Foundation executive director.

Oklahoma nonprofits interested in posting pro bono opportunities to the portal should contact Katie Dilks at katie.dilks@okaccesstojustice.org to learn more about the process and brief training requirements.

Ms. Pace is the OBF director of development and communications. Ms. Dilks is the Oklahoma Access to Justice Foundation executive director.



# 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.



## **Event Sponsor**

Become a sponsor of OBF's annual fundraiser, Rock the Foundation - Lip Sync for Justice. Proceeds support OBF Grantees providing access to justice programs.



## 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.



## **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.



## Memorials & Tributes

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



## Interest on Lawyer Trust Accounts

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

Bank of Cherokee County · Bank of Oklahoma · BancFirst · Security Bank (Tulsa)
Bank of Commerce (Duncan) · Herring (Altus) · Grand Savings (Grove)
The First State Bank (MWC, OKC) · NBC · First National Bank (Okmulgee)
First Oklahoma Bank

## Young Lawyers Division

## Division Adapts to Changes

By Jordan Haygood

THINK IT IS CLEAR we are living in different times. Like other divisions and committees, the YLD has moved all its meetings to virtual communications and have had to postpone or cancel most of our normal philanthropic events. However, we are still moving forward hoping that soon we will be operating under normal circumstances. Until then, we will continue to do the best we can to support the bar association, young lawyers and new admittees from the comfort of our homes and offices.

The YLD was supposed to attend the American Bar Association YLD and TIPS spring conference on May 2 in Nashville, Tennessee. However, the meeting was canceled, and the YLD attended the virtual conference

in June. The virtual conference provided on-demand, free CLE sessions on "Cultural Competency Primer for the Young Lawyer" and "Protecting Your Client's Intellectual Property" and a webinar on legal tech in the time of COVID-19.

The YLD held both its June and July meetings via teleconference, which has been very efficient for the group and has required less travel for those board members who live outside the Oklahoma City metro area. The division is brainstorming ideas on how to continue with our Wills for Heroes project in the wake of COVID-19, so please be on the lookout for more detail on this in the near future.

#### SURVIVAL KITS

As we all know, July was bar exam month, and the YLD met (with masks and appropriate distancing measures) to proceed with our biannual bar exam survival kit (BESK) project. While we debated moving forward with BESK, we all thought it was best to continue to show our support to the test takers during these times and let them know we are proud of all the work they have put in for the exam. This year, the test takers noticed something different in their BESK an OBA face mask they could wear during the exam and take with them after the exam. While this may seem unconventional, the YLD proudly teamed up with the OBA to supply these to the test takers. Anything to help them feel at ease during the test.



The Kick It Forward Kickball Tournament will be held Saturday, Sept. 26, at the Wendel Whisenhunt Sports Complex, 3200 S. Independence Ave. in Oklahoma City starting at 9 a.m. The event is something that is near and dear to the YLD, as well as the Kick It Forward Fund, which helps members pay their bar dues. Start recruiting team members now! Team size is 8 - 12 people. Registration will be out soon. Details can be found on the Kick It Forward Kickball Tournament webpage at www.okbar.org/kif, so check it out and be sure to follow the YLD at www.facebook.com/obayld for real-time updates.

#### LEADERSHIP ENCOURAGED

If you are interested in being on the YLD board, I urge you to go to our division webpage at www.okbar.org/yld/elections and complete the nomination page. It is important that the board has representation from all over Oklahoma. The deadline is Aug. 13.

I hope you'll consider becoming involved with the YLD. Here is information about board positions from Immediate Past Chair Brandi Nowakoski.

#### WANT TO GET INVOLVED WITH THE YLD? RUN FOR THE OBA/YLD BOARD OF **DIRECTORS**

Each year the Young Lawyers Division holds elections for its officer and director positions. Per the bylaws, the YLD is composed of a chairperson, chairperson-elect, immediate past-chairperson, 20 voting directors and the ex-officio members. The directors and ex-officio members consist of one representative from each Supreme Court Judicial District and Oklahoma and Tulsa counties each having two additional representatives; seven at-large representatives, five of whom are to be elected at large from the division without regard to geographic residence and two of whom are to be elected from counties other than Oklahoma and Tulsa counties; and four ex-officio, nonvoting members. The YLD board's full composition can be found at www.okbar. org/members/YLD/Bylaws.

#### NOMINATING PROCEDURE

Article 5 of the division bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The petition must be signed by at least 10 members of the OBA/YLD. The original petition must be

### **2021 YLD BOARD VACANCIES**

#### **OFFICERS**

Officer positions serve a one-year term.

Chairperson-Elect: any member of the division having previously served for at least one year on the OBA/YLD Board of Directors. The chairperson-elect automatically becomes the chairperson of the division for 2022.

Treasurer: any member of the OBA/YLD Board of Directors may be elected by the membership of the division to serve in this office.

Secretary: any member of the OBA/YLD Board of Directors may be elected by the membership of the division to serve in this office.

#### **BOARD OF DIRECTORS**

Board of Director positions serve a two-year term.

District 1: Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers and Washington counties

District 3: Oklahoma County (two seats)

District 5: Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties

District 6: Tulsa County (two seats)

District 7: Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee and Wagoner counties

District 9: Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman counties

At-Large: all counties (two seats)

At-Large Rural: any county other than Tulsa or Oklahoma counties

submitted by the deadline set by the Nominating Committee chairperson. A separate petition must be filed for each opening, except a petition for a directorship shall be valid for one-year and two-year terms and at-large positions. A person must be eligible for division membership for the entire term for which elected.

#### ELIGIBILITY

All OBA members in good standing who were admitted to the practice of law 10 years ago or less are members of the OBA/ YLD. Membership is automatic – if you were first admitted to the practice of law in 2010 or later, you are a member of the OBA/YLD!

#### ELECTION PROCEDURE

Article 5 of the division bylaws governs the election procedure. In October, a list of all eligible candidates and ballots will be published in the Oklahoma Bar Journal. Deadlines for voting will be published with the ballots. All members of the division may vote for officers and at-large directorships. Only those members with OBA roster addresses within a subject judicial district may vote for that district's director. The members of the Nominating Committee shall only vote in the event of a tie. Please see OBA/YLD Bylaws for additional information.

#### **DEADLINE**

Nominating petitions, accompanied by a photograph and bio (in electronic form) for publication in the OBJ, must be received by Brandi Nowakowski, Nominating Committee Chairperson, at brandi@stuartclover.com and dana@stuartclover.com no later than 5 p.m. Thursday, Aug. 13.

Results of the election will be announced at the November YLD meeting at the OBA Annual Meeting.

#### TIPS FROM THE **NOMINATING COMMITTEE CHAIRPERSON**

- A sample nominating petition can be found at www. okbar.org/YLD/elections. This will help give you an idea of format and information required by OBA/YLD Bylaws (one is also available from the Nominating Committee).
- Signatures on the nominating petitions do not have to be from young lawyers in your own district (the restriction on districts only applies to voting).
- Take your petition to local county bar meetings or to the courthouse and introduce yourself to other young lawyers while asking them to sign - it's a good way to start networking.
- You can have more than one petition for the same position and add the total number of original

- signatures if you live in a rural area, you may want to fax or email petitions to colleagues.
- Don't wait until the last minute – I will not accept petitions that are scanned and emailed after the deadline.
- Membership eligibility extends to Dec. 31 of any year which you are eligible.
- Membership eligibility starts from the date of your first admission to the practice of law, even if outside the state of Oklahoma.
- All candidates' photographs and brief biographical data are required to be published in the OBJ. All biographical data must be submitted by email, no exceptions. Petitions submitted without a photograph and/or brief bio are subject to being disqualified at the discretion of the Nominating Committee.

I hope that everyone stays safe and healthy during this time, and please feel free to reach out to me for any ideas or events that you have where the YLD can help you or your committee.

#### **ABOUT THE AUTHOR**

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

## **SPONSORSHIP OPPORTUNITIES**



All sponsors will be recognized in the bar journal, on the website and advertising/promotion

#### First Base - \$250

- Placement on shirt
- 8 koozies

#### Second Base - \$500

- Placement on shirt
- 5 shirts
- 10 koozies

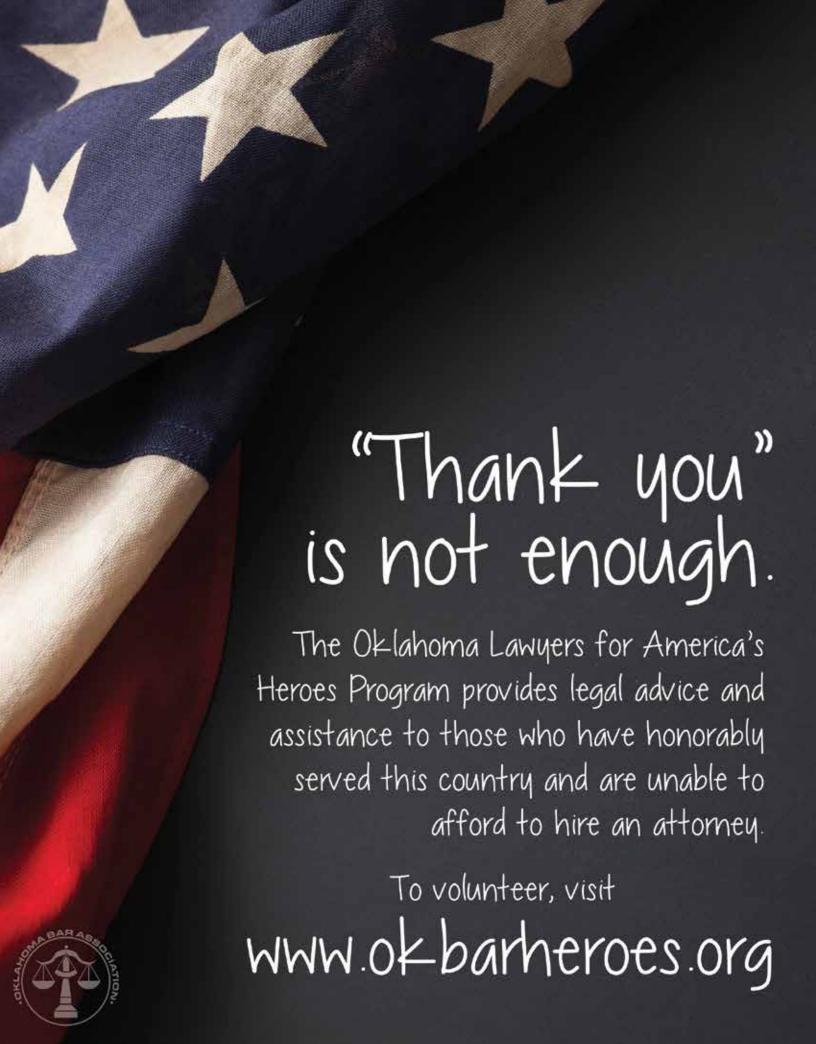
#### Third Base \$750

- Placement on shirt
- Placement on banner
- 12 koozies
- 12 shirts
- Team entry up to 8

#### Home Run - \$1,000

- **Event sponsor**
- Placement on shirt
- Placement on banner
- 15 shirts
- 15 koozies
- Team entry up to 12

To confirm your sponsorship, contact Laura Talbert at Italbert@stocktontalbert.com



## For Your Information

#### **OBA HIRES NEW CLE DIRECTOR**

Janet K. Johnson has joined the OBA as the new director of educational programs to head the Continuing Legal Education Department team.

Ms. Johnson has served in different roles within the Department of Human Services (DHS) Child Support Services since 2013. Most recently, she was the managing attorney in the Office of Impact Advocacy and Legal Outreach. She advocated as lead counsel in appellate proceedings and managed legal



training and workshops for Child Support Services and the legal community. Previously, she was a state's attorney in the Midwest City Child Support Office. Before joining DHS, Ms. Johnson was a solo practitioner focusing on family law and collections.

She is a member of the Ruth Bader Ginsburg Inn of Court and the OBA Women in Law and Legislative Monitoring Committees. She also devotes time to educating students and new and expecting parents through Oklahoma City Public Schools and Public Strategies.

Ms. Johnson received her J.D. from the OCU School of Law in 2010. She is licensed to practice in Oklahoma and the United States District Court for the Western District of Oklahoma.



#### COL. STANLEY EVANS TO RECEIVE AWARD FROM STATE MILITARY HALL OF FAME

Col. Stanley Evans will be awarded the Maj. Gen. Douglas O. Dollar Award during the Oklahoma Military Hall of Fame's Induction Ceremony and Banquet on Oct. 17. The award is given to individuals for their service to veterans and their support of community activities that enhance quality of life. The award is based on service rather than valor.

He grew up in Oklahoma City and graduated from Frederick Douglass High School

in 1964. He joined the U.S. Army, where he rose to the rank of colonel. During his 32 years of service, Col. Evans received the Legion of Merit, the Distinguished Service medal and four meritorious medals.

After retiring from the army, he received his J.D. from the OU College of Law in 2003. As a result of his scholastic and academic achievements, he was chosen to be the assistant dean for students upon his graduation. In that position, Col. Evans increased OU College of Law's minority enrollment by 27%. He also continues to provide pro bono legal and financial aid to many community and civic entities, including establishing two annual scholarships awarded to Oklahoma students.

#### **OBA MEMBER RESIGNATION**

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

Asher Ross Levinthal, OBA No. 32905 Supervising Attorney **Bronx Defenders** 360 E. 161st Street Bronx, NY 10451



#### **IOHN F. HEIL III CONFIRMED** TO FEDERAL JUDICIAL POST

John F. Heil III will serve as the U.S. district judge for the Northern, Eastern and Western Districts of Oklahoma. He was nominated by President Donald Trump on December 2, 2019, and confirmed by the U.S. Senate on May 20, 2020, by a vote of 75-17.

Previously, Judge Heil practiced complex commercial litigation at the Tulsa office of Hall Estill, where he was a shareholder and director. He explained, "While I will miss private practice, I am honored for this opportunity to serve our nation and my home state."

He received his bachelor's degree from OSU and his J.D. from the TU College of Law in 1994.

## BENCH AND BAR BRIEFS

#### ON THE MOVE

Colton Richardson has joined the firm of Richardson Richardson Boudreaux as an associate. He received his J.D. from the TU College of Law in 2018 and previously worked as an assistant district attorney for Tulsa County.

**Iacob A. Hansen** has joined Lloyd Legal PLLC of Tahlequah. He received his J.D. from the Washburn University College of Law in 2019 and practices primarily in civil litigation, family law and estate planning.

Angela Knight Hooper has established Happy at Law LLC, located at 6110 East 51st St. in Tulsa. She received her J.D. from the Southern Methodist University Dedman School of Law of Law in 1998.

Robert J. Barron has been named assistant chief counsel of the Department of Homeland Securityin Washington D.C. He previously worked at the Port Isabel Detention Center in Los Fresnos, Texas. Mr. Barron received his J.D. from the OCU College of Law in 1999.

**Evan Watson** has joined the Lawton-based firm Godlove, Mayhall, Dutcher & Rabon PC. He received his J.D. from the OCU School of Law in 2017. Austin **Rabon** has been named shareholder of the firm. He received his J.D. from the OU College of Law in 2018.

Rich Marshall has joined the Tulsa office of Connor & Winters LLP as partner. He practices primarily in the areas of banking, finance and real estate. Mr. Marshall received J.D. from Columbia Law School in 1995.

Alyssa Gillette and Maggie K. Martin have joined the Oklahoma City office of Crowe & Dunlevy. Ms. Gillette is a member of the firm's Energy, Environment and Natural Resources Practice Group and received her J.D. from the OCU School of Law in 2019. Ms. Martin is a member of the Healthcare Practice Group and received her J.D. from the OCU School of Law in 2005.

Alex Masters, Benjamin Aycock and Kaitlyn Allen have been named partners of Henry + Dow Law. Ms. Masters received her J.D. from the TU College of Law in 2012 and practices primarily in the area of family law. Mr. Aycock received his J.D. from the TU College of Law in 2006 and practices primarily in the areas of civil litigation and family law. Ms. Allen received her J.D. from the OCU School of Law in 2011 and practices primarily in the area of family law.

The office of Miller & Johnson PLLC has relocated to 500 NW Sixth St., Ste. 300, Oklahoma City, 73102. Firm members are **Brad** Miller, J. Logan Johnson, Jami Rhoades Antonisse, Weston H. White, Marc Walls, John C. Curtis III, Shawna L. Landeros and Grace E. Dawkins.

Russell M. Tacheira was named chief counsel of the McAlester Army Ammunition Plant. Mr. Tacheira received his J.D. from the OU College of Law in 2000 and practices primarily in the areas of contract, environmental, labor and employment law.

**Sheila Stinson** was appointed by Gov. Kevin Stitt as a district judge for Oklahoma County. She is an experienced civil litigator and trial attorney who has resolved hundreds of disputes on the family and domestic docket in Oklahoma County since she assumed the post of special judge in June 2017. Previously, Judge Stinson was the owner and managing member of Stinson Law Group from 2014 to 2017 and served as an adjunct professor at OCU School of Law from 2015 to 2017. She has also served as a law clerk for Judge Gary Lumpkin at the Oklahoma Court of Criminal Appeals. She holds a J.D. from the OU College of Law.

#### **KUDOS**

William O'Connor and Stuart Van De Wiele have been elected to the Board of Directors of the firm Hall Estill. Robert Dougherty will serve on the firm's executive committee. Mr. O'Connor received his I.D. from the OU College of Law in 1989. Mr. Van De Wiele received his J.D. from the TU College of Law in 1999. Mr. Dougherty received his J.D. from the OU College of Law in 1991 and an LL.M. in taxation from the Emory University School of Law in 1993.

**Donna Jackson** was appointed to serve as treasurer of the 2020-2021 National Academy of Elder Law Attorneys Board of Directors. She will advise and assist the NAELA board and executive committee with fiscal management and will serve as chair of the NAELA Finance Committee. Ms. Jackson received her J.D. from the OCU School of Law in 1988.

Ron Burton was honored for his service to the community by the Duncan mayor, who proclaimed June 24, 2020, to be Ron Burton Day. Since 1983, Mr. Burton has served the Rotary Club in many capacities, including district governor and board member

on the Rotary International Board of Directors. After sitting on the board for several years, he was named president of Rotary International from 2013-2014. He was only the second Oklahoman to serve in that capacity.

Jason Glidewell was appointed to serve as one of four municipal court judges by the Oklahoma City Council. He previously served as a Wyandotte Nation Supreme Court justice, Delaware Nation gaming commissioner, Oklahoma State Department of Tourism and Recreation commissioner, Grady and Caddo County assistant district attorney and Bureau of Indian Affairs court chief magistrate. Mr. Glidewell received his J.D. from the OU College of Law in 2001.

Darla Jackson has been appointed to the ABA TECHSHOW 2021 Planning Board. Ms. Jackson joined the OU College of Law in 2018 as the research and electronic resources librarian. She previously participated in the ABA TECHSHOW as a presenter.

Nikki Edwards has been named OCU School of Law's Distinguished Practitioner in Residence for the 2020-2021 fall semester. Ms. Edwards, who is a director at Phillips Murrah, will be first woman to hold the position.

Deanna Hartley-Kelso was sworn in as district judge of the Chickasaw Nation District Court on March 4. Ms. Hartley-Kelso has served the Chickasaw Nation in several capacities since 1997, including attorney general, executive officer, general counsel and legislative counsel. She also served as the president of the Chickasaw Bar Association from 2013-2014 and currently serves on the Oklahoma Bar Foundation Board of Trustees as treasurer.

Glenn Coffee, Noble McIntyre and Judge Doris Fransein will be honored during the Oklahoma Institute for Child Advocacy's Heroes Ball. Mr. Coffee will receive the Gateway to Leadership Award for Public Service. Mr. McIntyre will receive the Individual Advocate of the Year Award. Judge Fransein, who was chief judge of the Tulsa County Court's juvenile division for 14 years, will receive the Kate Barnard Perseverance Award for Lifetime Achievement in Child Advocacy.

#### **HOW TO PLACE AN ANNOUNCEMENT:**

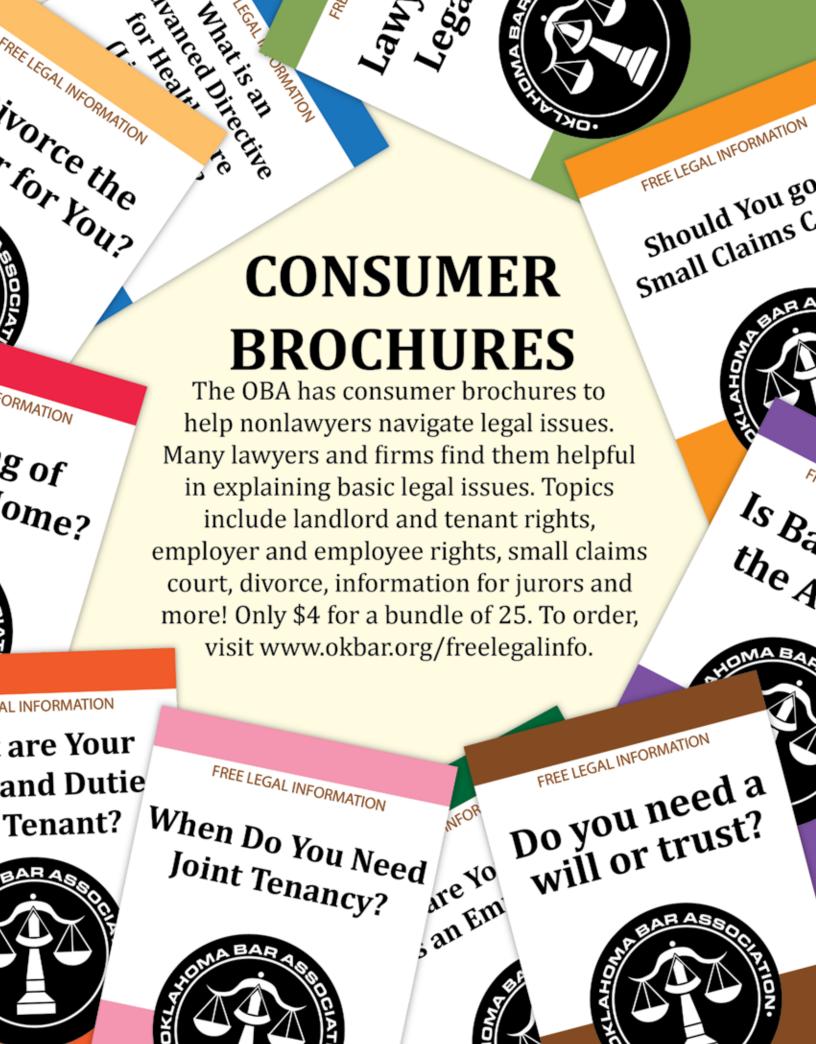
The Oklahoma Bar Journal welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature,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

Lauren Rimmer Communications Dept. Oklahoma Bar Association 405-416-7018 barbriefs@okbar.org

Articles for the October issue must be received by Sept. 1.



#### IN MEMORIAM

renton David Boaldin of L Oklahoma City died Jan. 14. He was born March 29, 1962, in Amarillo, Texas. Before attending law school, Mr. Boaldin was the CEO of Epic Touch Co., where he served in national communications offices and on committees in Washington, D.C. He received his J.D. from the OCU School of Law in 2011.

**Tames Gary Bova** of Oklahoma City died May 26. He was born June 4, 1952, in Dickson City, Pennsylvania. After attending Keystone College and New Mexico State University, Mr. Bova received his J.D. from the OCU School of Law in 1981. He practiced family law before joining the State Insurance Fund, where he was the managing attorney. He then worked as a solo practitioner until retiring in 2016. Memorial contributions may be made to the Center of Family Love.

ordon W. Edwards of Whiteville, Tennessee. died June 12. He was born Nov. 16, 1944, in Memphis. Mr. Edwards served in the U.S. Army. He attended OSU and received his J.D. from the OU College of Law in 1970. After graduating, he worked as a lawyer until retiring in 2018. Memorial contributions may be made to St. Jude Memorial Giving in Memphis.

acquita Gorelick of Oklahoma City died Dec. 18, 2018. She was born Feb. 14, 1943, in Maud. She received her J.D. from the OU College of Law in 1982.

Tichael Livingston Green of Tulsa died Mar. 29. He was born June 25, 1932, in Tulsa. Mr. Green received his J.D. from the TU College of Law in 1966 and devoted his career to promoting and defending the rights of members of the LGBTQ+ community.

Philip F. Horning of Oklahoma City died June 5. He was born Apr. 19, 1941, in Beaumont, Texas. Mr. Horning attended University High School in Norman, where he played basketball and was the 1959 class valedictorian. After receiving his undergraduate degree from OU, he was commissioned a second lieutenant in the U.S. Army Reserves. He was honorably discharged as a captain. He then returned to OU and received his J.D. from the OU College of Law in 1968. Mr. Horning began his law practice in Oklahoma City and eventually established his own firm. He also served on the Oklahoma City School Board for eight years and was an adjunct professor of law at both OU and OCU. In 1979, he received the Oklahoma County Bar Ethics Award and the OBA Service to the Public Award in 2011. Memorial contributions may be made to the Philip F. Horning OKCPS College Scholarship Fund.

ames Clifton King Jr. of Broken Arrow died June 21. He was born June 7, 1924, in Tulsa. Mr. King enlisted in the U.S. Army Corps and was stationed in England. In 1943, his B-17 crew was shot down over Germany, and he was taken to a prison

camp near Austria. He was rescued by American soldiers in 1945 and transported back to the U.S. He received a Purple Heart for his service. Mr. King attended OU and later transferred to TU, where he received his J.D. from the TU College of Law in 1950. Upon graduating, he worked as an insurance investigator and then maintained a busy private practice until he was 94. He also helped establish Broken Arrow's Municipal Court. Memorial contributions may be made to Contact Mission Church of Christ or Physician's Choice Hospice.

**B**ill E. Ladd of Tulsa died June 5. He was born Aug. 17, 1934, in Prague. Mr. Ladd served in the U.S. Navy. Following his service, he returned to Oklahoma and received his J.D. from the TU College of Law in 1969. Mr. Ladd served as an assistant district attorney, a special judge and a municipal court judge. Memorial contributions may be made to Clarehouse.

**Todd W. Markum** of Edmond ▲ died June 12. He was born Dec. 15, 1938, in Clinton. After graduating from high school, he joined the U.S. Army Reserve. Mr. Markum received his bachelor's degree from OU and his J.D. from the OU College of Law in 1965. He served as an assistant attorney and later went into private practice, where he worked for over fifty years.

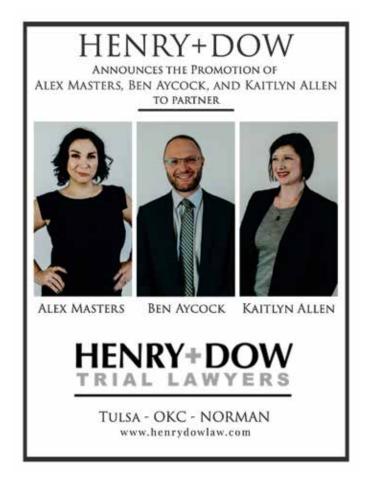
Jon Thomas Mason of Tulsa died June 22. He was born Feb. 2, 1940, in Detroit. Mr. Mason received his J.D. from the TU College of Law in 1966. After graduating, he practiced law in Tulsa for 44 years. He received the Golden Rule Award from the Tulsa County Bar Association in 2005. Memorial contributions may be made to the Sigma Nu Educational Foundation, Saint Simeons Employee Fund or the National Federation of the Blind.

Raymond Patton of Tulsa • died June 17. He was born July 21, 1950, in Tulsa. Mr. Patton received his J.D. from the OU College of Law in 1976. For the past 22 years, he was a shareholder at Conner & Winters practicing in the areas of securities and corporate law, mergers and acquisitions, and corporate litigation, arbitration and mediation. He also served as an adjunct professor at the TU College of Law for over 10 years. Memorial contributions may be made to the Humane Society of Tulsa.

**C** onja Porter of Oklahoma City died June 18. She was born Mar. 22, 1972, in Kingsport, Tennessee. Known as the DUI Diva of Oklahoma, Ms. Porter was a criminal defense attorney specializing in DUI defense for 20 years. She began her career as an assistant district attorney in Oklahoma County before joining the law firm of Fabian and Associates and eventually opening her own practice. Memorial contributions may be made to the Susan G. Komen Foundation or Trinity Legal Clinic of Oklahoma.

an Sprouse of Pauls Valley died June 25. He was born Dec. 30, 1952, in Litchfield, Illinois. After graduating from Illinois State University, he received his J.D. from the OCU School of Law in 1978. He worked for Legal Aid of Western Oklahoma before opening his own practice in 1981. Mr. Sprouse was elected to the OBA Board of Governors for two terms and served as vice president in 2002. He was also appointed to several municipal judgeships in Garvin County and was named Master and Outstanding Judge by the Ruth Bader Ginsburg Inns of Court. Memorial contributions may be made to Legal Aid Services of Oklahoma Inc.

June 18. He was born Sept. 17, 1937, in Seneca, Missouri. In 1954, Mr. Welker graduated from Seneca High School, where he excelled in baseball and received a scholarship to play for TU. He later played minor league baseball for the Oklahoma Gassers. In 1980, Mr. Welker received his J.D. from the TU College of Law. He established a private practice in McAlester, where he focused on estate and tax law for over 20 years.





The Oklahoma Legal Directory is the official OBA directory of member addresses and phone numbers, plus it includes a guide to government offices and a complete digest of courts, professional associations including OBA committees and sections. To order a print copy, call 800-447-5375 ext. 2 or visit www.legaldirectories.com. A free digital version is available at tinyurl.com/2018oklegaldirectory.

#### **2020 ISSUES**

#### **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**

#### Wellness

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

#### **2021 ISSUES**

#### **JANUARY**

Meet Your Bar Association Editor: Carol Manning

#### **FEBRUARY**

#### Marijuana and the Law

Editor: Virginia Henson virginia@phmlaw.net Deadline: Oct. 1, 2020

#### **MARCH**

#### Probate

Editor: Patricia Flanagar patriciaaflanaganlaw office@gmail.com Deadline: Oct. 1, 2020

#### **APRIL**

#### Law Day

Editor: Carol Manning

#### **MAY**

#### **Personal Injury**

Editor: Cassandra Coats cassandracoats@leecoats com

Deadline: Jan. 1, 2021

#### **AUGUST**

#### Tax Law

Editor: Tony Morales tony@stuartclover.com Deadline: May 1, 2021

#### **SEPTEMBER**

#### Bar Convention

Editor: Carol Manning

#### **OCTOBER**

#### DUI

Editor: Aaron Bundy aaron@bundylawoffice.com Deadline: May 1, 2021

#### **NOVEMBER**

#### **Elder Law**

Editor: Luke Adams ladams@tisdalohara.com Deadline: Aug. 1, 2021

#### **DECEMBER**

#### Labor & Employment

Editor: Roy Tucker

RTucker@muskogeeonline. org

Deadline: Aug. 1, 202

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



and stay connected to your profession



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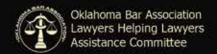


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#### **OFFICE SPACE**

LUXURY OFFICE SPACE AVAILABLE - One office available for \$670/month lease in the Esperanza Office Park near NW 150th and May Ave. The Renegar Building offers a reception area, conference room, full kitchen, fax, high-speed internet, security, janitorial services, free parking and assistance of our receptionist to greet clients and answer telephone. No deposit required. Gregg Renegar, 405-488-4543.

MIDTOWN TULSA LAW OFFICE - 1861 E. 15th. Receptionist, copier, scanner, phone, fax, wireless internet, alarm system, conference room, signage, kitchen. Ample Parking. Virtual Office leases also available. Contact Terrie at 918-747-4600.

#### **FOR SALE**

BEAUTIFUL LAKEFRONT LOT .85 acres with a large private boat dock. The lot is located in Falcon View addition close to Carlton Landing and 3 miles east of 69 highway on 9A. Perfect lot for a retirement or vacation home. Please call JoAnn for inquires (405)229-9739.

#### POSITIONS AVAILABLE

#### MAKE A DIFFERENCE

Do you want a fulfilling career where you can really make a difference in the lives of people? Are you fervent about equal justice? Does a program with a purpose motivate you? Legal Aid Services of Oklahoma, Inc. (LASO) is searching for Attorneys who truly want justice for ALL.

Legal Aid Services of Oklahoma is growing and is needing Attorneys in Oklahoma City, Tulsa, Guymon, Ardmore, Poteau and Hugo. The successful individuals will have the unique opportunity to work within civil laws to effect "justice" outcomes. Our Attorneys get to work in every area of the law-from housing, to consumer, to family, to social security and more. These positions make a real difference in the lives of those who are vulnerable and underrepresented. In return, the employee receives a great benefit package including paid health, dental, life insurance plan; a pension, loan assistance program (for qualified law school loans) and generous leave benefits. Additionally, LASO offers a great work environment and educational/career opportunities.

To start making a difference, complete our application and submit it to Legal Aid Services of Oklahoma and join the fight for justice! The online application can be found at: https://www.paycomonline.net/v4/ats/web.php/jobs?clientkey=AA-9D7E79C05435467020F3CA15B56685. Legal Aid is an Equal Opportunity/Affirmative Action Employer.

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

DEPUTY COUNTY ATTORNEY - Gunnison County, Colorado - Salary: \$99,983 - \$128,090. For complete position profile and to apply, visit Prothman at https:// www.prothman.com/. Questions, call 206-368-0050. First review of applications: 8/23/2020 (open until filled).

#### POSITIONS AVAILABLE

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

DOWNTOWN OKLAHOMA CITY AV RATED LAW FIRM—primarily state and federal court business litigation practice with some transactional and insurance defense work—has a very nice, newly renovated office space including a spectacular corner office in the heart of downtown available for an experienced lawyer interested in an Of Counsel relationship. Send resume to Box PP, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152.

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

NORMAN BASED FIRM IS SEEKING A SHARP AND MOTIVATED ATTORNEY to handle HR-related matters. Attorney will be tasked with handling all aspects of HR-related items. Experience in HR is required. Firm offers health/dental insurance, paid personal/vacation days, 401(k) matching program and a flexible work schedule. Members of our firm enjoy an energetic and team-oriented environment. Position location can be for any of our Norman, OKC or Tulsa offices. Submit resumes to justin@polstontax.com.

AV RATED DOWNTOWN OKC insurance defense/ civil litigation firm seeks an associate attorney with 5+ years civil litigation experience. Candidate should be self-motivated, detail oriented and have strong research and writing skills. Excellent career opportunity for the right person. Send replies to Box DD, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

#### POSITIONS AVAILABLE

TULSA AV RATED LAW FIRM seeking associate attorney with civil litigation experience and excellent writing and oral presentation skills. Candidate should be self-motivated, detail-oriented, organized, and able to prioritize multiple projects at one time. Salary commensurate with experience. Submit cover letter, resume, and writing sample to Box T, Oklahoma Bar Association, P.O Box 53036, Oklahoma City, OK 73152.

ESTABLISHED, AV-RATED TULSA INSURANCE DEFENSE FIRM seeks motivated associate attorney to perform all aspects of litigation including motion practice, discovery, and trial. 2 to 5 years of experience preferred. Great opportunity to gain litigation experience in a firm that delivers consistent, positive results for clients. Submit cover letter, resume, and writing sample to amy.hampton@wilburnmasterson.com.

KNIGHT AND STOCKTON, ATTORNEYS, is searching for an Associate Attorney to be an integral part of our team. We require a candidate that is trustworthy, hardworking, self-motivated and willing to serve, and be a part of our community. This position would be perfect for an Attorney with 0-5 years' experience. Salary depends upon experience. Our office, located in Poteau, Oklahoma. We are an Equal Opportunity Employer. Resumes and Cover letter only please. Please email both to Martha@kslawfirm.biz.

ESTABLISHED, DOWNTOWN OKC, AV-RATED LAW FIRM with a heavy emphasis in plaintiff's insurance bad faith litigation seeks associate attorney with 2-5 years insurance defense litigation experience. Deposition and trial experience preferred. Competitive salary and benefits, with bonus opportunity. Send replies to Box F, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

#### POSITIONS AVAILABLE

#### VACANCY ANNOUNCEMENT

The Wyandotte Nation Tribal Court is in search of an individual to fill the position of Supreme Court Justice. To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall: is an attorney, be a licensed attorney who is in good standing with the licensing authorities where licensed; who possesses a demonstrated background in tribal court practice and have demonstrated moral integrity and fairness in their business, public and private life; and have never been convicted of a felony or an offense, except traffic offenses, for a period of two years next preceding their appointment. The two-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction. The candidate must have regularly abstained from the excessive use of alcohol and use of illegal drugs or psychotic chemical solvents. The candidate must not be less than twenty-five (25) years of age.

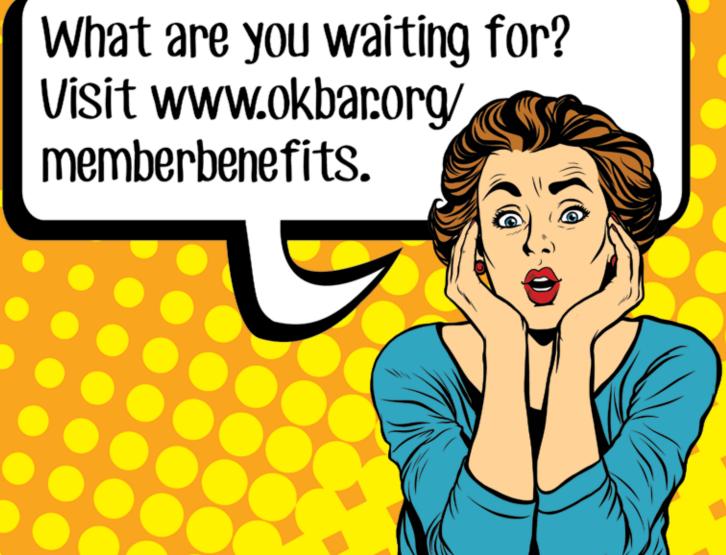
Indian preference will apply for qualified candidates.

Please submit your resume or CV to Kristy Fink, Court Clerk via email to kfink@wyandottenation.org by August 31, 2020.

THE OKLAHOMA TAX COMMISSION is accepting applications for the position of General Counsel. This position oversees legal services provided by attorneys employed by the agency and provides legal counsel and assistance to the Tax Commission and various divisions of the agency. Applicants must be licensed to practice law in Oklahoma. The ideal candidate should have at least 5 years of relevant experience and strong communication skills. Submit resume and cover letter to applicants@tax.ok.gov, noting "General Counsel" in the subject line. The OTC is an equal opportunity employer.

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## Reminiscing on a Durant Landmark

By Mark Morrison

THE DAY IS YOUNG, and the air is crisp as I drive to my office. The early morning sun causes the limestone walls of the Bryan County Courthouse to shine brightly. This day, like many of late, finds little activity at this downtown centerpiece. I've known this old courthouse for more than 60 years now.

The Bryan County Courthouse, despite the passage of time, is an original architectural gem designed by Jewell Hicks, that recently celebrated its centennial. It has survived storms, fire, flood and scandal in much earlier years. Notwithstanding the inauspicious political career of the county's namesake, the old building has seen the likes of Robert L. Williams, the first chief justice and third governor of Oklahoma, and Ralph B. Hodges, the 42nd and 50th chief justice.

The old hall has welcomed countless out-of-towners, namely Texans and celebrities desiring to get "hitched." It exists today as an integral part of civic life. It has endured the Red River Bridge War and the boll weevil, and it has witnessed the loss of peanuts to sod farms that feed the North Texas development frenzy. The Queen of Three Valleys, as this county seat is known, is home to the Choctaw Nation and is the eastern gateway to Lake Texoma.

A courthouse skeleton crew spends the workday behind locked doors, presumably practicing social distancing among themselves. I arrive down the street at my office and begin the day behind my locked door, bolstering a sign that says, "I'm open for business and available by phone and email." I must confess that the phone is not ringing as often.

The postman is not deterred by the mail slot in the front door. He still bangs on the door daily. I suppose it's true that neither rain, snow, pandemic nor anything else can stop him as long as there is mail to deliver. I really think he just wants to visit.

I'm unhappy that I am not allowed to walk the 263 steps to the place I once had the privilege to work in and do my clients' business in person. I cannot visit with familiar faces and ask how everyone is doing. I reminisce about the grand ole days of political

speeches, concerts and other community events on the lawn.

As the day ends, I decide to take a stroll. The shining old building pierces the nightfall, lit up by the lights on its facade. I can't help but walk up to the front door. In the silence, I loathe that life is not as it was before. As I turn to leave, I hear in my mind the faint sound of bones rattling from the basement, and I'm taken back to a time when Grandma dispatched me to fetch Grandad for supper from his game of 42.

Mr. Morrison, former special judge, is a current Choctaw Tribal Court judge and a sole practitioner in Durant.



Bryan County Courthouse in Durant. Photographer: Mark Morrison

# Oba : Cle

### FRIDAY, OCT. 2, 2020

9 - NOON MORNING PROGRAM 12:45 - 4 P.M. AFTERNOON PROGRAM

Oklahoma Bar Center 1901 N. Lincoln Blvd. Oklahoma City, OK 73106

# DUE TO SOCIAL DISTANCING IN-PERSON SEATING LIMITED

MCLE 3.5/0 MORNING PROGRAM MCLE 3.5/0 AFTERNOON PROGRAM



#### FEATURED PRESENTER: Larry Kaye, The Winning Litigator, LLC



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#### MORNING PROGRAM PERSUASION TECHNIQUES FOR LITIGATORS AND NEGOTIATORS

Being able to persuade your audience is vital for every litigator. In this fast-paced CLE session, veteran trial attorney Larry Kaye, President of The Winning Litigator, LLC, a full-service national trial consulting firm, will reveal 25 effective Persuasion Strategies to assist you in winning over judges, juries and mediators. These strategies cover almost every aspect of the cycle of litigation. Whether you litigate jury or bench trials, arbitrations, or administrative proceedings, you'll take away an excellent group of Persuasion Strategies that you can apply immediately in your practice.



#### AFTERNOON PROGRAM CREATING VISUAL PRESENTATIONS TO PERSUADE

Litigation graphics and exhibit boards are one of your most important persuasion tools, and can be used especially effectively when

- · A timeline or sequence is important
- · There is a potential for information overload in a trial or mediation
- Language and processes are highly technical
- Calculations are complex
- Evidence seems disjointed and not compelling
- · Complex trials require synthesis of volumes of evidence

TUITION: In-person registration is \$120. To ensure appropriate social distancing, seating is limited to 35. Registration for both morning and afternoon sessions includes box lunch. Registration for the live webcast is \$120. Bundle for morning and afternoon is \$200, Members licensed 2 years or less may register for \$85 for either the in-person program or the live webcast. All walk-ins are \$145.00. This program may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org or call 405-416-7029 to register.

