ALSO INSIDE: Mona Salyer Lambird Spotlight Award Winners
Annual Meeting

THE OKLAHOMA BAR
Journal
Volume 91 — No. 9 — November 2020

Alternative Dispute Resolution

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2020 LEGAL UPDATES

THURSDAY & FRIDAY, DEC. 10 & 11, 2020
9 A.M. - 2:50 P.M.

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MCLE 12/1 BOTH DAYS
6/0 DAY ONE
6/1 DAY TWO

DAY ONE:

Bankruptcy Law
Sam G. Bratton, II, Doerner Saunders Daniel & Anderson, Tulsa

Labor and Employment Law
Jake Crawford and Charlie Plumb, McAfee & Taft, Tulsa
Josh Solberg, McAfee & Taft, Oklahoma City

Health Law
David Hyman, Tulsa
Eric Fisher, Crowe & Dunlevy, Oklahoma City

Criminal Law
Barry L. Derryberry, Assistant Federal Public Defender, Tulsa

Oklahoma Tax Law
Rachel Pappy, Partner, Polston Tax Resolution & Accounting

Insurance Law
Rex Travis, Travis Law

DAY TWO:

Business and Corporate Law
Gary Derrick, Derrick and Briggs, LLP, Oklahoma City

Family Law
Professor Robert Spector, University of Oklahoma College of Law, Norman

Real Property Law
Kraettli Epperson, Mee Mee Hoge & Epperson, PLLP, Oklahoma City

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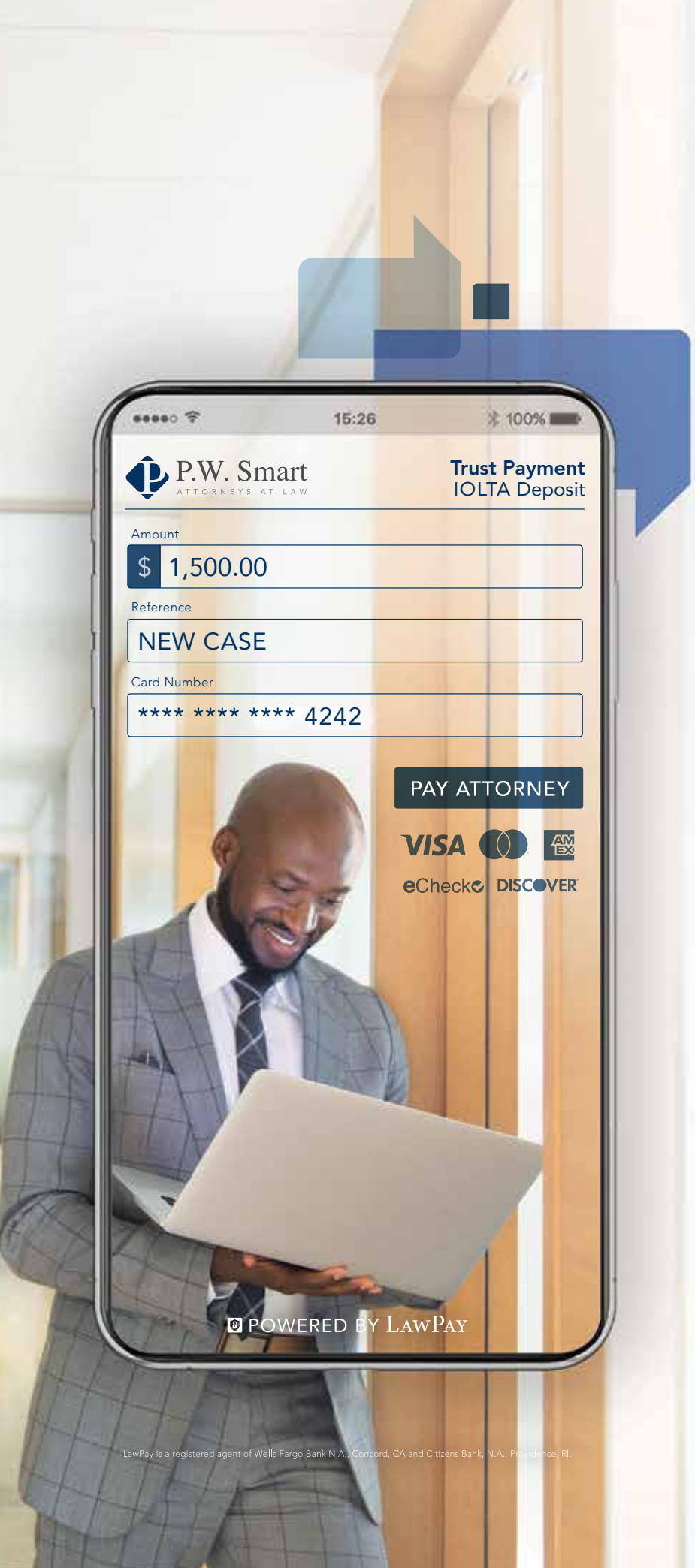

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12 ROOKIE BLUNDERS
GOOD LAWYERS OFTEN MAKE IN DRAFTING CONTRACTS

Who taught you to draft a contract, what provisions to include, what the provisions mean, how to analyze risk, and how to negotiate a better deal for your client? When you review a contract, are you confident that you know what to look for? Have you missed anything?

The truth is that when it comes to reviewing and drafting contracts, most of us are "winging it," so, predictably, many contracts are plagued with embarrassing rookie blunders. The Rookie Blunders program is packed with brand new content you should know about:

- **analyzing a complex provision;**
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Using examples drawn from high-profile transactions, you'll learn to identify 12 specific rookie blunders, and how to prevent them. You'll be able to apply these practical techniques to all kinds of contracts, including mergers and acquisitions, sales of goods and services, licenses, real estate, settlement agreements, employment and consulting agreements, partnership agreements, and more. Whatever your current level of experience in drafting contracts, you'll learn to enhance your drafting skills, to avoid embarrassing blunders, to improve the overall quality of your work, and to draft more confidently.

THE OKLAHOMA BAR Journal

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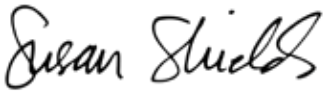
Role Models

By Susan B. Shields

THE RECENT DEATH OF Supreme Court Justice Ruth Bader Ginsburg has resulted in many touching remembrances of her remarkable life and her mark on history as a Supreme Court justice – and, before that, as a practicing attorney handling many important cases championing gender equality before the Supreme Court. The "Notorious RBG," as she came to be known in her later years, was a role model for many of us, women and men. Following her death, Chief Justice John Roberts said, "Our nation has lost a justice of historic stature. We at the Supreme Court have lost a cherished colleague. Today we mourn but with confidence that future generations will remember Ruth Bader Ginsburg as we knew her, a tireless and resolute champion of justice."

When Justice Ginsburg began law school at Harvard in 1956, she was only one of nine women out of a class of more than 500. The total number of women graduating in my law school class in 1989 was about 35%, and today enrollment of women in law school is at 50% or more. The increasing number of women in the law is surely due, in large part, to the path that Justice Ginsburg blazed for gender equality before she first became a judge in 1980 and her subsequent rulings on equality during her time on the court. Following her death, one author said that Justice Ginsburg "changed the way the world is for American women."



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This issue of the bar journal includes an article about this year's honorees for the Mona Salyer Lambird Spotlight Awards. Sponsored by the OBA Women in Law Committee, the Oklahoma women attorneys honored annually with this award are also role models who are well-deserving of recognition, and this year is no different.

The lawyer for whom the award is named, Mona Salyer Lambird, was "notorious" in her own way.

U.S. Supreme Court Justice Ruth Bader Ginsburg unveils the OBA's book, Leading the Way: A Look at Oklahoma's Pioneering Women Lawyers, at the September 2003 Women in Law Conference in Tulsa. Photo Credit: The Tulsa World

She graduated from law school in 1963 as only one of three women in a class of 100 and took her first legal job with the Department of Justice in Washington. Mona had a distinguished career in private practice in Oklahoma City and served in many roles at the Oklahoma Bar Association, becoming the OBA's first woman president in 1996. The Spotlight

(continued on page 47)

NOVEMBER WELLNESS TIP

"Every now and then it helps to be a little deaf … That advice has stood me in good stead. Not simply in dealing with my marriage, but in dealing with my colleagues."
~Ruth Bader Ginsburg

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Maximizing the Benefits of Arbitration

By R. Carson Fisk

ARBITRATION OFFERS MANY ADVANTAGES over traditional litigation. Efficiency and cost-savings are often cited as the primary benefits, with a fair arbitration hearing being viewed as a shortcut to substantial justice. However, such concepts over-generalize the benefits arbitration can provide and are merely potential effects of the greatest value arbitration has to offer: control of the process placed in the hands of the end-users. It is this aspect of control that fully distinguishes arbitration from litigation.

CONSIDERATION REGARDING APPLICABLE RULES

Depending on one's perspective or negotiating leverage, arbitration is often chosen – or accepted – with reference to an administering body, such as the American Arbitration Association, JAMS or CPR. These entities have a variety of distinct rules that apply to different types of disputes, including general commercial, construction and employment.[1] These rules, when referenced in an arbitration agreement, are generally viewed as extensions of that agreement – provisions that are incorporated by reference. They effectively serve as a gap-filler, setting a detailed and time-tested process and structure for the arbitration that the parties can rely on and do not have to create. Even in nonadministered arbitration, the question of how various procedural matters will be addressed will inevitably arise. It is worth giving thought at the contract drafting stage and the outset of a case as to whether it would be beneficial to modify applicable rules or add to them where they fall silent.

QUALIFICATIONS OF THE ARBITRATOR

Having a voice in the selection of the arbitrator – who decides the outcome of the case – is one of the principal and unique benefits of arbitration. There generally is no equivalent in litigation. Even if one were to utilize a forum selection clause or engage in the disfavored practice of forum shopping, it is often difficult to ensure that a particular judge hears a case. However, an arbitrator can be identified who has a particular skill set, knowledge or experience regarding the subject matter at issue or possesses other qualifications or traits. This can eliminate or reduce the need to present basic information at the hearing, thus saving the parties time and associated costs. Further, the selected arbitrator may offer a specific perspective that a more randomly appointed decision-maker might not possess. Additionally, it is common in cases above a threshold dollar amount for there to be an arbitration panel or tribunal generally consisting of three arbitrators. This allows for a greater range of experience and knowledge – and lessens the impact that a "rogue" arbitrator might otherwise have. There is no equivalent in trial-level litigation.

The Uniform Arbitration Act, as adopted in Oklahoma, vests a court with the power to appoint an arbitrator, with no requirements or limitations as to any qualifications.[2] The rules of various administering bodies typically provide for the selection of arbitrators from general or specialized panels or rosters and often adopt a process by which the parties rank potential arbitrators.[3] But parties can define or refine the process. For example, it might be contractually required that the arbitrator maintain a certain license, focus in a particular field or area of

practice, have a certain number of years of experience with the subject matter of a given dispute or have sector-specific or technical knowledge within an overarching industry. The options are limited only by the imagination. Such requirements become binding as part of the arbitration agreement and will be enforced.[4]

ARBITRAL DECISION MAKING

Arbitrators generally render substantive decisions under a model containing three extreme points: 1) strict application of the law without any consideration to a contrary result otherwise required by the contract, 2) equity related to the outcome and 3) strict application of the contract without any consideration as to a contrary result otherwise required by substantive law. Practically speaking, decisions may be made primarily relying on one approach as may be tempered by another. For example, the contract language could be strictly applied with subjective concepts of fairness being given due consideration. Similarly, concepts of fairness could be applied with some degree of deference given to the law.

The preferred approach can be – but often is not – identified in the applicable arbitration agreement. The laws supporting the use of arbitration are generally silent on the application of the law, as the Federal Arbitration Act and the Uniform Arbitration Act do not mention the role of substantive law in arbitral decision-making. Left unaddressed, the standard may be set by the rules of any administering body, which often vary.[5]

If the parties choose to establish the decision-making process to be utilized by an arbitrator, this would typically occur at the pre-dispute stage, likely during contract negotiations. By contractually defining the concepts to be utilized by the arbitrator, the parties avoid any ambiguity on the matter and prevent any potentially undesirable default standards from applying. But setting a decision-making standard is of value only if it is utilized. Faith may be placed in the arbitrator to abide by the parties' intent as reflected in the applicable agreement, or the agreement may be drafted to effectively require the arbitrator's compliance under the threat of vacatur due to the arbitrator exceeding his or her powers, although the enforceability of such threats may be subject to further legal debate.[6]

To avoid end-user dissatisfaction, consideration should be given to drafting and negotiating arbitration agreements so all involved parties, including the arbitrator, understand the standard to be employed in rendering decisions. Further, it should be determined whether the arbitrator is to be trusted to use that standard voluntarily or should be compelled to use it and whether any adjustments to the contractual language are needed. The parties can receive great value if they take proper care to negotiate the decision-making standard up front and to select an arbitrator who will uphold the parties' intent.

PROCESSES FOR EXCHANGE OF INFORMATION

It is the discovery process or, more appropriately in arbitration, the exchange of information that often drives up the cost of litigation and arbitration.[7] In a survey conducted over an approximate three-year span, the American Arbitration Association collected 422 surveys from arbitrators related to cases with a median claim amount of approximately $2.5 million. The resulting white paper notes, with respect to discovery:

> Arbitrators reported that most of the arbitration agreements did not address discovery and therefore did not impose a time limit on or restrict the type of discovery allowed. Still, about 25% of the arbitration clauses limited discovery to the exchange of documents. In the other direction, a small but significant percentage of the arbitration clauses (just under 10%) provided for the same kind and extent of discovery as was available in court litigation. Arbitrators reported that, even when the arbitration clause limited discovery, in the majority of instances (57%), the parties in the arbitration agreed to expand discovery beyond those limitations.
>
> In nearly all cases, discovery involved the exchange of documents. The survey showed that depositions also were common and took place in nearly two-thirds of the reported arbitrations (66%). Discovery frequently included the deposition of either experts or non-parties (40% of cases). Interrogatories were relatively unpopular, being used in less than 20% of the reported cases. Discovery disputes happened often, however, with arbitrators ruling on discovery disagreements (whether brought by written motion or orally) in about 70% of the cases.[8]

As noted above, attorneys have a tendency to gravitate towards what is familiar, often including litigation concepts in the arbitral context. Parties may prefer to have at their disposal all of the discovery-related tools made available under the Oklahoma Discovery Code.[9] But the opportunity to control the exchange of information process should not be overlooked. In arbitration, certain discovery tools may be ignored, limited or expressly eliminated, with requests for admission and interrogatories often falling by the

wayside. Similarly, depositions may be unavailable or subject to aggregate or deposition-specific limits on time or the number of depositions available. Expert-related discovery may be limited to the exchange of reports. Other limits may be warranted as well. Once again, limitations that translate into cost-savings are limited only by the imagination.

LIMITS ON ARBITRAL POWER

As the source of the arbitrator's power, "[t]he parties' agreement may give the arbitrator broad power, and it may confine and limit the arbitrator's power," and the arbitrator "has the obligation to effectuate the intent of the parties' agreement."[10] An arbitrator's attempt to utilize authority that has been expressly denied to him or her – or to refuse to enforce a power granted to him or her – will subject the award to vacatur.[11]

Additionally, where an arbitrator is contractually denied the power to award certain types of relief (e.g., equitable, declaratory, etc.), which may be permitted under the rules of various administering bodies, the arbitrator can be expected to abide by that denial of power and not include such matters in his or her award.

RECOVERY OF ATTORNEY FEES

Under Oklahoma law, a litigant's right to recover attorneys' fees is governed by the "American Rule," which provides that courts generally may not award attorney fees in the absence of a specific statute or a contractual provision allowing for such recovery.[13] There are, however, exceptions, including claims related to breach of contract.[14] The underlying logic for these exceptions would appear to be that a prevailing party should be compensated for the cost of

As the source of the arbitrator's power, "[t]he parties' agreement may give the arbitrator broad power, and it may confine and limit the arbitrator's power," and the arbitrator "has the obligation to effectuate the intent of the parties' agreement."

Contracts may contain limits on certain types or amounts of damages or costs recoverable by a party and, generally, such contractual terms are generally legally enforceable.[12] However, arbitration agreements may be drafted in a way to give further effect to such provisions by framing them as limits on the arbitrator's power.

prevailing – at least as long as such costs are reasonable. Similarly, in arbitration, attorneys' fees are often recoverable if permitted by law or contract.[15] However, there are potential unintended consequences in allowing for such recovery.

A party that expects to recover its attorneys' fees may be less inclined to keep those costs in check. When attorneys' fees are recoverable, one focus of risk assessment is on the potential for an expanded negative result – the fact that the losing party might not only have to pay an adverse judgment or arbitration award, but also the attorneys' fees incurred by the winning party. This increased risk may motivate parties to take a more "reasonable" position in settlement negotiations. But the prospect of such recovery may also embolden a party with the stronger position (or perceived stronger position).

Conversely, when a party has no prospect of recovering its attorneys' fees, the party is effectively encouraged to be fiscally prudent regarding actions that are taken. When attorneys' fees are not recoverable, either having been waived or expressed as a limit on the arbitrator's power, the focus of risk assessment is on the merits of the dispute, without attention to added-on costs such as legal expenses. This approach can be particularly effective for early stage resolution of "smaller" disputes. However, certain parties may also be inclined to adopt harsher or unreasonable approaches as a means to gain negotiating leverage, knowing that their exposure to attorneys' fees is lessened or nonexistent.

Ultimately, one of three different scenarios will usually apply: 1) the contract mandates or permits for the recovery of attorneys' fees, 2) the contract is silent on the recovery of attorneys' fees or 3) the contract bars the recovery of attorneys' fees. There may be variants within these, including fee-shifting and caps on recovery. Whether one is a claimant or respondent, or dealing with a particularly aggressive claimant or respondent, may dictate the preferred contractual approach. However, such matters should be addressed during contract negotiations, long before any litigation has ensued and the

preferred approach for any specific situation can be solidly identified.

CHOOSING THE TYPE OF AWARD

While a judgment in litigation may contain no to minimal reasoning, arbitration offers the parties various options. An arbitration award may be issued that offers no reasoning or may provide much deeper insight as to the factual and procedural background, resolution of factual and legal issues and a reasoned analysis. In arbitration, "A reasoned award is something short of findings and conclusions but more than a simple result."[16] A standard award offers the "simple result." Findings of fact and conclusions of law, using legal principles as a guide, should offer substantial detail with general findings being insufficient.[17]

In general, standard awards, reasoned awards and findings of fact and conclusions of law offer different advantages and disadvantages, though it is normally more costly to have an arbitrator dedicate the time for the preparation of a reasoned award or findings of fact and conclusions of law. Standard awards generally involve less time to prepare and, by extension, are less costly. However, they offer minimal insight as to why the particular result was reached, which can be frustrating for a party who did not prevail or did not prevail to the extent expected. Given the limited information provided, they are – at least theoretically – more insulated from post-award attack, such as a motion to vacate the award.

Conversely, reasoned awards and findings of fact and conclusions of law involve more time to prepare and are more expensive. With the analysis they offer, there is often less of a question as to why a particular party prevailed. However, empowered with greater information as to why a given result was reached, a nonprevailing party may be provided with a better opportunity to seek to have the award vacated. In fact, the underlying purpose for obtaining findings of fact and conclusions of law – at least in litigation – is to permit ease of review for a higher court.[18] In the absence of agreement on the matter, deciding the type of award may be left to the discretion of the arbitrator. It can, however, be directly addressed in the arbitration agreement itself. This is yet another value-add to selecting arbitration over litigation.

TIMING AND METHOD OF CONDUCTING THE HEARING

As the COVID-19 pandemic has made abundantly clear, litigation does not always proceed uninterrupted or swiftly. Shelter in place directives and other orders impacted the ability (and, in some cases, willingness) of jurors, parties, attorneys, court personnel and judges to participate in the judicial process. The necessity of striking a balance between access to courts and ensuring the health and safety of the public has required that the judicial system adapt. As a result, the Oklahoma Supreme Court directed that, "Judges are encouraged to continue to use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules for District Courts, Skype, Bluejeans.com and webinar-based platforms."[19] While it may have taken a global pandemic and disaster to prove the benefits, as well as the limitations, of remote hearings and dispute-related resolution on a large scale to those who resisted the usage of such tools, attorneys and their client are quickly learning.

Even before the pandemic, many aspects of the arbitration process were already conducted remotely. Most communications with the arbitrator and any case manager, in the case of an administered arbitration, were and are handled via email. The critical preliminary hearing, where various procedural matters are addressed and a final hearing date may be identified, was and remains generally conducted by telephone conference. Hearings on interim matters were generally conducted by telephone conference as well. While the final hearing was typically conducted in-person, arbitral rules often permitted and encouraged flexibility. For example, Rule R-33 of the American Arbitration Association's Construction Industry Arbitration Rules provides that "[w]hen deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation," provided that "[s]uch alternative means must still afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and when involving witnesses, provide an opportunity for cross-examination."[20] The parties themselves are empowered to dispense with either an in-person or remote hearing as "[t]he parties may agree to waive oral hearings in any case."[21]

This flexibility of arbitration is of particular benefit in uncertain times such as these, where the prospect of conducting an in-person trial or hearing may frequently change. Parties may select a hearing date at the outset of an arbitration and reasonably expect, assuming some degree of willingness to be flexible,

the date will hold. The hearing may need to be conducted remotely, but proceeding in this private setting may not be subject to the same limitations of access that might be imposed on more public forums, such as courthouses. Thus, in many instances, it is possible to conclude a final hearing in an arbitration long before it might be possible to conclude a trial in court.

CONCLUSION

Beyond the high-level benefits arbitration offers are numerous discrete advantages over litigation that may, in many instances, go overlooked by parties when negotiating arbitration agreements or initiating an arbitration. That need not be the case. Contracting parties and their counsel would be well-served to consider nuanced points that can place greater control in the hands of the end-users. Unlike litigation, arbitration offers a fully customizable process, ranging from the selection of the governing rules and qualifications of the arbitrator to the nature of the final award. Framing the advantages of arbitration as involving merely efficiency and cost-savings, while accurate, only scratches the surface of how arbitration can be effectively utilized as not merely a shortcut to substantial justice but rather a tailored path taking into account the preferences of the contracting parties.

ABOUT THE AUTHOR

R. Carson Fisk is a shareholder in the Austin, Texas office of Andrews Myers PC, where he practices in the area of construction law and regularly serves as an arbitrator. Licensed in Texas and Oklahoma, he is board certified in construction law by the Texas Board of Legal Specialization and is a Fellow of the Chartered Institute of Arbitrators.

ENDNOTES

1. *See e.g.* Amer. Arb. Ass'n Comm. Arb. R.; Amer. Arb. Ass'n Constr. Indust. Arb. R.; Amer. Arb. Ass'n Employment Arb. R.; JAMS Comprehensive Arb. R. & Proc.; JAMS Employment Arb. R. & Proc.; JAMS Eng. & Constr. Arb. R. & Proc.; CPR Administered Arb. R.; CPR Rules for Expedited Arb. of Constr. Disputes.

2. *See* 12 O.S. §1862.

3. *See e.g.* Amer. Arb. Ass'n Constr. Indust. Arb. R. R-14; JAMS Eng. & Constr. Arb. R. & Proc. R. 15.

4. *See* 12 O.S. §1862 (providing that "[i]f the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails"); *see also* Amer. Arb. Ass'n Constr. Indust. Arb. R. R-14 (noting that the selection process only applies "[i]f the parties have not appointed an arbitrator and have not provided any other method of appointment…").

5. Compare Amer. Arb. Ass'n Constr. Indust. Arb. R. R-48(a) (providing that "[t]he arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, equitable relief and specific performance of a contract") to JAMS Eng. & Constr. Arb. R. & Proc. R. 24(c) (providing that "In determining the merits of the dispute the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that the Arbitrator deems to be most appropriate. The Arbitrator shall have the power to grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including but not limited to specific performance of a contract or any other equitable or legal remedy").

6. *See Hall St. Assocs., L.L.C. v. Mattel, Inc.,* 128 S. Ct. 1396, 1405, 170 L. Ed. 2d 254 (2008) (holding that the "national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway" warranted barring expanded judicial review of arbitral awards under the FAA); *Wells Fargo Bank v. Apache Tribe of Oklahoma,* 2016 OK CIV APP 68, ¶10, 384 P.3d 145, 148 (concluding that "[p]rivate parties may not contract for expanded judicial review [of arbitral awards] when the strict confines of the Federal Arbitration Act apply to the arbitration proceeding and award"); *Forest Oil Corporation v. El Rucio Land and Cattle Company Inc.,* 518 S.W.3d 422, 432 (Tex. 2017) (holding that, under Texas law, "[i]n the absence of a clear agreement to limit the panel's authority and expand the scope of judicial review, this Court may not exercise expanded judicial review...").

7. *See e.g.* American Arbitration Association, Parties and Counsel: Make Commercial Arbitration More Efficient, Less Expensive (available at www.adr.org).

8. American Arbitration Association, Parties and Counsel: Make Commercial Arbitration More Efficient, Less Expensive (available at www.adr.org).

9. *See* 12 O.S. §§3230, 3231, 3233, 3234, 3236 (providing for various discovery tools, such as oral depositions, depositions on written questions, interrogatories, the production of documents and requests for admission).

10. *Sooner Builders & Invs., Inc. v. Nolan Hatcher Constr. Servs., L.L.C.*, 2007 OK 50, ¶24, 164 P.3d 1063 1071 (citing *Alexander v. Gardner–Denver Co.,* 415 U.S. 36, 53 (1974)).

11. *See* 12 O.S. §1874(A)(4); *see also Sooner Builders & Invs., Inc. v. Nolan Hatcher Constr. Servs., L.L.C.,* 2007 OK 50, ¶¶24-25, 164 P.3d 1063 1071-1072 (holding that an arbitration award was properly vacated where the parties' agreement mandated an award attorney fees the prevailing party but the recovery of such fees was denied).

12. *See Fretwell v. Prot. Alarm Co.,* 1988 OK 84, 764 P.2d 149, 152 (holding that a contractual provision limiting damages to a set amount was enforceable); *Elsken v. Network Multi-Family Sec. Corp.,* 1992 OK 136, 838 P.2d 1007, 1010 (recognizing that if parties are not in an unequal bargaining position, a limitation of liability as to the amount of damages recoverable is generally binding and enforceable); *Dollar Rent-A-Car Sys., Inc. v. P.R.P. Enters., Inc.,* No. 01-CV-698-JHP-FHM, 2006 WL 1266515, at *21 (N.D. Okla. May 8, 2006) (concluding that defendants were contractually precluded from recovering lost profits or consequential damages).

13. *See Barnes v. Oklahoma Farm Bureau Mut. Ins. Co.,* 2000 OK 55, ¶46, 11 P.3d 162, 178-179.

14. *See* 12 O.S. §936 (identifying a variety of claim where attorneys' fee may be recovered).

15. *See e.g.* Amer. Arb. Ass'n Constr. Indust. Arb. R. R-48(d); JAMS Eng. & Constr. Arb. R. & Proc. R. 24(g).

16. *House v. Vance Ford-Lincoln-Mercury Inc.,* 2014 OK CIV APP 36, ¶24, 328 P.3d 1239, 1246 (quoting Holden v. Deloitte & Touche LLP, 390 F.Supp.2d 752, 780 (N.D.Ill.2005)).

17. *See* 12 O.S. §611 (providing that "[u]pon the trial of questions of fact by the court, it shall not be necessary for the court to state its findings, except generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state, in writing, the findings of fact found, separately from the conclusions of law"); *Messinger v. Messinger,* 1958 OK 296, 341 P.2d 601, 604 (noting that "[t]he object of the statute [12 O.S. § 611] is to enable the parties to have placed on the record the facts upon which the rights litigated depend, as well as the conclusions of law which the court drew from the facts found, so that exception may be taken to the views of the trial court as to the law involved in the trial").

18. *See Weavel v. U.S. Fid. & Guar. Co.,* 1993 OK CIV APP 4, 848 P.2d 54, 59 (noting that "[t]he trial court is bound to make findings of material fact in sufficient detail for a correct decision of questions of law involved in the case in the event the action is reviewed by a higher court").

19. Third Emergency Joint Order Regarding the COVID-19 State of Disaster (SCAD No. 2020-36) (April 29, 2020).

20. Amer. Arb. Ass'n Constr. Arb. R. R-33(c).

21. Amer. Arb. Ass'n Constr. Arb. R. R-33(d).

The Development of Mediation Practices in Oklahoma

By R. Lyle Clemens

IN 1986, COMMERCIAL MEDIATION PRACTICES were in their infancy in Oklahoma. Before then, mediations were primarily conducted by administrative agencies and commercial businesses. The insurance industry was the first to acknowledge the commercial benefits of mediation, as mediation helped clear out a backlog of small insurance claims resulting from auto accidents and homeowners' claims.[1] These claims often sat for prolonged periods without the stimulus to proceed to a conclusion. It was proposed the way to move these claims was to create an "event" to bring the parties together. This event was mediation.

Early mediation programs were billed as "mediation marathons."[2] These marathons were conducted over a period of two days, and sometimes more than eight mediations were scheduled and assigned to a mediator.[3] Mediation events succeeded in bringing resolution to files that had long been dormant. The marathons were a resounding success, settling many of the cases in less than one hour and spurring the commercial popularity of mediations. Due to this early success, insurance companies were convinced resolving disputes with the help of mediators could be both efficient and profitable. Mediation could not only resolve backed up dockets, but many cases could also benefit from the insight of skilled intermediaries. At this time, many insurance companies were abandoning the traditional relationship they had with defense firms and were moving the defense of many cases "in house" to captive law firms.[4] With these captive firms receiving large volumes of case files, mediation became a good way to settle cases at an early stage in the litigation process while cases with multiple parties and complex factual and legal issues continued to be handled by traditional defense firms.

Federal courts also began to recognize the value of mediation to keep their civil dockets manageable. In 1991, the 10th Circuit implemented a mediation program directed by the Circuit Mediation Office.[5] The office randomly selects civil cases on the circuit's docket and assigns them court-mandated mediation.[6] The Western District of Oklahoma also adopted a court-mandated mediation program, providing parties who were required to participate with a list of court-approved mediators.[7] A court "alternative dispute resolution coordinator" was appointed to monitor the implementation of the program, and mediators were required to report the results of each mediation.[8] Mediator reports provided data proving mediation was incredibly effective at resolving cases without the costs of the courtroom.

ROLE OF THE COURTS

During the formative period in the adoption of mediation as a legal tool, there was much discussion about the role the courts would play in the mediation process. Much of this discussion centered around mediator certification. Certification was proposed as a safeguard to ensure parties would receive competent mediation services.[9] The certification process would have limited the amount of "certified" mediators to individuals who were approved by a group with the power to grant the designation.[10] Certification is regarded by many mediators and attorneys as unnecessary.[11] Unlike a typical consumer transaction, mediators are selected by a sophisticated

market of experienced trial attorneys. The demand for mediators by these attorneys determines who will succeed and who will fail in the practice of mediation.[12] Certification adds little if anything to this dynamic, further regulating an already selective market.

Another proposed plan to involve courts more in the mediation process was to provide a list of mediators who were "qualified" by the district courts.[13] There was much discussion as to whether it was appropriate to have a district judge order cases to mediation or select a mediator for the parties. In other jurisdictions where the court had the power to do so, the appointee was often a retired judge or someone the appointing judge had a relationship with.[14] To ensure fairness in the selection process, Oklahoma adopted the District Court Mediation Act in 1998.[15] The act set forth requirements for mediators who wished to be "qualified" but prohibited any court rule that would undermine the parties' choice of mediator, allowing parties to "select a mediator not identified on any list of qualified mediators maintained by the district court."[16] This legislation left the selection of mediators to the free market, encouraging a robust and active roster of talented mediators to provide the best possible service to attorneys and their clients.

MEDIATION BENEFICIAL TO PLANTIFF'S BAR

While the initial demand for mediation was driven mostly by the defense bar, mediation also was and continues to be very beneficial to the plaintiff's bar. Often, mediated cases are represented by an attorney on a contingency fee basis.[17] This contingency arrangement provides the plaintiff's attorney gets paid out of the proceeds of a resolved case. An early resolution reduces the time expended by the attorney and the costs associated with protracted litigation while still ensuring payment. Early settlement is beneficial to the client because costs are reduced, and the award can often be collected much faster. Perhaps the biggest benefit of mediation to plaintiffs is the plaintiff has direct input on whether the case is settled or tried. Every plaintiff and their circumstances is unique, although risk tolerance and the motivation for settlement varies between them. The opportunity mediation affords plaintiffs is direct input into the decision-making process of their case, which leads to happier clients who are more satisfied with the representation they receive.

For many clients, a lawsuit is usually their first exposure to the civil justice system. The litigation process is confusing and frustrating to most. Clients do not understand why cases take so long, and the process of discovery is invasive and overwhelming. The necessary elements to "prove" a case are foreign to them. Prior to mediation being utilized as a method of settlement, the client

was not exposed to a neutral party who could explain the legal process and outline available options. At mediation, each party has the opportunity to ask questions and acquire an understanding of the reasons for depositions, interrogatories, expert witnesses and the burden of proof. If elements of the case are lacking, the mediator can educate the party on the risks the absence may pose. This third-party dialogue leaves the attorney to advocate for their client without seeming adversarial or skeptical, ensuring the client does not question counsel's loyalty to the case. It is easier for an attorney to agree with a mediator's evaluation than to disagree with the client.

The advent of the use of mediation has materially transformed the practice of law. In some areas of practice, the use of mediation has become so routine that attorneys seldom need to be ordered by the court to participate, instead initiating mediation themselves. This acknowledgment of the value of mediation has also caused lawyers to refrain from direct negotiation themselves because they anticipate a mediation event will soon be forthcoming.

Arguably, the common ending event of litigation has shifted from a jury trial into a successfully negotiated settlement at mediation. Many mediators in Oklahoma successfully settle more than 90% of the cases they take.[18] This high settlement rate encourages the lawyers involved in litigation to put significant effort into preparing cases for mediation. Mediation preparation limits the number of depositions taken and discovery conducted and focuses instead on gathering the information needed to evaluate the case. Because there is no jury to persuade, the presentation is often for the benefit of an insurance adjuster or, where insurance is not involved, a risk manager, and attorneys can adjust their arguments accordingly.

Whether a case requires extensive knowledge of product liability, negligence torts, contracts, employment, oil and gas, trusts, estates or family law, there is a mediator who has experience in that area and can deftly assist in the resolution of the dispute. Many mediators are experts in multiple areas of the law.[19] However, the complexity of certain areas of litigation makes it desirable for a mediator to develop a niche market that allows them to shine in a single area of expertise.[20] Once this niche is well established, many lawyers become repeat customers as they too specialize in one type of law and appreciate the services of a mediator who is well-versed in that area.[21] Often, one side is familiar with a mediator while the other party has not worked with them before. It is not uncommon for the unfamiliar party to contact the mediator prior to scheduling mediation to become comfortable with the selection.

I have conducted mediations in 48 states, and in almost every case, I have pre-mediation discussions with the unfamiliar party to ensure the best possible experience for everyone involved. Perhaps the best way to select a mediator is by the recommendation of other attorneys. Opinions certainly vary on this topic, and it is not difficult to find attorneys with both favorable and unfavorable impressions of a well-known mediator. Every mediator has a distinctive style. Not unlike a client's selection of an attorney, mediation services are personality driven. A mediator's resolution style can range from iron-fisted to velvet-gloved, and every attorney will have a preference. Regardless of style, a high success rate is ultimately what drives the demand for mediation services. A resolved case is often the best indicator of a skillful mediator.

THE FUTURE OF MEDIATION

Given the increase in use and acceptance of mediation in the past few decades, what does the future of mediation hold? Methods of conducting mediation are evolving to better accommodate clients. Online mediation services are already growing at unprecedented rates.[22] While face-to-face

interaction allows mediators to better access the personalities and needs of the parties, which can be crucial to a mediation's success, online services have some notable benefits. Online mediation allows parties to negotiate from their own homes, where they are likely more at ease.[23] The lack of travel also eliminates costs and provides for more flexible scheduling, which, unconstrained by geographic location, can lead to earlier resolution of a case.[24] The types of cases that will see an increase in mediation rather than litigation in years to come are also changing.

Family law disputes, like divorce cases, are seeing an increase in parties choosing mediation over a drawn-out court battle, even as those cases become more complicated.[25] Mandatory mediation for workers' compensation claims is becoming increasingly commonplace as companies seek to avoid the courtroom, driving the need for mediators well versed in the nuances of those claims.[26] Recently, after multiple tribal nations in Oklahoma sued Gov. Kevin Stitt over casino gaming compacts, a federal judge sent the dispute to mediation.[27] New developments at the intersection of tribal and state law may result in an increased demand for mediation in these areas.[28]

Mediation in Oklahoma has changed in significant ways over the last 40 years, evolving from an unconventional means of conflict resolution into a commercial product widely accepted and utilized.[29] The advent of COVID-19 and the subsequent shutdown of courtrooms across the country will likely encourage more parties to look to mediation to solve their disputes as quickly and inexpensively as possible. This shutdown has served to exacerbate both American's growing mistrust in the justice system[30] and further back up dockets from a recent spike in lawsuits.[31] Both of these issues can be addressed, at least in part, by nontraditional dispute resolution methods. In the future, lawyers, clients and mediators alike can expect to see an acceleration of the trend in the legal community away from adversarial litigation and toward the continuously developing practice of mediation.[32]

ABOUT THE AUTHOR

R. Lyle Clemens is an AV-rated attorney whose practice emphasizes mediation and arbitration services. He has been a leader in the field of ADR since 1986 when he was appointed to the board of mediators for the Oklahoma Mediation and Arbitration Services. He has conducted more than 4,500 mediations.

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Ethics and Psychology in Mediation: More Important Than You Think

By Collin R. Walke

REMEMBER THE TV SHOW, *THE OFFICE*? In one episode, Michael Scott, the bumbling head of the Dunder Mifflin Scranton, Pennsylvania branch, tries to resolve an interoffice dispute through a handbook on mediation. The handbook says there are three types of mediation: mediations in which one participant or the other gets what he or she wants, another where neither gets what he or she wants and a final one in which everybody gets what they want. Mr. Scott is optimistic he can get the co-workers to the win-win-win compromise.

The foundational textbook for mediators has historically been *Getting to Yes*, created by members of the Harvard Negotiation Project. I am confident Mr. Scott's "win-win-win" mindset came from the unreal expectations set by *Getting to Yes*, because the authors of that book would have you believe the possibility of an agreement in which everyone gets what they want is fairly likely because disputes often have areas of mutual interest that can lead to a cooperative agreement.

The reality is much different. As anyone who has served as a mediator or participated in a mediation can tell you, people are not looking for ways to solve both sides' problems – they're looking for ways to solve *their own* problem. This is why a book like *Never Split the Difference,* by a former FBI hostage negotiator, is much more practical. In *Never Split the Difference*, the author doesn't delve into mutual interests like the authors of *Getting to Yes* – and, in fact, takes several digs at *Getting to Yes* because of its pie-in-the-sky theory. Instead, *Never Split the Difference* employs various psychological techniques to create an environment for dispute resolution.

So, who's right? Should mediators, or attorneys, be looking for mutual interests, or should they simply be looking for ways to game one party psychologically? I believe the answer is: it depends.

THE CRUX OF MEDIATION

Broadly speaking, mediation can be thought of as an informal dispute resolution method for any conflict. However, the focus of this article will be on mediating litigation cases since that will be of most practical benefit for those reading. To that end, we must frame the purpose of mediation in a litigation context. Proper framing leads to proper answers; after all, Einstein said if he had one hour to solve a problem, he'd spend 55 minutes articulating the problem and 5 minutes solving it.

I'm sure you're thinking, "Why is framing the question even necessary? Isn't the point of every mediation to settle the case? Isn't that defining the problem?" If that were so, then why doesn't every case settle? In other words, if both sides genuinely want to settle, then shouldn't it get done? Of course, not every case gets settled, and of course, there are a potentially infinite number of reasons why any given case doesn't settle – the defense adjuster undervalues a claim, a plaintiff's lawyer overvalues a claim, a divorcee can't set aside his or her emotions, etc., etc. The point is, a case does not necessarily fail to settle because both sides don't want to settle; rather, there is some other problem that needs to be overcome to reach agreement.

The reason *Getting to Yes* fails in practice isn't because the theory is

bad, it's because the theory doesn't match up to reality. When you have an overly zealous adjuster or plaintiff's lawyer, you have someone who doesn't gauge their own interests accurately. That is a psychological roadblock someone has to push through in order to resolve the case. Thus, if you were to frame every mediation as simply a method of settling the case, you've framed the question too broadly. Instead, the question should be, "How do I get Party A to see Fact 'X'?" This, in my opinion, is the key to mediation – homing in on the real problem and figuring out through rational thought and/or emotional gaming how to get the obstinate party to move.

THE ETHICAL DILEMMA OF THE MEDIATOR

Standard I of the Model Standards of Conduct for Mediators by the American Bar Association is titled "Self-Determination." The standard explains that a mediator "shall conduct a mediation based on the principle of party *self-determination*. Self-determination is the act of coming to a *voluntary, uncoerced* decision in which each party makes free and informed choices as to process and outcome." (Emphasis supplied.) Taking this

standard at face value then begs the question as to the extent a mediator may employ psychological or emotional devices to appeal to a particular party. If a mediator were to play on the heartstrings of a litigant to get movement in a case, has the mediator violated this standard?

Let's look at it from another perspective. The Oklahoma Supreme Court has made it clear that a right to trial by jury in our Constitution means the right to a fair and impartial jury.[1] If our Constitution does indeed guarantee a fair and impartial jury, what are we to make of the trial technique known as the Reptile? The Reptile method of trying cases basically posits that if you are capable of exploiting the "reptilian" portion of a juror's brain, the amygdala, to stimulate fear, then the juror is more inclined to side with your client and punish the other side. Scientific studies have shown the amygdala will react to fear-inducing stimuli even when a person isn't conscious of the fear. In other words, the juror believes he or she is making a rational and voluntary decision, but in reality, may in fact not be because he or she isn't conscious of the fear bias implanted in the brain.

Indeed, this brings up the very notion of free will in the first place. If you want a quick dive into why it's arguable that humans lack total free will, look into split-brain studies. Split-brain studies are literally just that – studies of human behavior after the two hemispheres have been separated, thereby preventing communication between the left and right hemispheres.

In one such study, participants were given an electrical stimulation that compelled the participant to stand up. When asked why the participant stood up, the participant provided a rational justification like, "'Oh, I need to get a drink.'"[2] However, the actual reason the person stood up is not because of the after-the-fact justification, but because of the preconscious stimulation. Just like with the juror who voted in favor of punitive damages. Because the hypothetical juror isn't being studied by brain imaging, it's impossible to determine whether the juror is creating an after-the-fact justification for punishment based upon an unconscious fear bias via the Reptile, or really, truly and voluntarily believes that one side ought to be punished.

Where then does one draw the line? If a trial lawyer obtains a jury verdict through psychological gaming, can a mediator do the same to get one party to settle? When has a mediator overstepped his or her bounds in making different types of arguments to persuade one party to move on an issue?

Or, to make it less sinister, we could look at a very common situation. The parties have been mediating 8 hours, everyone is tired, and the parties are extremely close. Everyone is excited at the prospect of getting the case done, and then, simply to be finished, one side finally caves. The paperwork is signed, and one party goes home and sleeps on it, only to wake up the next morning with deep regret. That party feels as though the mediator or the lawyer coerced him or her into simply signing the deal in the late hours of the night and now wants to back out. We've all experienced instances like this. Was the party's free will or voluntary choice supplanted by the psychological pressure of the mediation itself?

If a trial lawyer obtains a jury verdict through psychological gaming, can a mediator do the same to get one party to settle? When has a mediator overstepped his or her bounds in making different types of arguments to persuade one party to move on an issue?

It doesn't take a master manipulator, or even any intentional manipulation, to make a party feel as though he or she was robbed of an actual choice. Exhaustion can sometimes have that same effect. For example, in one study scientists found, "Experienced parole judges in Israel granted freedom about 65% of the time to the first prisoner who appeared before them on a given day."[3] However, "[b]y the end of a morning session, the chance of release had dropped almost to zero." The same effect was seen after the judges returned from lunch. The first prisoner had a 65% chance of being released, and the odds decreased thereafter.

This is sometimes known as choice fatigue. Some psychologists posit that each choice you make takes away a little bit of your own willpower. That's why you can start a diet, say no to yummy treats for a little bit and then be right back to eating ice cream for breakfast in a week. There's only so much self-control we can impose upon ourselves before our hardwired biases and preferences kick in.

SO WHAT?

Just this brief foray into mediation, ethics and psychology ought to cause you to think seriously about a few things. First, what kind of a mediator do you need for your case? Do you have a case where both sides really are close to resolution, fairly amicable and only one small issue needs to be resolved? Or do you have a case where the parties are miles apart and both lawyers hate each other? Perhaps this latter scenario requires an FBI hostage negotiation approach.

Second, once you've selected the type of mediator appropriate for your case, what are the real issues in your case? I can't fathom how many millions of billable hours are wasted in mediations the world over by the parties just trying to get on the same page. Are you playing football or baseball? Is this a case about liability or damages? Both? Articulating and clarifying the issues in advance not only saves time but will increase the chances of settlement. Why?

Because the final lesson is that information exchange in mediation is the bedrock to success. The party that controls the information, controls the mediation. Think about it. We're not just talking about testimony and affidavits. We're talking body language, verbal engagements and off-handed comments. As pointed out in *Never Split the Difference*, 7% of personal communication is via spoken words, 38% tone and 55% body language.

One might think, then, that a mediator has more information than anyone because he or she is in both rooms. However, that's not always the case. Sometimes, lawyers or clients hedge on information sharing. When that happens, there is a potential advantage to the lawyer or client and a potential disadvantage to the mediator. So, now, who's manipulating who? If one side never discloses fact "x" and the parties settle without fact "x" ever being known, was that mediation agreement truly an "informed" choice as the ABA standard of conduct requires? What if a lawyer intentionally slow plays a mediation to frustrate the other side in the hopes of gaining something more out of it? If the other side is experiencing choice fatigue, should the mediator stop the mediation? What if the mediator doesn't know one side is truly fatigued?

The next time you think mediation is about dollars and cents or child visitation schedules, think again. Mediation is a complex interchange of information with many potential ethical pitfalls. That is why I think it's important we take a broader view of mediation other than simply how to get to terms and conditions of settlement. We must constantly examine and reevaluate our problem-solving techniques inside the mediation room and the courtroom in order to ensure that however it is we come to resolve our disagreements, we do it ethically.

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Why Are We Still Fighting?

By Melissa Fell

WHEN HE WAS STILL A PRACTICING COUNTRY LAWYER, Abe Lincoln wrote: "Discourage litigation. Persuade neighbors to compromise whenever you can … As a peacemaker, the lawyer has a superior opportunity of becoming a good [person]." There is so much to unpack out of these wise words, but most telling is Lincoln was implying attorneys should strive to be the best kind of person they could through their guidance during the process of legal representation.

What does it mean to be a peacemaker? Why even bother when we are taught the skills and rewarded by a judicial system that puts parties at odds in courtroom battles for a decision with a "winner" and a "loser"? By default, when a judge or other decision maker has to decide between differing sides, it must be based upon the information presented within the process, limited by the abilities of the attorneys and/or parties themselves providing the information within the parameters of the laws governing the process. If an attorney believes they have the better facts and case, all the more reason to forge ahead to the battleground to prevail.

The whole process is, by design, a gladiator battle, with kudos and recognition awarded to those who prevail. A win often leads to more cases as it may be used for advertising, awards and accolades, which is all great for the attorneys and their firms, but who does it really serve other than them? How does it serve the best interest of the client? How do you resolve an issue around something that cannot be "split" or come down to a dollar amount when the underlying issue has not even been addressed? If the attorneys are so focused on the "win," how do they know if or how they could have ensured the best result for their client?

The path of peacemaker is not an easy one. For many, once the courtroom skills are embedded in their routine, it becomes second nature to identify the conflict, choose the desired outcome and build the case around the outcome desired. Clients become willing participants in this process, enticed into developing their positions from the outset. "What do you want?" is the first and continued focus once they cross the threshold. The judge becomes the arbiter of the outcome, and typically either the client gets what they want or not, thus the "win or lose" paradigm.

Even the late Supreme Court Chief Justice Warren Burger voiced his concern over the misguided aim of the legal profession when he claimed, "The entire legal profession … has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers of conflict." But the process doesn't have to look that way. The process of alternative dispute resolution is designed to allow for exploration of the "why" with options and solutions in ways not available when strictly interpreting and following statutes and case law. It takes emotional intelligence to help the client identify why they are there, deconstruct the conflict and explore much more intimately the needs, interests, concerns, fears and other motivating factors at play.

This takes time, patience and most importantly, listening – the kind of active listening that means you are engaging with the client and working to draw out those motivating factors that will help more fully resolve their issue and lead to creative and constructive solutions, listening that may provide not just a resolution but healing of the divisiveness that led to the dispute in the first place. The task of the attorney can and should be so much broader than just to take a client and process them to a win in front of a judge who may never address the

underlying issues at hand. No peace comes from the process in that manner. With an attorney who is focused on interests rather than concrete positions, the result becomes an outcome the parties each has given up enough to call a draw, where the mediator "beats each side up" until they relent enough to come to a more middle of the road compromise. When the attorneys and neutrals create a true

design and own as they walk away from the process.

I would challenge the use of the word "compromise" as used by the venerable lawyer from Illinois for today's peacemakers. It implies each side is required to give up on certain interests and needs that may otherwise be satisfied through the process with patience and trust in our clients to find the path that brings them the best outcome. This is often the case in mediations today. Most times, the parties are ordered to mediation or arbitration by the court prior to proceeding to trial, with the hope they will settle to save their own and the court's resources. The biggest disservice an attorney or mediator/arbitrator can do is start from position statements. They are often rushed, with no time allowed for either side to tell their story. It becomes a pressurized settlement negotiation of laying out positions, then one by one giving up or giving in on those positions until problem-solving atmosphere, we become a part of the solution rather than the conflict.

The lawyer sets the tone from the time they first interact with a client and throughout representation in every way they and their staff engage with the client, the other party and their counsel. Clients are typically vulnerable when working with an attorney, taking their cues from the person they have hired to guide them and tell them what to do. A wise counsel will use caution in engaging the client in the battle and instead focus on truly helping clients find the best resolution for their life that leaves them with more peace and calm than when they first came to them.

If a client is led to believe they should "win" on any point or points or they "have a right," they will have that stuck in their mind and no doubt leave a mediation or settlement conference feeling they did not win and had to give up what they thought they really wanted and take less as a compromise. In our fervor to vigorously represent our clients, the patience required to be a peacemaker becomes increasingly daunting as we continue to assert the positions of our client. But it need not be so. By refocusing on the underlying interests, we may provide the peace and opportunity for problem solving and thus healing. A successful attorney and neutral should close a case not celebrating a "win," indicating there was a "loser" but rather secure in the comfort that the clients were brought a resolution that best worked for them and their situation. We all bring more peace into the lives of our clients and ourselves. So, I ask, why are we still fighting?

Author's Note: Inspiration for the article came from lawyers David Hoffman and Kevin Scudder from their contributions to the book titled Building a Successful Collaborative Family Law Practice by Forrest S. Mosten and Adam B. Cordover.

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Melissa Fell is a collaborative attorney, mediator and certified life coach. She focuses on assisting clients through the process of divorce and related family issues outside of the courtroom. Ms. Fell is an active board member and president of the Oklahoma Academy of Collaborative Professionals and serves as the ADR Section chair for the Tulsa County Bar Association.

OKLAHOMA BAR ASSOCIATION

let's talk housing

The Oklahoma Bar Association needs Oklahoma lawyers to help keep families from becoming homeless by serving as mediators in eviction claims.

In partnership with the Oklahoma Supreme Court Early Settlement Program and the Access to Justice Commission, the OBA is offering free mediation training, including 6.5 hours of Continuing Legal Education, to equip more attorneys to be involved in the state's Early Settlement Mediation program.

"Our goal is for Oklahoma attorneys across our state to get training in the Early Settlement Mediation program so we can apply our expertise to help in this emergency. Lawyers are looking for opportunities to help in this time of crisis and the Let's Talk Housing program is an important way to give back to people in our communities that are hurting and to help relieve the stress on the court system."

– OBA President Susan Shields

For additional information on becoming a volunteer mediator for the Early Settlement Program, email marissa.fairbanks@oscn.net.

Mediation in the Time of a Pandemic: Preparing for the 'New Normal' of Online Mediations

By Amy J. Pierce

WHEN I CIRCULATED A FINAL TERM SHEET on March 4, 2020, to 15 mediation participants and shook their hands as they left my conference rooms, I had no way of knowing that the practice of law, and in particular the practice of mediation, would be so drastically changed within just a few short days. On March 6, the first case of the novel coronavirus (COVID-19) was confirmed in the state of Oklahoma. By March 15, eight COVID-19 cases had been reported in our state, and Gov. Stitt issued Executive Order 2020-07 declaring a state of emergency in all 77 Oklahoma counties. The governor issued his Fourth Amended Executive Order 2020-07 on March 24, which ordered all businesses located in a county experiencing the community spread of COVID-19 and that were not identified as being within a critical infrastructure sector, to close.

Legal services and lawyers were exempted from the executive order a day later, but that did not mean the business of law could proceed as usual. Oklahoma lawyers were advised by the OBA to follow the Centers for Disease Control's guidelines on social distancing and were encouraged to work from home in order to meet their clients' needs and maintain personal safety. The Oklahoma Supreme Court issued its own emergency orders, cancelling civil and criminal jury trials through July 31, 2020, and suspending case, statutory and order deadlines for March 16 through May 15, 2020.[1] In short, the justice system had effectively ground to a halt by the end of March 2020.

Lawyers were faced with a new reality – figure out how to conduct depositions, meetings and hearings online or not at all. The same was true with respect to the practice of mediation. Many lawyers had previously mediated via telephone with federal circuit appellate mediators and had heard of "online mediation," but few had actually participated in or conducted a mediation solely online using video technology.[2] When it became apparent that in-person mediations were not possible for the foreseeable future, many mediators immersed themselves in numerous different online videoconferencing platforms, such as Zoom, Microsoft Teams, Skype, Google Meet or Webex. While mediation conference rooms remained empty throughout the spring and early summer of 2020, mediators and lawyers alike were busy navigating the world of videoconferencing technology and conducting mediations from their homes and offices. In just a few short months, conducting online mediations has now become the "new normal," and based upon the continued expected delays, travel restrictions and court closures, this "new normal" may be here to stay.

Both federal and state courts are continuing to limit in-person hearings and further suspend jury trials. COVID-19 has undoubtedly added months, if not years, to the time it takes for parties to normally obtain a jury trial date. It is reasonable to assume that mediations will increase in light of continued jury trial delays and learning to adapt and use online mediation

technology is necessary if lawyers want to continue to serve those clients who have engaged them during this unprecedented time.

While in-person mediations have cautiously resumed with proper protocols in place, many practitioners are likely to find that once the pandemic ends, their clients, insurance adjustors and out-of-state counsel may want to continue to remotely participate in mediations. As mediators, our hope is that someday COVID-19 will run its course, and we will return to the normality of in-person mediations. But the reality is many clients and practitioners have now experienced the efficiency and cost savings of online mediation, and it is likely that online negotiation skills will remain an important part of an effective mediator's and lawyer's tool belt.

NOW IS THE TIME TO INVEST IN TECHNOLOGY AND LEARN TO USE IT EFFECTIVELY

According to recent data from the International Telecommunication Union, by the end of 2019, 4.1 billion people, or 53.6% of the world's population, were using the Internet.[3] With social distancing being implemented, a sharp rise in internet communications has occurred. Since COVID-19 integrated itself into our lives in March 2020, video and audioconferencing companies have seen a tremendous increase in users. Zoom, one of the more popular providers, reported in April 2020 it had increased from more than 10 million daily participants in December 2019 to more than 300 million daily participants by April 2020.

With COVID-19 now emphasizing the need for a digital role in almost every aspect of our lives, we as lawyers must familiarize ourselves with technology platforms that allow us to continue to practice our craft. Indeed, under the Oklahoma Rules of Professional Conduct,[4] lawyers are required to provide competent representation to their clients, which includes maintaining competency in relevant technology. Spending time researching and working with a videoconference platform is crucial for attorneys. Zoom and Google Meet offer easy to follow video tutorials on their website that are fairly self-explanatory, and there are numerous online resources that contain directions for using this technology in mediations.[5] In the early days of the pandemic, mediators in my office routinely conducted their own online "test" mediation runs with family and friends using the different platforms so they

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were familiar with the technology prior to using it in mediations. It is likewise recommended that lawyers spend time working with the different platforms to become familiar with them and engage in a test prior to any online mediation. Using these various platforms is not complicated, but it does require practice.

It is also important that lawyers invest in quality technology to conduct online mediations. Obviously, participants need a solid and reliable internet connection and a computer with a camera and microphone. Many online participants are using laptops with built in cameras and microphones, but cameras can also be added to traditional desktops, preferably with features like full HD video, a microphone, autofocus, light correction and 1080p resolution. With COVID-19 likely lingering for an indefinite amount of time, lawyers should consider taking the time now to invest in and explore videoconferencing technology.

KEEP SECURITY CONSIDERATIONS IN MIND

In the first few post-pandemic weeks when the world was attempting to adjust to a new online workplace, horror stories circulated about online video security. "Zoom bombing" became a popular term used to describe the process of hackers "hijacking" a videoconference call. Numerous security measures have since been implemented that allow a mediator to ensure videoconferencing confidentiality and privacy.[6] For example, Zoom allows a mediator to create passwords for mediation participants, prohibit participant recordings of the mediation and "lock" the mediation against uninvited guests once all participants have arrived in the online mediation. Zoom also provides an option allowing the mediator to create a waiting room so that mediation participants can be screened prior to being placed in their own separate conference or "break-out" rooms. Likewise, Google Meet will allow the mediator to mute or remove participants and to approve requests made by participants to join the conference prior to their entry.

While the various platforms provide security measures the mediator can utilize, practitioners also have an obligation to ensure they and their clients take steps to maintain the confidentiality of the mediation process. Pursuant to the Dispute Resolution Act, District Court Resolution Act and the Choice in Mediation Act, communications made during the mediation relating to the subject matter of the dispute are considered confidential communications.[7] Lawyers should stress the importance of this confidentiality to their clients prior to the online mediation, and lawyers and participants alike should consider the privacy and security of their surroundings in order to take steps to confirm that no unauthorized persons or inadvertent eavesdropping occurs during the mediation process. Generally, clients should be advised to only participate in online mediation from a private location, such as their home office, with a secure (non-public) internet connection.[8]

PRE-MEDIATION PREPARATION IS ESSENTIAL

Pre-mediation telephone or videoconferences between the mediator and lawyers for the parties are crucial prior to conducting an online mediation. Specifically, the parties should explore during these conferences whether there are any specific terms that can be agreed upon prior to mediation. For example, it is common that parties can agree on release language or confidentiality language prior to the date of their mediation. Additionally, spending time preparing and circulating a form term sheet between counsel prior to the mediation with some basic, agreed-upon language will obviously speed up the mediation process and make the exchange of the final term sheets much more efficient.

Lawyers should also consider providing their statements to opposing counsel prior to the mediation. Exchange of mediation statements by the parties prior to mediation is not necessarily standard practice in Oklahoma, but with many cases proceeding to mediation with limited discovery due to COVID-19 delays and restrictions, exchange of the statements by both parties will assist in clarifying issues prior to mediation and is helpful to the mediator.

Prior to the online mediation, lawyers should also understand and plan how they will obtain their

client's signature on a final written term sheet. Some mediators will email a term sheet to the client and lawyer and have the client print, sign, scan and return a signed copy of the term sheet for distribution to opposing parties, but this is not always possible. Many clients are unfamiliar with such technology, or the parties may find there is a technical glitch that prevents the client from returning the signed term sheet. A lawyer can bind a client to a settlement agreement with the client's consent, so that the lawyer's permitted signature on the term sheet may be sufficiently binding.[9] Alternatively, programs such as DocuSign and Adobe exist that allow for the exchange of digital signatures.

Oklahoma has adopted the Uniform Electronic Transactions Act (UETA), 12A Okla.Stat. §15-101 *et seq.*, which may allow an electronic or digital signature to bind the parties to a contract in certain circumstances, but the parties must be in agreement to conduct such transactions by electronic means.[10] To avoid signature pitfalls, lawyers and mediators should consider entering into an agreement among the parties to the mediation, acknowledging the mediation is being conducted by electronic means and providing the parties may exchange electronic or digital signatures on any final mediation term sheet.[11] Thinking through and preparing for how the signatures will be obtained at the end of a successful mediation will ensure a smoother online resolution process.

ONLINE COMMUNICATIONS REQUIRE EFFORT AND PRACTICE

Eye contact is a foundation for communication in humans, and direct eye contact in a mediation is essential for both the mediator and the participants. However, making "virtual" direct eye contact in an online mediation is at first an unnatural process. A participant must speak while looking directly into the camera, so the other parties view the speaker as looking them in the eye. However, a participant must look at the screen in order to view another speaker's eyes. This process is awkward at first and takes some practice and adjustment. Additionally, hand gestures and facial expressions can appear to be exaggerated by video and can be distracting. An eye roll during a videoconference is much more noticeable than an eyeroll across the space of a conference room. Background noises are also harder to filter out during online mediations. Participants should turn off notifications on their computers, phones or other devices prior to logging onto the mediation. Most applications will allow you to "mute" yourself while others are speaking, which will cutdown on background interference.

A helpful tool to prepare for online mediation preparation is the 10th Circuit Court of Appeals' "Videoconferenced Arguments Guide."[12] The guide provides practical tips for videoconference oral arguments that translate well into online mediation. Another excellent resource is the Harvard Business Review video titled "How to Make Virtual Meetings Feel More Real."[13]

CONCLUSION

We as mediators are hopeful that we will return to the world of regularly scheduled, face-to-face mediations, but lawyers should be prepared that our "new normal" may now consist of some form of online mediation practices and should take steps to acclimate themselves and their clients to these possible changes.

ABOUT THE AUTHOR

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ENDNOTES

1. SCAD No. 2020-24, was issued by the Oklahoma Supreme Court March 16, 2020, and it canceled jury trials for 30 days and suspended statutory, rule or order deadlines in all civil, juvenile or criminal cases for 30 days. The court modified this order in SCAD No. 2020-36 on April 29, 2020, extending this suspension period from March 16, 2020, to May 15, 2020, and rescheduling all civil and criminal jury to dockets to the next available docket after July 31, 2020.
2. "Online mediation" is not to be confused with "cyber mediation." A "cyber mediation" is a fully automated system using software to create a "range" of settlement for the participants. Domke on Commercial Arbitration, §3:33.
3. www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx.
4. Rule 1.1, Comment 6, of the Oklahoma Rules of Professional Conduct requires that lawyers should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.
5. In April 2020, the Office of Dispute Resolution for the Supreme Court of Michigan published a guideline called *Using Zoom to Conduct Online Mediation: Considerations and Resources for Community Dispute Resolution Program Centers*, which provides an excellent tutorial of how to use Zoom as a mediator and includes links to several other helpful articles. courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/Zoom%20Online-Mediation%20Considerations%20v1.pdf.
6. Zoom 5.0 was released April 27, 2020, and is touted as using the most secure encryption standards.
7. 12 Okla.Stat. §§1805, 1824 and 1836.
8. Mark D. Zukowsi, "Online Mediation Goes Mainstream," 56 *Ariz. Att'y* 38 (2020).
9. Oklahoma law requires express authority for attorneys to bind their clients to settlement agreements. *Hays v. Monticello Retirement Estates, LLC,* 2008 OK CIV APP 74, ¶8, 192 P.3d 1279, 128; *Scott v. Moore,* 1915 OK 850, ¶1, 152 P. 823, 824 (attorney has no authority to settle a lawsuit without the specific authority of his client).
10. *Id.* at §15-105(b), *Rich v. DCT Enterprises of Oklahoma, Inc.,* 2018 WL 9816098 (W.D. Okla. June 5, 2018) (party who digitally signed an arbitration agreement was compelled to arbitration pursuant to the UETA); *Kluver v. PPL Montana, LLC,* 2012 MT 321, 293 P.3d 817 (email sent by party's lawyer accepting terms of a mediation agreement constituted the party's "electronic signature" on the mediation agreement, pursuant to Montana's version of the UETA).
11. Cynthia Ford, "It Was Late; The Printer Was Down," 38 *Mont. Law.* 32 (March 2013) (providing form language for use of electronic signatures in mediations).
12. *See* Videoconference Arguments Guide, The United States Court of Appeals for the 10th Circuit, www.ca10.uscourts.gov/clerk/videoconferenced-arguments-guide.
13. Harvard Business Review, "How to Make Virtual Meetings Feel More Real," (April 6, 2020) www.youtube.com/watch?v=zchEneW2890.

Informal Resolution of Title IX Cases in Higher Education

An Analysis of ADR Opportunities Under the New Regulations

By Michael J. Davis

ON MAY 26, 2020, THE U.S. DEPARTMENT OF EDUCATION released its most recent regulations on sexual harassment, including sexual assault as a particularly egregious form of harassment, under Title IX of the Education Amendments Act of 1972.[1][2] These regulations presume about 25% of all Title IX grievances will be resolved by a method of "informal resolution" through alternative dispute resolution (ADR) following the effective date of the regulations.[3] The regulations have been challenged by multiple federal lawsuits and are potentially subject to injunction, but otherwise became effective August 14, 2020.[4]

Section 106.45(b)(9) of the final regulations explicitly permits the pursuance of "informal resolution" of all Title IX investigations initiated by a college or university system with the voluntary, informed and written consent of the parties.[5] The ADR methods permitted include mediation and restorative justice techniques, so long as the claim does not involve allegations that an employee harassed or assaulted a student. Since many Title IX claims are instead student against student or take some other form, this means ADR is a permissible method of handling Title IX cases at institutions of higher education across the country for the vast majority of Title IX allegations.

The regulatory preamble states that such pathways to resolution are "alternatives to a full investigation and adjudication of the formal complaint, with the voluntary consent of both the complainant and respondent, which may encourage some complainants to file a formal complaint where they may have been reluctant to do so if a full investigation and adjudication was the only option."[6] The Department of Education defends the informal resolution process as a measure to protect the "complainant's autonomy" when they wish to pursue remedies but avoid the perhaps intimidating due-process trappings of a full formal investigation, hearing process and right of appeal on the part of the accused.[7] To state the matter more succinctly, footnote 463 of the final regulations states, "Informal resolution may present a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures."[8]

Title IX resolution by ADR methods is required by regulatory language to be "reasonably prompt" in the same manner as a full investigation. The autonomy of colleges and universities is rather broad in terms of choosing the method of resolution within these ADR processes, as the Department of Education states institutions "retain the right and ability to use the disciplinary process as an educational tool rather than a punitive tool because the grievance process leaves recipients with wide discretion to utilize informal resolution processes and does not mandate or second guess disciplinary sanctions."[9] However, no institution is permitted to mandate ADR as a condition of enrollment, employment or participation in the institution's Title IX regulated activities.[10] Additionally,

requiring mediation as a remedy to exhaust prior to formal resolution is also prohibited.[11]

The rationale behind permitting ADR in Title IX processes is based partly on attestations that victims prefer having the choice of more informal options.[12] The Department of Education also points out that ADR resolution options have the potential benefits of shortening the time of resolution, increasing the input of the parties in achieving a customized outcome and even potentially increasing the chances of a sense of justice and intent to comply with agreed-upon decisions.[13] Institutions are still free to avoid offering informal resolution processes, but it is clear that such avenues to resolution may have potential benefits, especially since the scope of ADR under Title IX is permitted to produce outcomes that still punish a respondent who committed misconduct. In terms of offering finality, the Department of Education says they expect agreed-upon ADR resolutions to be binding once signed in the same manner as a contract.[14]

Prerequisites to ADR under Title IX include written notice to the accused, disclosure of the allegations in detail, disclosure of any requirements of the informal resolution process, information about any prohibitions on resuming formal process, the right to withdraw from ADR prior to a final agreement and notification of potential disclosability of records kept regarding the informal resolution process.[15]

TYPES OF ADR PERMISSIBLE UNDER TITLE IX

The regulations specifically mention mediation as a potential ADR method, but other methods of informal or agreement-based resolution are permitted by implication under the phrase "or other informal resolution."[16] These include the negotiation of a binding agreement by the parties with or without a mediator, an admission by the accused party of responsibility for their actions and willingness to accept specified sanctions and agreement to a written, binding document written by the institution as an author. However, since affirmative written agreement with a final outcome is required by the parties for ADR under Title IX, arbitration is not a permissible route of informal resolution, since traditional arbitration means that a decision is made by a third party without the explicit consent of the parties as to the final determination.

MEDIATION UNDER TITLE IX

Mediation can be a beneficial and productive exercise in resolving conflict in Title IX disputes primarily because the resolution is designed, in detail, by the disputing parties themselves.[17] Research has shown that when parties design their own resolutions to disputes, compliance with the terms of those agreements is more likely.[18] However, because cases of sexual harassment and assault are extremely sensitive, sometimes with simultaneous ongoing criminal investigations, not every investigation will be appropriate for mediation – in fact, very few will.

In 2011, the Dear Colleague Letter distributed as sub-regulatory guidance to colleges and universities by the U.S Department of Education, which has since been withdrawn, actively discouraged mediation as a resolution method, especially for sexual assault cases.[19] While mediation is not explicitly discouraged under the new regulations, there are practical considerations for hesitancy on the part of the institution prior to any mediation, even if it is sought by the parties. Parties who are actively hostile, have vastly diverging interests in the outcome or who have exhibited behaviors not conducive to achieving an agreement through dialogue are likely not going to be able to reach agreement in good faith. If litigation or a criminal investigation is likely, there is a risk information shared in the mediation may become disclosable to law enforcement authorities or civil depositions in a manner the parties may not expect. Finally, if the parties are imbalanced by one having an attorney and the other without, concerns of coercion within the mediation are warranted.

Before agreeing to mediation, an institution of higher education should make an independent and objective determination that the disposition of the investigation would benefit from an attempt to achieve a mutual agreement with the help of a mediator. This analysis can consider whether there is or was any hesitancy on the part of the complainant or respondent in agreeing to mediation, the nature of their questions or concerns about mediation and whether any pressure has been exerted upon them by third parties to be more agreeable to mediation than they seem otherwise inclined. Once these gatekeeping factors are cleared, the parties should be reminded they can end the informal mediation process at any time.[20] A trained mediator, someone who has no connection at all to either party, should facilitate as the mediator in an objectively neutral and nurturing manner, without bias, prejudgment or proposals of their own ideas for resolution.

AGREEMENT-BASED RESOLUTION

Agreement-based resolutions have been used for many years in Title IX processes at colleges and universities and are one of the most common informal resolutions currently used.[21] An agreement-based resolution is a proposed agreement that comes

fully-formed either from a party or from the institution itself and not as a result of dickering terms in a mediation. In a typical situation ripe for agreement-based resolution, a complainant contends they have a preferred outcome they wish to see implemented to end the Title IX investigation, and the specified outcome is one the respondent might be agreeable towards. An example is a case where a complainant who feels harassed by sexual text messages from the respondent wishes for them to cease and desist and for the university to enforce such desistance by implementing a no-contact agreement between the parties. Because this preferred outcome is not so bold as suspension or expulsion and seems to be reasonable even if the respondent believes the conduct was not harassment, an agreement-based resolution may be both possible and fair. Indeed, the implementation of the agreement by both parties' signatures takes the harsher sanctions effectively off the table and offers peace of mind to the parties that the investigation is over without appeal and has finality. In cases where more creativity is needed to draft an agreement, the likelihood of disagreement is heightened. Nearly all agreement-based resolutions are predicated on the respondent being permitted not to admit a policy violation.

ADMISSION AND AGREEMENT TO SANCTIONS

There are times in Title IX investigations when a respondent admits their misconduct, expresses remorse and expresses a willingness to submit to fair sanctions. Once an admission is documented as part of an investigation, a respondent often has a much greater willingness to agree to be sanctioned without continuing through all the intimidating trappings of the formal Title IX process, such as forensic interviews, production of an investigative report, a hearing and administrative appeal. However, the exact nature of the sanction itself may be a major factor in their willingness to agree. If the conduct was severe, such as a physical assault, an institution may rightly be unable to accept ending the Title IX investigation for any agreed-upon sanction short of suspension, and the complainant may have similar concerns as well. But for a vast array of cases, suspension is not the preferred outcome of any party, including the institution itself, and an agreement to lesser sanctions has a much greater chance of likelihood.

WHEN NOT TO IMPLEMENT ADR UNDER TITLE IX

While the new regulations do not have many prohibitions on informal resolutions in Title IX cases, and in fact seem to encourage their use, even the Department of Education states they only expect 25% of cases to end through informal resolution.[22] Every institution of higher education should appreciate the distinct interests at stake by all parties involved in a Title IX investigation, which are not just limited to justice. Both complainants and respondents care deeply about their dignity, the feelings of friends and family and their public image and reputation. Due to all these overlapping and sometimes conflicting considerations, a majority of cases may not result in informal resolution even if such a resolution is attempted and fails. Sometimes the attempt and failure only harden positions and make the investigation and hearing even more acrimonious. For these reasons, Title IX coordinators and other higher education administrators should be careful to utilize these ADR options only when the circumstances have favorable hallmarks of a likely success. These hallmarks include generally agreeable parties, clearly articulated and fair preferred outcomes, open-mindedness, an absence of vendettas or malice and a strong interest in finality or avoiding more formal and intimidating settings for resolution.

ABOUT THE AUTHOR

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ENDNOTES

1. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Rule, 85 Fed. Reg. 30,026 (May 19, 2020).
2. 20 U.S.C. 1681 *et seq*.
3. 85 Fed. Reg. at 30,569 n.1970.
4. 85 Fed. Reg. at 30,026.
5. *Id*. at 30,578.
6. *Id*. at 30,083.
7. *Id*. at 30,086.
8. 85 Fed. Reg. at 30,098 n.463.
9. *Id.*
10. *Id.*
11. *Id.*
12. National Academies of Science, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Frasier F. Benya et al. eds., 2018).
13. 85 Fed. Reg. at 30,400.
14. *Id*. at 30,405.
15. *Id.* at 30,578.
16. *Id.* at 30,055.
17. Adam Laytham, *Mediation and Misconduct: A Better Way to Resolve Title IX Disputes*, 2020 J. Disp. Resol. 191 (2020).
18. James A. Jr. Wall & Ann Lynn, *Mediation: A Current Review*, 37 J. Conflict Resol. 160 (1993).
19. *Office for Civil Rights, U.S. Dep't of Educ. Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 3-12 (2001) [Rescinded]. www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf.
20. 85 Fed. Reg. at 30,578.
21. Gene Roberts & Kay Elkins Elliott, *Title IX Mediations: An Initial Review*, 23 Alternative Resol. 35 (2013-2014).
22. 85 Fed. Reg. 30,067.

Foundations for Family Law Mediation

By Grant Brown

FAMILY LAW COURTS OVERWHELMINGLY ORDER COUPLES to mediation before setting a case for trial. As an alternative resolution measure, it's a viable way for couples to resolve the issues in their case with less acrimony and for less money. That's the "why" that lands couples in mediation. Success then largely rests in the mediator's hands. To be a mediator requires the skill to create a conducive environment, as well as understand the settlement process. It's as much about the "how" as the "what."

As soon as the couple sets foot in the office, the environment created takes center stage. These are couples tasked with dissecting every aspect of their personal lives – from the cars to the house to the kids. Litigants should be made comfortable, and that includes assigning them separate rooms with their respective attorneys. In the presence of the opponent, most people won't say what they want and think.[1] I get farther faster with litigants in separate rooms versus staring at each other from across the table. Another tip: provide sustenance – they are in for a long day.

As an important factor, I only allow third parties in extremely rare circumstances. The third-party friends and family members offering their personal advice to the litigants is often the reason they are litigating and in my office in the first place. These parties were able to have and raise children together, acquire assets and debts together. They should be making the decisions related to these issues, not a third party typically biased against the other side.

Regarding formality, some of the conventional rules for attorneys should be eschewed. For example, there's nothing wrong with ditching the traditional suit and tie in favor of casual clothing, maybe even shorts. I frequently mediate in shorts, and all the attorneys who mediate with me know this is a possibility. It's the mediator's task to create the dynamic between the parties that accommodates their individual needs and a path to a legal resolution. Suits scare most litigants. When I walk in with shorts on, it puts the parties at ease, and if they were at a nine on the stress level, it often immediately drops to a five. The more relaxed the litigant, the more rapport they develop with the mediator, and the likelihood of successful mediation increases exponentially.

I understand this is against every old-school rule that exists, but people want empathy, and too many mediators lack that quality. You have to listen to people and stop talking. If the mediator talks the entire time, it shows no empathy toward the party – and, often, the horrible situation. This does nothing to settle the case. Anything the mediator can do to relay a sense of commonality, of actually caring, leads to success, not failure.

THE MEDIATION STARTS NOW

Moving past setting the scene, I have a game plan I follow. I always start with a speech. The speech is not about me – I have learned over the years that no one cares about my accomplishments or accolades. I have always viewed a 20-minute introduction of how wonderful the mediator is and how successful they have been in their lives as a waste of the litigants' time and money. My speech instead informs each party of the practical concerns and information they need to understand so we can effectively mediate. Everyone feels more at ease when they understand the process before

diving into the deep end. This is also the mediator's first chance to set the tone, get them smiling and convince them to trust this person offering advice about their assets and children.

Before moving into the substance of mediation, make sure both parties understand this is not a trial. The mediator is not the finder of the truth nor facts. The litigants need to realize this is their opportunity to settle their disputes on terms they can live with instead of taking their case into the unknown at the courthouse – they hold the final decisions in their hands. The next step is into the courtroom in front of their judge who tells them what will happen with their kids and their property. Help them understand they still control the outcome with mediation. There's much more left to chance should they fail to agree and move to trial.

Once the initial framework is in place, the mediator transitions to identifying the issues. From the onset, listen. Identify what's important to that person. What are the primary concerns? Money? Custody? Property? All the above? Find out what each party *wants*, whether it's legally viable or not – addressing legalities comes later. Each party wants to present their case, and just having the chance

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to be heard by someone and “say my piece” goes a long way toward likely resolution.

What may be important to one side may be the least important issue in the other room. It’s important to understand this from the beginning, as these are the key negotiation points for settling the case. I generally do not leave the first room without an offer that covers all issues that need to be addressed in order to have a final agreement. That seems like a daunting task but consider this: going back and forth multiple times without a firm offer addressing all the issues wastes time and money. Get to the point, get there quickly and then get into the other room and figure out what the other side loves about the proposal and what they hate. The faster this is done, the better.

WORKING THROUGH THE PROCESS

After the concerns and desired outcomes are on the table, begin weaving through the expectations of reality – what each litigant is likely to “get.” It’s an opportunity to educate regarding the law applied. The term “counselor” factors heavily into the mediator’s role, both in the legal and practical sense of the word. A mediator cannot give legal advice, but this does not mean we cannot share practical advice. Practical advice is defined as an opinion, thought or idea on how to settle a case. A mediator with no opinion or ability to think outside the box is again a waste of time and money. There is no harm in sharing an opinion, so long as the litigants understand and have been instructed the mediator’s opinions should never be substituted for the legal advice of their attorney. Many times, the mediator reinforces what the party has already heard from the attorney, and a good attorney stays out of the way in the periphery for legal advice. In some of the best mediations, the attorneys don’t say anything!

I have experienced litigants begging me with their eyes to get their case settled by any means, all the while the respective attorney is strongly advocating to not settle or creating such terms that it becomes unreasonable to settle. This is dangerous and difficult to watch. A good mediator can usually tell within the first 30 minutes if the attorneys want the case settled or if today is just a good billing opportunity – they want to keep on the litigation train to trial. Derailing this train is a difficult part of mediation, but it’s not about the attorneys’ wants and wishes. Rather, it’s about the litigants and getting them to an agreement they can live with so they can stop litigating. I understand this may not be a popular thing to say, but it is true. It’s a problem I have witnessed too many times to not mention it in this article.

MEDIATION ADVERSITY AND HOW TO HANDLE IT

At some point, a mediator faces hostile or difficult litigants. What do you do with the challenging party? Enter the room understanding that one person may not want to be involved in this case in the first place. Or that years of abuse have taken their toll. Or that there’s money exchanging hands that this person resents handing over. Or suffering from a physical or mental illness predating any of this process. A successful mediator needs soft skills to diffuse the acrimony, to be the calm in the tempest. Again, listen. Empathy must take center stage at this point in the mediation. If you hit a sore subject with a litigant, recognize it quickly and pivot to other issues in order to build more confidence before circling back around.

All the above seems time consuming. It is, and it isn’t. The old adage “go slow to go fast” applies to the entire mediation process. With the foundation in place, the shift to legal work begins. Take each expressed issue to task. Match the wish to the legal reality. Take the time to explore every detail.

For example, should the support alimony provision carry a commensurate life insurance policy? Exactly what time and at what gas station or police station should the parties exchange?[2] The proverbial devil is in the details. Experienced mediators address the fine print before sending parties out the door to draft final documents. Again, don't be afraid to share an opinion. Mix the practical with the logistical and the legalities. Most importantly, do not leave the room without an offer. The mediator's role is to guide everyone to a resolution, and that cannot happen without concrete, detailed offers and provisions.

WRAPPING UP A MEDIATION – PUT IT IN WRITING

This entire process must repeat with the other party. Once the parties reach an agreement, put it in writing. I have seen the fallout from litigations with dysfunctional or incomplete mediation agreements. Take the time to be thorough! Handwritten, abbreviated gibberish on notebook paper leads to misunderstandings when the attorneys try drafting the final documents. It often renders the entire mediation useless and becomes a source of frustration to the parties who thought they agreed to one thing, but the chicken scratch indicates something else.

The mediation agreement will become the playbook for attorneys and parties when they put pen to paper. Have everyone review the thorough, typed mediation agreement, review it in full in each room and have all parties and counsel execute a signed copy before they leave. I have also seen catastrophes when the mediator types up the mediation agreement later (or delegates it to staff) and then circulates it with the attorneys. Almost every time, somebody disagrees with the wording, wants a change or realizes the mediator has missed some important aspect of the agreement. The parties then get to pay the attorneys to remedy what could have been avoided by taking the time at mediation to do it the right way.

WHAT DOES IT TAKE TO BE AN EFFECTIVE MEDIATOR?

Now we come to the realities of being a mediator. Put bluntly, not everyone is destined to be a mediator. While this may not be a popular statement, it's the practical truth. How many times have we gone to a mediation and walked away thinking, "This mediator was a waste of time and money." Mediating with someone ineffective is not only frustrating but can further harm and sabotage the case. These flawed mediations will often mislead the parties regarding the law and, even worse, the likely outcome of issues before the court.

I frequently hear attorneys say, "I'm thinking of getting into the mediation business." I do not believe one "gets into the mediation business." I believe that becoming a mediator finds you, based upon personality and other intangibles that most people in general (including attorneys) do not possess. It's tough to put a finger on what makes a good mediator. Is it empathy? Is it a smiling face? Is it the knowledge and ability to tell people when they are being unrealistic? Maybe it's the shorts! The exact answer is difficult to pinpoint. What makes a great quarterback? What makes a great baseball player? Most people say it is the intangibles those people possess, but very few can explain what those mean. Those qualities that a person has distinguish them from the majority of the people in their industry. I believe these soft skills are something you either have or you don't.

The majority of those who mention they want to be a mediator draw an instant reaction of either two things: they could actually be a good mediator, or this will be a disaster if this person did a mediation. Of course, one would never say this out loud, and I encourage anyone who wants to try mediation to take some initial steps. I would encourage those that are

considering throwing their hat into the mediation ring to find several good mentors, mediators they can shadow and observe how they operate. I do not believe there is such a thing as the perfect mediator. The best mediators utilize the positives they gain from watching other mediators and quickly develop a list of "things not to do" during the process. Learn what worked and what led to disaster. This information can be derived by mentoring, training and being observant while participating in mediations while representing your clients. I have pieced together a mental database of what works and what does not work through experience. This is something I believe training cannot teach a person. It's analogous to graduating from law school and thinking you are ready to conduct a murder trial. Experience is everything.

THE NEW WAVE OF MEDIATION – WHERE ARE WE GOING FROM HERE?

The times we live in are drastically changing when it comes to practicing law and conducting mediations. With the global pandemic, litigants and attorneys are finding it more difficult to get resolutions through the court system. Mediation becomes the most cost-effective and quickest way to obtain a resolution, including temporary relief that is not otherwise available.

Attorneys who are accustomed to mediating their cases in person are struggling with the new concept of virtual mediations such as Zoom or BlueJeans. While conducting a mediation in person is certainly the most effective way to successfully settle a case, the concept of virtual mediations has taken off. Everyone, including myself, was skeptical about virtual mediations and their effectiveness. I am convinced now after conducting a large number of virtual mediations, this may be our new normal. My settlement rate has not changed from in-person mediations to virtual mediations. A mediation is either going to work or not, regardless of the setting. Those who previously refused to embrace the new technology and this new normal have either jumped on board quickly or will slowly fade away.

Attorneys from remote counties enjoy participating in virtual mediations because they save the hassle of driving to and from the mediator's office located in other cities. This time saved from traveling translates to additional opportunities to work on their other cases, which results in more opportunities to earn money. The other added benefit is you can participate in the comfort of your own office, which translates to higher productivity while the mediator is in the "other virtual room." With the onset of virtual mediations, I have found myself no longer in the minority of those who mediate in shorts.

It's taken time, reflection and refining to grow my mediation practice. I became a mediator by accident. As it so happened, I was the only other attorney in a courtroom while two attorneys fought it out over their choice of mediator. The judge turned and said, "How about you use Grant?" As I was friends with both attorneys, I agreed even though I had never acted as a mediator in a case at that time. One mediation became a few, then became many, and now mediating comprises approximately 50% of my practice, averaging 20-25 mediations per month.

Insight into the "why" and "how to" of mediations is important for any practitioner regardless if they are conducting or participating in a mediation. Careful planning, attention to detail and being thorough tends to save clients money and save the attorneys additional time. In our industry, time is everything. Mediating your case is a smart way to litigate and is most likely to result in a reasonable outcome for your client, which results in their happiness. Isn't the goal of every litigator to obtain a reasonable outcome for our clients and make them happy? I urge everyone who has not considered mediation as an alternative to imminent litigation to give it a try, and by all means, try it in shorts.

Author's Note: I'd like to thank Kelsey S. Holder, an assistant professor of legal writing at the TU College of Law, who helped edit this article.

ABOUT THE AUTHOR

Grant Brown is a partner with The Firm on Baltimore PLLC in Tulsa. He primarily focuses on family law and has successfully settled over 1,000 family law cases as a mediator. He received his J.D. from the TU College of Law.

ENDNOTES

1. It is essential to be apprised of any protective orders in place. Advise legal staff and have a system in place to keep parties separate in this instance.

2. As an aside, unless there are protective order concerns or convincing reasons, I strongly discourage gas station and police station exchanges. Nobody wants to wait in a convenience store parking lot and entertain children for chronically late people, nor do we want children associating the police station as where they go to see mommy or daddy.

JOIN THE ALTERNATIVE DISPUTE RESOLUTION SECTION

Membership in the OBA ADR section is an excellent opportunity to collaborate and network with lawyers and mediators who are committed to advancing quality ADR processes. The investment in section dues is minimal and the benefits include free CLE and monthly section meetings.

FREE CLE FOR MEMBERS:

Please join us Monday, Nov. 9 on the first day of the OBA Virtual Annual Meeting for up to six FREE hours of CLE credit.

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Nominating Petition Deadline was 5 p.m. Friday, Sept. 11, 2020

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Current: Michael C. Mordy, Ardmore
(One-year term: 2021)
Mr. Mordy automatically becomes OBA president Jan. 1, 2021
Nominee: **James R. Hicks, Tulsa**

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Tulsa county
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(Three-year term: 2021-2023)
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Nominee: **Kara I. Smith, Oklahoma City**

NOTICE

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

Terms of the present OBA officers and governors will terminate Dec. 31, 2020.

An election will be held for the Member At Large position. The Oklahoma Supreme Court has issued an order (SCBD 6938) allowing the OBA to conduct its Annual Meeting in an alternative method to an in-person meeting allowing delegates to vote by mail. Ballots for the election were mailed Sept. 21 with a return deadline of Friday, Oct. 9. Runoff ballots would, if needed, be mailed Oct. 19 with a return date of Monday, Nov. 2.

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5 Women Honored for Leadership

Mona Salyer Lambird Spotlight Award

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

This is the 24th year for the awards to be presented by the OBA Women in Law Committee. The 2020 award winners will also be honored at the 2021 Women in Law Conference.

Rachel Blue

After receiving her J.D. from the TU College of Law in 1988, Rachel Blue went to work in Washington, D.C. for the U.S. Patent and Trademark Office as an examining attorney. She returned to Tulsa in 1995 to focus on her intellectual property practice, serving twice as president of the OBA's Intellectual Property Section. A shareholder at McAfee & Taft, she has served as the Intellectual Property Practice Group leader and chair of the Women's Initiative.

She developed the firm's annual Off the Record event, which she hosts with her colleagues from McAfee & Taft. The event brings women law students together with women lawyers from the bench, private practice, nonprofits and industry for straight talk conversations about issues and concerns women face in practice that are not typically discussed in the classroom.

Ms. Blue has long been active in the TU College of Law's Alumni Association, chairing various committees and serving as its president. She currently serves on the Dean's Advisory Board. In 2017, she received the Tom Coffman Community Service Award and was inducted into the TU College of Law's Hall of Fame. She is TU's 2019 Fern Holland Award recipient.

She volunteers as a lector at Christ the King in Tulsa, where she and her husband, Tom Vincent, also serve as mentors for engaged couples preparing for marriage. Active on the Board of Directors for the Tulsa Day Center for the Homeless, she has served in several roles, including president. She spends the rest of her time ruining her teenager's life.

Nicholle "Nikki" Jones Edwards

Nicholle "Nikki" Jones Edwards succeeds under many titles: mother, lawyer, teacher, volunteer and philanthropist. Her passion and determination shed light on how she excels in such disparate capacities.

Born in Tulsa in 1969, her interests led her into law. By 1997, she graduated from the OU College of Law and began practicing family law. In 2013, she joined Phillips Murrah PC, where she leads the firm's Family Law Practice Group with a focus that includes complex custody, valuation issues, general civil litigation and appellate matters.

Ms. Edwards is a community leader. Her 20-year dedication to Positive Tomorrows, a school for homeless and at-risk children, includes being past president and a four-term board member. She is a member of the Oklahoma City Ballet Board of Trustees, president-elect of the Oklahoma Single Parent Scholarship Program and was a founding member of the OU Women & Gender Studies Advisory Board.

She is currently a distinguished practitioner in residence at the OCU School of Law, where she teaches an experiential litigation practicum course. She has been active in the Ruth Bader Ginsburg American Inn of Courts since 1998 and was mentoring co-chairperson from 2001-2005. She is also a member of the Oklahoma County Bar Association, where she is a leader in the areas of diversity, community service and ethics.

Sculptures to be presented to Mona Salyer Lambird Spotlight Award recipients.

She was recognized by *The Journal Record* as one of its 50 Women Making a Difference and received their Leadership in Law Award. She has also been honored by Martindale-Hubbell as a pre-eminent female lawyer.

Katheleen Guzman

Katheleen Guzman has taught law students and has learned from them since joining the OU College of Law faculty as an associate professor of law in 1993. She was named MAPCO/Williams presidential professor in 2000 and Earl Sneed centennial professor of law in 2015. Having served in assorted administrative positions throughout her OU Law tenure, she was named interim dean and director of the OU College of Law in June 2019.

Ms. Guzman has received numerous teaching awards, including the 2014 Medal of Excellence from the Oklahoma Foundation for Excellence for Research University Teaching and the 2008 Merrick Foundation Teaching Award from OU. The law school student body has also shared teaching and mentorship awards with her over the years, including inviting her to participate in convocation as one of three professors chosen to hood the graduates. Her scholarly passions rest within the intersection of culture, property and its transfer.

She earned a B.A. with honors and a J.D. with highest honors from the University of Arkansas, where she served as articles editor for the *Arkansas Law Review* and received the Outstanding Law Student Award from the National Association of Women Lawyers. After earning an LL.M. from Yale Law School, she worked as a litigation associate with the Philadelphia law firm of Dilworth Paxson. She has been a visiting professor of law at Villanova University and recently completed a three-year term on the Yale Law School Association Executive Committee.

Judge Sharon Holmes

Judge Sharon K. Holmes is a 1977 graduate of Booker T. Washington High School in Tulsa. She received her bachelor's degree from Loyola University in New Orleans and her J.D. from the OCU School of Law. She is a member of Alpha Kappa Alpha Sorority Inc.

Before being elected to the bench, Judge Holmes was a criminal defense attorney, and prior to that, she was an assistant district attorney for Tulsa County. In 2015, she took the bench after an election, which made her Tulsa County's first Black female district court judge. She was recently re-elected to her second term. She currently presides over a criminal docket.

Judge Holmes also proudly served in the U.S. Air Force.

Judge Aletia Haynes Timmons

Judge Aletia Timmons serves as a district judge in Oklahoma County, District 7. She graduated from John Marshall High School in Oklahoma City, earned a B.S. in political science with a minor in history from OSU in 1983 and obtained her J.D. from the OU College of Law in 1986.

Prior to election to the district judgeship in 2014, she was a solo practitioner at her own firm, Timmons & Associates. Before that, she was in private practice with the Abel, Musser, Sokolosky, Mares & Kouri Law Firm, where she founded the civil rights and employment law litigation section. Previously, she served in the Civil Division of the Oklahoma County District Attorney's Office. She began her legal career with General Motors Legal Services.

She was admitted to practice in the U.S. Circuit Court of Appeals for the 10th Circuit and the U.S. District Court for the Northern, Western and Eastern Districts of Oklahoma. She was Gov. David Walters's appointee on the Committee on the Status of Women. She also served as the appointee of the chief justice of the Oklahoma Supreme Court on the court's Times Standards Committee. Judge Timmons has also been an instructor at Langston University's Oklahoma City campus. She is a CLE speaker for the OBA's continuing education programs, and she is also a co-founder/sponsor of Jamming Hoop Fest, a summer basketball program designed to keep youth in northeast Oklahoma City out of trouble.

Be Involved – Join a Committee!

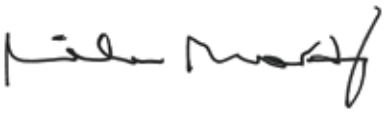
OBA COMMITTEE membership is good for you, good for our organization and therefore good for all! OBA committees cover a wide range of subject matter and topics.

OBA committee membership helps you make new acquaintances and creates collegiality amongst its members. Involvement will help you become better known in the legal community and develop referral and mentoring relationships with attorneys across the state. Working with other attorneys on a committee will further promote pride in your profession and remind you of what great colleagues you have.

Committees are currently meeting remotely but will hopefully have occasional in-person meetings sometime in the future, allowing you to get to know your fellow committee members even better. Some committees are devoted to service in the communities where we live and practice, which will enhance the image of our profession in your community.

I promise your participation will be a rewarding experience and not a burden. You will give less of your time than you might think and gain far more than you contribute. Committee membership is like great experiences in life – you think participation will be burdensome but winds up being enjoyable and rewarding. You owe it to yourself and your profession.

Sign up now! Go to www.okbar.org/committees and click "Committee Sign Up." We will be making appointments soon. Thank you for your participation.



Michael C. "Mike" Mordy
President-Elect

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

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

ADR

By John Morris Williams

THIS MONTH'S BAR JOURNAL theme of alternative dispute resolution makes for the use of an easily recognizable acronym. ADR can also stand for Always Do Right. In the current course of events, these two concepts actually can align very nicely.

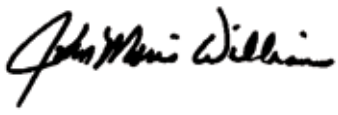
The OBA, as a partner with the Oklahoma Supreme Court Access to Justice Commission, helped launch the "Let's Talk Housing" project. The goal of the project is to help landlords, tenants, homeowners and lenders find alternative resolutions to evictions and foreclosures during the drastic downturn in the economy brought on by the COVID pandemic. In Oklahoma, the accompanying collapse of oil and gas prices only compounded the problem. Fortunately, for now, the evictions are not as bad as first thought. The original stay of evictions contained in the CARES Act has run its course, and there is an amount of uncertainty with the executive order that seeks to continue the moratorium on evictions and foreclosures. At some point, all the stays and moratoriums are going to end, and rent and mortgages will be required to be paid.

Research shows that persons who face an eviction or foreclosure have a significantly greater chance of having long-term housing issues. Once an eviction or foreclosure goes to judgment, that record follows a renter or homeowner forever. The state of Oklahoma and the city of Oklahoma City have allocated CARES Act funds for housing, and many nonprofits across the state have made funds available for housing assistance. Getting people and resources aligned is at times a big undertaking, and by utilizing the Oklahoma Supreme Court Early Settlement Program, a great opportunity exists to find alternative resolutions to evictions and foreclosures. Keeping people in housing during a pandemic is especially important.

With the support of Chief Justice Noma Gurich and Phil Johnson, who coordinates the Oklahoma Supreme Court Early Settlement Program, Oklahoma lawyers have a great opportunity to do something that is really right. Utilizing OBA CLE resources, the OBA in this partnership has created an opportunity to get early settlement mediation training online – which also results in 6.5 hours of free CLE. The result for lawyers is they have an opportunity to do something that is of a great service and to obtain a mediation certification to help expand into a new area of practice. For complete details go to www.okbar.org/lets-talk-housing-program-addresses-covid-19-related-evictions.

I must compliment Oklahoma City Vice Mayor and OBA member Mark Stonecipher and Oklahoma City Councilperson James Cooper for bringing these issues and the search for solutions to our attention. President Shields and the OBA Board of Governors gave their instant support for the OBA to assist where it could in these endeavors. Chief Justice Gurich was invaluable with her support, and Phil Johnson with the Early Settlement Program made things happen quickly once the plan was hatched. Janet Johnson, our newly hired director of educational programs, rolled up her sleeves to ensure the training was online, free of charge. And I would be out of line not to give credit to Katie Dilks, the executive director of the Oklahoma Access to Justice Foundation for helping to spearhead the resolution passed by the Oklahoma Supreme Court Access to Justice Commission. It always helps when you have a host of people who always do right. Thanks to each of them.

Putting it as plain as I can, this is the right way to do right. By utilizing ADR, we can be part of Always Doing Right. ADR helps to ADR! I want to encourage all OBA members to become part of this ADR opportunity to uplift the legacy of the OBA's commitment to ADR!



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

From the President

At the 2003 Women in Law Conference are (from left) President Melissa DeLacerda, Vice President Stephen Beam, U.S. Supreme Court Justice Ruth Bader Ginsburg, President-Elect Harry Wood and Past President Gary Clark.

(continued from page 4)

Awards were first given in 1996, and Mona was one of the inaugural year recipients, along with four other distinguished honorees.[1] She died in a tragic automobile accident overseas in 1999, and I still recall the shock and sadness of learning of her death.

The renaming of the award to honor Mona Salyer Lambird following her death is an indication of her important role and legacy in our legal community. In some fitting symmetry, Justice Ginsburg visited Oklahoma for the September 2003 Women in Law Conference in Tulsa during the term of Melissa DeLacerda, who was the second female president of the OBA. In the time period since Mona and Melissa served as OBA presidents to now, there is no longer any novelty about having a female bar association president. In fact, in the last decade, six out of 10 OBA presidents have been women.

My legal career began at a time when gender issues were still significantly different, however, so it has always been important to me to pause and be grateful for those who made my path so much easier. We must all remain conscious of the fact that we all are made better because of those who commit themselves to equal justice under the law and work to ensure there is a place at the table for everyone. Let's strive to continue that progress in the mentoring and teaching of our next generation of lawyers.

As always, please do not hesitate to contact me with your questions, comments and suggestions at susan.shields@mcafeetaft.com.

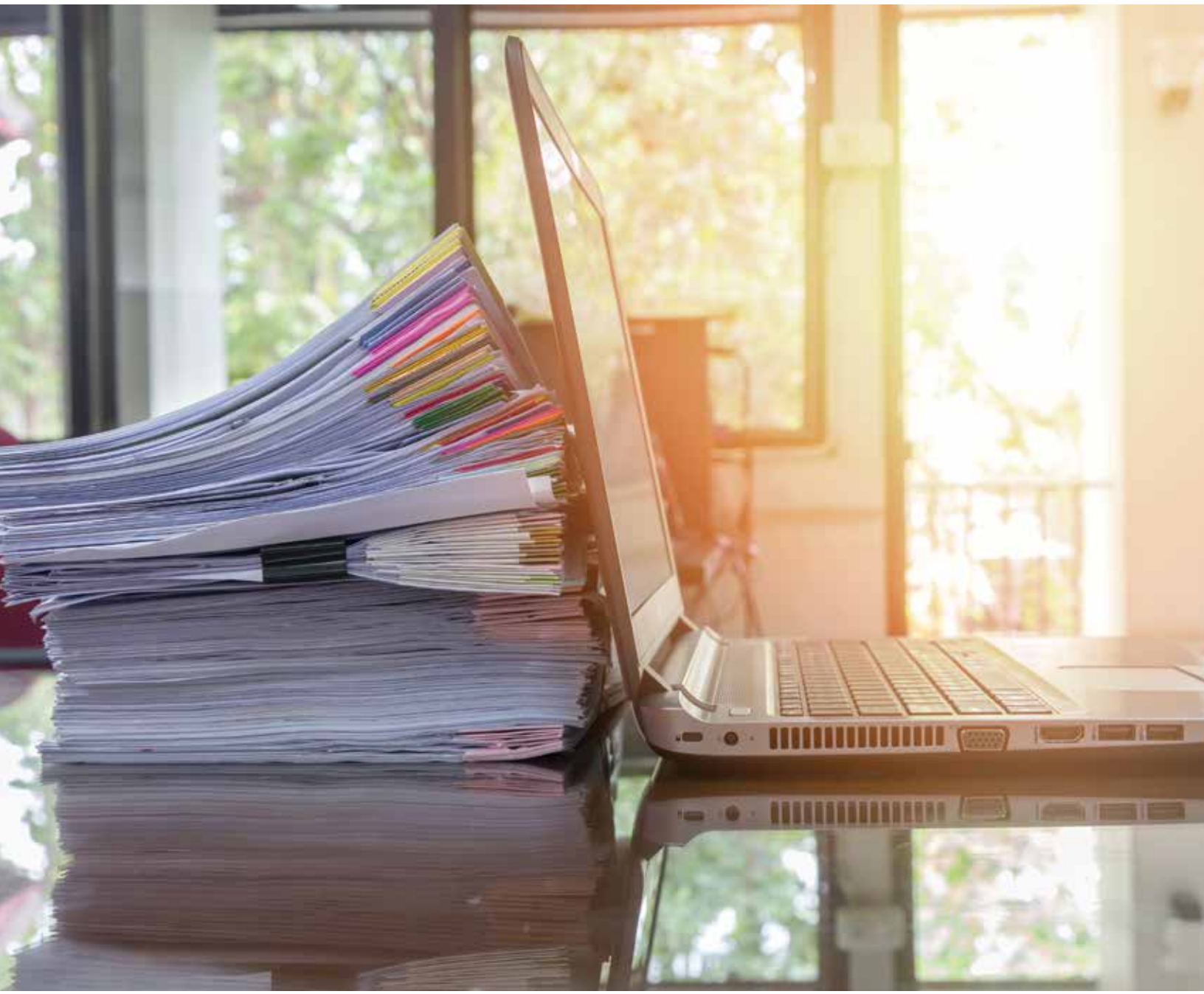
ENDNOTE

1.The other 1996 inaugural honorees were Yvonne Kauger, Stephanie Seymour, Reta Strubhar and Alma Wilson.

We must all remain conscious of the fact that we all are made better because of those who commit themselves to equal justice under the law and work to ensure there is a place at the table for everyone.

Observations of Today's Law Firm Client Files

By Jim Calloway



EACH CLIENT'S INFORMATION is maintained by the law firm in the client file. Lawyers do not frequently use the term data, but it is data that is contained in the client file, and data from the client file is used to deliver legal services to the client. Our tradition, however, involved "extracting" the data by reading or scanning written documents and taking notes. That will likely always be something lawyers do, reviewing documents to see what is important.

But reading the documents you created to recall the date of the accident or how many children your client has is not an efficient 21st-century process. And most lawyers don't have to do it that way. They may have a quick-reference datasheet. It may be called Initial Client Interview. Looking at that was quicker than reading legal documents, but it could trip one up if a mistake was made during the interview that was fixed before the document was executed.

In the pre-computer days, my law firm had a form printed on construction paper we called File Opener with all of the client's contact information, the basics of the matter, a place to handwrite opposing counsel's information and places to jot down new dates if matters were reset. The form stayed on the top of one side of the file for quick reference and was often removed to file documents under it – hence the need for construction paper. That concept could still be useful today as many lawyers who have converted to digital client files still have a "back up" paper client file to take to court with them.

But that's not how we do it today! Today we search. Today we organize data. This brings me to what some would consider a controversial statement that many of my professional colleagues also consider obvious. Digital client files are superior to paper-based client files. It is true today and will be truer going forward. This does not mean that lawyers who are using paper-based files to represent their clients are doing anything wrong concerning their client representation. The legal profession has traditionally used paper-based information management tools from client files to exhibits entered into evidence at court to legal treatises. For centuries, paper was the best way to organize information.

TODAY DIGITAL TOOLS ARE REPLACING PAPER-BASED ONES

Business operations run digitally. When a business converts its data to digital, it can be used more effectively. And yes, the legal profession is lagging a bit in this transition to digital compared to many other types of businesses.

The most obvious reason a digital client file is superior to files held solely in traditional file folders is a digital client file can be securely backed up and the client's information protected, while paper files can be destroyed or lost. Fires and natural disasters do happen, but they are rare. Hard drive crashes are also rare. Malware attacks are a greater danger. If this was the only reason digital client files are superior, the weakness could be remedied by an appropriate data backup regime. Digital client files also:

- Allow the lawyer to locate any document in the client file with a mouse click or two
- Allow for more than one person to work on a client file at a time
- Allow for easier remote access
- Provide for easier and secure sharing of client information with the client or co-counsel
- Allow lawyers to use specific data with automated document assembly functions
- Result in never misplacing the client file
- Make it much easier to quickly check the current status of projects.

During the 2020 shelter in place period, law firms immediately experienced the reality that digital client files were superior in the event several people from the law firm needed to have access to the client file, particularly if they were working from different physical locations.

During the 2020 shelter in place period, law firms immediately experienced the reality that digital client files were superior in the event several people from the law firm needed to have access to the client file, particularly if they were working from different physical locations.

For solo and small firm lawyers, the structure and sophistication of a practice management software solution is of great value for managing and organizing digital client files. But even larger law firms should explore these tools if their "homegrown" solutions are not meeting their needs. Practice management tool Clio is a sponsor of the 2020 OBA Virtual Annual Meeting. Discounts codes for OBA members for Clio and other practice management solutions are available to new subscribers by logging into MyOKBar.

I frequently talk with lawyers who have been planning to make this move for some time but can't find the time to do so. In fact, I talked to one lawyer three Decembers in a row before his law firm finally made the move. The monthly subscription fees for these tools that provide data storage, time and billing and client portals are well worth the price. I have been making this pitch for years now, and now many law firms use these tools. But many still do not. It is a business choice.

SECURE CLOUD-BASED STORAGE IS A MUST

A lawyer or law firm may decide to not utilize complete digital client files. But having some method of secure, online storage is an important tool and a good insurance policy to protect against critical document loss, at least when a representation is concluded – even if you do not enjoy the benefits of using a digital file during the representation. While you may not have complete digital client files, it is a good insurance policy to scan and upload a final decree or a last will and testament to a secure cloud storage site. For Microsoft 365 subscribers, OneDrive is a safe and secure cloud storage option.

If you have decided not to subscribe to a practice management solution, the next best solution (and, sorry, but it is not a close second) is also a subscription service. But many consider it a better value because they have (or will soon have) this subscription already.

MICROSOFT 365 (FORMERLY OFFICE 365)

A Microsoft 365 subscription is "must-have" software for the majority of law firms. Certainly, some lawyers use the G Suite alternative or other tools, but Microsoft Outlook, Microsoft Word and Microsoft PowerPoint are mainstays of modern business operations today. That is an important reason why "Everything a Law Firm Should Know About Microsoft 365" from Catherine Sanders Reach, director for the Center for Practice Management at the North Carolina Bar Association, is on the agenda for the 2020 OBA Virtual Annual Meeting. There is now an amazing number of tools, add-ons and customizations that are available at no extra charge as a part of your Microsoft 365 suite.

Because Microsoft 365 is still expanding and developing, you are going to have to first learn how to

operate the many tools it provides and then customize them to perform the law office functions you desire. And then you would still most likely have to purchase a third-party time and billing application.

Reviewing the already-existing practice management tools and subscribing to one still seems like the best idea for most lawyers, who will at best seek to become adequate Microsoft 365 users as opposed to Microsoft 365 gurus who built their own data management tools.

BEST PRACTICES WITH DIGITAL DOCUMENTS

Digital documents are also superior to paper documents in most situations. Executed last will and testaments and certain affidavits are two of the ever-shrinking list of examples where paper documents are still "better" than digital due to admissibility type of issues. Even with those types of documents, the wise lawyer will scan and save a digital copy "just in case."

I still receive PDF files that are image-only PDF files and have not been properly created with text accessible in the file. For years, I used to gently reach out to a law firm or lawyers who sent me the file in that format as they might not appreciate what they are doing. Often it was just the default setting on the office scanner not set to optical character recognition (OCR) when scanning. Now it happens so rarely it is just simpler to open the document in Adobe Acrobat Pro DC and OCR it myself.

Whether you are sending PDF files to clients or opposing counsel, they need to be searchable. We want to be able to highlight and copy text from the digital document. I believe most law offices use Adobe Acrobat DC Professional, but some use other tools. Whatever tool you use, you should be able to easily OCR a PDF file, combine multiple PDF files, extract pages and do simple document editing. Every law office needs a resident PDF expert.

BETTER DIGITAL CLIENT FILES, PRACTICE MANAGEMENT SOFTWARE AND IMPROVING YOUR SKILLS WITH PDF FILES

This month my article is very basic and short. It is time to start planning for 2021, which we all agree really needs to be better than 2020.

Investing the time perfecting, improving or establishing your digital client files is an improvement that will keep on giving to your firm in the future, as will improving how you use your practice management software (or subscribing to a service if you do not).

It is not difficult to improve your PDF editing skills. Watch a few videos and do some other self-study on using these editing tools. The next time you don't know how to do something, use some internet searches to figure it out. It is much easier to learn when you are not trying to accomplish something under a deadline.

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.

Change is Hard

Not Changing is Even Harder

By Richard Stevens

BEGINNING NEXT YEAR, the rules for MCLE will change. The new rule states, "Effective January 1, 2021, of the 12 required instructional hours of CLE each year, at least two hours must be for programming on Legal Ethics and Professionalism, legal malpractice prevention and/or mental health and substance use disorders." The rule change increases the ethics requirement to two hours and expands the allowable subject matter to include professionalism, mental health and substance abuse disorders. The total number of MCLE hours required will not change.

WHY THE CHANGE?

OBA members have inquired about the reason for the change. There seems to be a generalized feeling that standards of professionalism have declined in recent years. While subjective belief is hard to support with data, the inclusion of that subject is a reaction to that belief. The inclusion of mental health and substance abuse programming is something more readily supportable with empirical data.

In 2017 the National Task Force on Lawyer Well-Being published a report titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.* The task force was initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), National Organization of Bar Counsel (NOBC) and Association of Professional Responsibility Lawyers (APRL), a collection of entities within and outside the ABA.

The task force recognized that "[t]o be a good lawyer, one has to be a healthy lawyer." It also found that "[s]adly, our profession is falling short when it comes to well-being."

Two studies were cited in the task force report. One, the 2016 ABA CoLAP and Hazelden Betty Ford Foundation's study of mental health and substance use disorders among lawyers, was a study of nearly 13,000 currently practicing lawyers. That study found "between 21 and 36 percent qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively."

The report went on to say:

> The parade of difficulties also includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a 'diversity crisis,' complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and

> negative public perception. Notably, the Study found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression. The budding impairment of many of the future generation of lawyers should be alarming to everyone.

The second study was a Survey of Law Student Well-Being. More than 3,300 law students from 15 law schools participated in the survey.

That study "found that 17 percent experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. As to alcohol use, 43 percent reported binge drinking at least once in the prior two weeks and nearly one-quarter (22 percent) reported binge-drinking two or more times during that period. One-quarter fell into the category of being at risk for alcoholism for which further screening was recommended."

One recommendation to deal with these problems was for bar associations to encourage education on well-being topics in association with lawyer assistance programs (in Oklahoma called the Lawyers Helping Lawyers Assistance Program). For those reasons, the OBA decided to seek Supreme Court approval for a change in the MCLE rules.

There are many other recommendations in the report, which is available online at www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf. I encourage every Oklahoma lawyer to read it.

HELP IS AVAILABLE

I have said and I believe almost every Oklahoma lawyer knows another lawyer who suffers from mental illness, substance abuse or excessive stress. We must help each other for our own sake and for the sake of the profession. One way to do that is through the Lawyers Helping Lawyers Assistance Program. If you have become impaired or you fear another lawyer has become impaired, and you want to get confidential help, simply call the LHL helpline at 800-364-7886. You can also confidentially email oklalhl@gmail.com.

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

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center and remotely on Friday, August 28.

REPORT OF THE PRESIDENT

President Shields reported she attended virtual meetings of the Southern Conference of Bar Presidents (SCBP), ABA House of Delegates, National Conference of Bar Presidents (NCBP) and the Tulsa County Bar Association annual meeting. She attended an OBA Annual Meeting meeting and worked on planning, including coordination with the Lawyers Helping Lawyers Assistance Committee and Diversity Committee, and worked on the Let's Talk Housing program in conjunction with Executive Director Williams.

REPORT OF THE VICE PRESIDENT

Vice President Nowakowski reported she attended the Annual Meeting planning meeting, Oklahoma Bar Foundation meeting and OBA Awards Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Mordy reported he attended virtually a NCBP program on the status of officially regulated state bars, a portion of the ABA House of Delegates meeting and the NCBP annual meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the staff budget meeting, virtual Tulsa County Bar Association annual luncheon, virtual SCBP plenary and executive director meetings, virtual Audit Committee meeting, meeting with the hotel to discuss Annual Meeting, meeting with counsel on the pending legal matter, meetings for Annual Meeting planning and meetings with new directors. He spoke at the virtual HOBY Leadership Conference and worked on the Let's Talk Housing program.

REPORT OF THE PAST PRESIDENT

Past President Chesnut reported he attended virtual meetings of the ABA Annual Meeting, ABA House of Delegates, Southern Conference of Bar Presidents and National Conference of Bar Presidents.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Audit Committee meeting. **Governor Davis** reported he presented a Title IX training to college and university administrators on the new regulations (85 F.R. 30026.) and authored a bar journal article on alternative dispute resolution in Title IX cases. **Governor DeClerck** reported he worked with the Garfield County Bar Association president to plan the possible Board of Governors meeting in Enid in October. **Governor Edwards** reported he graded one of the exam questions from the July bar exam. **Governor Garrett** reported she attended the OBA Audit Committee meeting. **Governor Hermanson** reported he spoke at the Association of Oklahoma Narcotics Enforcers Conference and attended the District Attorneys Council meeting, Oklahoma District Attorneys Association meeting and virtually the Oklahoma Uninsured Vehicle Enforcement Program meeting. **Governor Hutter** reported he met with the Oklahoma presiding judge to discuss COVID protocols and virtual appearances. **Governor Morton** reported he moderated and spoke at the OBA CLE defending the DUI-drug case seminar. **Governor Pringle** reported he attended the OBA Audit Committee meeting. **Governor Rochelle**, unable to attend the meeting, reported via email he attended the Access to Justice Committee meeting and Comanche County Bar Association meeting. **Governor Williams** reported he chaired the OBA Audit Committee meeting and attended the Tulsa County Bar Foundation Board of Trustees special meeting, Tulsa County Bar Association annual meeting and Tulsa County Bar Foundation meeting. All were virtual.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Haygood reported he and other YLD board members participated in preparing bar exam survival kits and attended

the YLD board meeting, ABA House of Delegates, ABA YLD Assembly and ABA YLD Council meeting. He announced the official postponement of the Kick It Forward Tournament to April.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

Governor Williams said the **Diversity Committee** circulated award nominations for voting among committee members. Governor Garrett said the **Women in Law Committee** has cancelled its conference for this year. President Shields reported recipients of the Mona Salyer Lambird Spotlight Awards will be selected for 2020 and will be presented in some way.

APPLICATIONS TO SUSPEND AND STRIKE MEMBERS

Executive Director Williams said action to suspend and strike members for noncompliance is usually done in May, but because of the pandemic, action was delayed giving members more time. As a result, numbers were significantly lower. The board authorized Executive Director Williams to file the applications to suspend for failure to pay 2020 dues and to suspend for failure to comply with 2019 MCLE requirements.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NONPAYMENT OF 2019 DUES

The board authorized Executive Director Williams to file the application to strike for failure to reinstate after suspension for nonpayment of 2019 dues.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NONCOMPLIANCE WITH 2018 MCLE REQUIREMENTS

The board authorized Executive Director Williams to file the application to strike for failure to reinstate after suspension for noncompliance with 2018 MCLE requirements.

AUDIT COMMITTEE REPORT AND 2019 AUDIT REPORT BY SMITH CARNEY

As Audit Committee chairperson, Governor Williams briefed members on the meeting held and introduced auditor Chris Brumit. Mr. Brumit shared the audit team's positive experience in the field collecting information and reviewed the report. He said they found no issues, and it is their opinion the report accurately represents the financial condition of the organization. The board approved the report.

AWARDS COMMITTEE RECOMMENDATIONS

Awards Committee Chairperson Kara Smith reported no nominations were received for the Law Day award, which was not surprising since county bar associations had to cancel their events. She said

Executive Director Williams said action to suspend and strike members for noncompliance is usually done in May, but because of the pandemic, action was delayed giving members more time. As a result, numbers were significantly lower.

committee members thought nominations were not strong enough for the Fern Holland Courageous Lawyer Award and Trailblazer Award. She reviewed the committee's nominations for award recipients. The board voted to approve the nominations.

COMMISSION ON CHILDREN AND YOUTH

The board approved President-Elect Mordy's proposal to submit the names of Javier Ramirez, Okmulgee; Brandi N. Nowakowski, Shawnee; and Bradley James Wilson, Ardmore, to the governor for consideration and appointment of one person to the commission with a term to expire 12/31/2022.

2020 ANNUAL MEETING

President Shields said a meeting was held with staff yesterday, and the decision was made for the Annual Meeting to be virtual. Plans are underway. Board members were asked to hold that information. A formal announcement is planned for the second week of September. Executive Director Williams said a meeting was held with the hotel, and there will be a small financial expense. The virtual meeting will take place Nov. 9-13. Governor Williams said the Tulsa County Bar Association held its meeting virtually and did a good job. New Strategic Communications and Marketing Director Dawn Shelton introduced herself. President Shields said one of the first steps is to contact section chairs about planning their meetings. The strategy will be to prerecord programs with all CLE going through the OBA utilizing inReach to facilitate the reporting of MCLE credit.

SUSPENSION OF SECTION BYLAWS TO ACCOMMODATE VIRTUAL MEETINGS

Executive Director Williams explained the sections have bylaws requiring an in-person annual section meeting. It is his recommendation to suspend the requirements of their bylaws to allow them to hold a virtual meeting this year. Action will be requested at the next meeting.

NEXT MEETING

The Board of Governors met in September and October. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be Thursday, Nov. 5.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for:

District Judge, Seventh Judicial District,
Office 9, Oklahoma County

To be appointed to the office of District Judge, Office 9, Seventh Judicial District, one must be a registered voter of Oklahoma County, Seventh Judicial District and a resident of Electoral Division One at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.

Application forms can be obtained online at www.oscn.net (click on "Programs", then "Judicial Nominating Commission", then "Application") or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, November 13, 2020. Applications may be mailed or delivered by third party commercial carrier. No hand delivery of applications is available at this time. If mailed, they must be postmarked on or before November 13, 2020 to be deemed timely. Applications should be mailed/delivered to:

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

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WAYS TO SUPPORT THE

OKLAHOMA BAR FOUNDATION

Fellows Program

An annual giving program for individuals.

Community Fellows Program

An annual giving program for law firms, businesses and organizations.

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

OKLAHOMA BAR FOUNDATION
Law. Education. Justice.

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www.okbarfoundation.org • foundation@okbar.org

Oklahoma Bar Foundation Announces Legal Services Funding for Nonprofits

THE OKLAHOMA BAR FOUNDATION (OBF) Board of Trustees approved $731,242 in grants for 29 nonprofit programs that will provide legal services and education to over 46,500 Oklahomans. The OBF Grants & Awards Committee, tasked with reviewing grant applications and interviewing grant applicants, presented funding recommendations to the OBF Board of Trustees for programs that provide services in the following categories: legal services and advocacy for abused and neglected children, juvenile offender programs, civil legal aid for low-income Oklahomans, immigrant legal services, domestic violence prevention services, teen legal education and diversion programs.

The following nonprofits will receive program funding from the OBF for fiscal year 2021:

Grantee	Program/Services	Area of Service
CASA of Canadian County	Advocacy for Abused Children	Canadian County
CASA of Western Oklahoma	Advocacy for Abused Children	Beckham, Custer & Washita counties
CASA of NE Oklahoma	Advocacy for Abused Children	Ottawa, Rogers & Washington counties
CASA of Southern Oklahoma	Advocacy for Abused Children	Carter, Love & Murray counties
Center for Children & Families	Court Ordered Divorce & Co-Parenting Program	Cleveland and Oklahoma counties
Oklahoma Guardian Ad Litem Institute	GAL Services for Low-Income Families	Statewide
Oklahoma Lawyers for Children	Legal Services for Abused Children	Oklahoma County
The Care Center	Victim Legal Services & Forensic Interviews	Statewide
Tulsa Lawyers for Children	Legal Services for Abused Children	Tulsa County
Legal Aid Services of Oklahoma	Civil Legal Services for Low-Income	Statewide
Oklahoma City University School of Law	Indian Will Clinic	Statewide
Trinity Legal Clinic of Oklahoma	Civil Legal Services for Low-Income	Oklahoma City Area
Domestic Violence Intervention Services (DVIS)	DVIS Legal Program	Tulsa & Creek counties
Wings of Hope, Family Services Center	Survivors Legal Support	Logan, Noble & Payne counties
Catholic Charities of Eastern Oklahoma	Immigration Legal Services	Eastern Oklahoma counties
Catholic Charities of the Archdiocese of OKC	Immigration Legal Services	Canadian, Cleveland & Oklahoma counties
The Spero Project	The Common - Refugee Legal Services	Oklahoma City Metro
University of Tulsa Law School	Immigrant Rights Project	Statewide
YWCA Tulsa	Immigration Legal Services	Tulsa Area

Grantee	Program/Services	Area of Service
Oklahoma County Juvenile Bureau	Court Ordered Literacy Program	Oklahoma County
Oklahoma County Juvenile Bureau	Connect to Redirect	Oklahoma County
Teen Court	First-Time Juvenile Offender Court	Comanche County
Youth Services of Tulsa	First-Time Juvenile Offender Court	Tulsa & Ottawa counties
Western Plains Youth & Family Services	Juvenile Detention Services	Ellis, Harper & Woodward counties
OBA-YLD Mock Trial	High School Mock Trial Program	Statewide
YMCA of Greater OKC	Youth & Government Program	Statewide
Oklahoma Access to Justice Foundation	Legal Assistance Resource Center	Statewide
1st Step Male Diversion Program	Diversion & Mentorship Program	Tulsa County
Mental Health Association of Oklahoma	Special Services Docket	Tulsa County

2020 has been particularly tough for the nonprofit sector as many organizations experienced financial hardship, operational challenges and a decrease in volunteers, while at the same time seeing a major increase in clients needing legal assistance.

"This year, we heard from many of our grantees about how hard it has been to handle a dramatic increase in the need for services in an environment that suppresses fundraising events and personal outreach," said OBF Grants & Awards Chair Valerie Couch. "They have been heroic in their efforts to persevere, and we need to help them all we can. I hope all lawyers in Oklahoma will increase their support of the Oklahoma Bar Foundation so that we can provide timely help and funding for the people working in the trenches during this pandemic."

Each year, the OBF funds grantee programs providing legal services and aid to low-income populations. Interest on Lawyer Trust Accounts (IOLTA) is the primary source of funding for OBF grantees, but unfortunately it is not enough to meet the overwhelming need. This year, the OBF received grant requests for over $1.1 million from 30 Oklahoma nonprofits. This means that despite awarding over $730,000 in OBF grants, close to $400,000 in requests WILL NOT be met due to lack of funding, and many Oklahomans who desperately need help will not receive it.

The OBF's mission and priority is to provide as much funding to our grantees as possible, so they can focus on providing high quality services for their clients. To help close some of the funding gap, we have created some special campaigns and events.

So – a big THANK YOU to the OBF donors and the OBA sections who donated to the OBF Grantee COVID Legal Relief Campaign and the Giving Tuesday Now Campaign. Together these campaigns raised an additional $30,000 for OBF grantees. We also want to give a shout out to our Prime Partner Banks who pay higher interest rates on their IOLTA accounts, which translates into more funds for OBF grantees.

There is still time to support the OBF and advance justice - visit www.okbarfoundation.org to learn more and make a donation!

YLD Members Share Their Experiences Practicing During COVID

By Jordan Haygood

AS LAWYERS, WE ARE taught to think on our feet and adapt quickly to any issue presented before us, and that's what young lawyers have definitely done with the impacts of COVID-19.

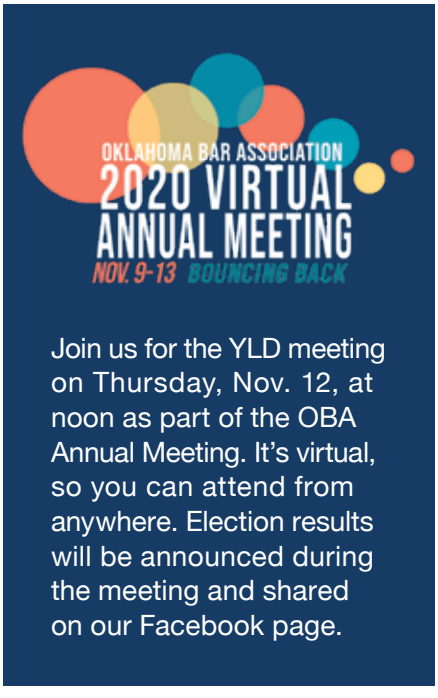
For me, this pandemic has brought a lot of positive things into my life and has made me change my perception of life and work. My office is based in a hospital, and before the pandemic, the halls were full with patients, guests, staff and clinicians roaming freely. While we all were working hard, it was always nice to see another employee and smile – a smile to let them know I see you and hope you are having a great day. I was able to give hugs to colleagues who needed a pick-me-up or quickly give high-fives in passing. My old boss and mentor always engrained in me to have an open-door policy, allowing anyone to walk in and visit, letting them know you are always there to help.

But those days have changed, and now my new normal is working from home. On the few days I'm in the office, I get to say hello to the frontline workers checking employees in and taking temperatures, but after that it's straight to my office and close the door behind me. Smiles are covered by face masks and freely moving about the hospital, strolling through the gift store and self-service cafeteria breakfast (trust me, it was the best) are things of the past. All meetings and negotiations are conducted on one of the countless tele-platforms.

With all of that being said, this pandemic has taught me how to adapt. It's allowed me to achieve my goal of taking my department from document heavy to almost 100% paperless. It's made me pick up the phone more often so I can at least have that human connection, which to me has created better customer service than in the past. I'm able to work more and longer hours without feeling confined to one office. Being in healthcare, the financial impacts of COVID have been an underlying theme in all my negotiations I conduct on behalf of the hospitals.

For this article I thought it would be a good chance to hear from some YLD members on how the pandemic has impacted their practices and the changes they have had to implement.

Dylan Erwin, associate attorney at Holladay & Chilton PLLC who practices business litigation, said, "Law in the time of COVID, aside from sounding like a rejected Gabriel García Márquez novel, has forced me to change some aspects of my practice. My 50 days of work from home quarantine made me realize how social practice can be. Whether it's running into colleagues at the courthouse or grabbing a quick lunch downtown with erstwhile classmates, we attorneys are social creatures. On the positive side, it has shown me that technology is an absolute



asset for modern lawyers. I can still meet with clients, attend hearings and participate in mediations via videoconference and, thanks to secure cloud-based platforms, I realized being at the office didn't mean I had to be in the office."

Alia Ramirez is senior attorney and manager of Legal Service for GlobalHealth. Her practice focuses on health care and compliance. She said, "My company has transitioned all personnel to remote work. This has allowed me to get to know my customers better. Getting to see people through their own homes, I have gotten to know a little bit more who they are versus who they presented to be in the corporate office. It has allowed me to get to know them on a more personal level – seeing their kids, their pets and what is going on in their homes has been refreshing. Lawyers have become very dependent on paper records and working from home has made us comfortable working from different media platforms and moving to electronic forms of documentation and communication. Which goes to show, we can truly work from anywhere. As devastating as the pandemic has been, my department has gotten to take on issues we have never had to contemplate. A pandemic means we have had to find ways to pivot to take care of our customers – overall, we have had to think quickly on our feet, and it brings a lot of excitement to my role."

Despite all the challenges we have faced with COVID, it has allowed everyone to take some time to center ourselves and to focus on how we can better help our clients. I urge each and every one of you to take some time to reflect on your time during this pandemic and to find positive changes that will continue to shape the future of the law and our law practices.

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.

ON THE MOVE

F. Thomas Cordell has joined the Oklahoma City office of Wilson Cain & Acquaviva as of counsel. He practices in the areas of tort and insurance litigation, focusing on personal injury, premises liability, products liability, auto liability, construction defect, oil and gas litigation, bad faith and insurance defense and coverage litigation. Mr. Cordell received his J.D. from the University of Idaho College of Law in 1979.

Blake Gerow and **Jonathan Rogers** have joined the Tulsa and Oklahoma City offices of Hall Estill. Mr. Gerow joins the firm as an associate, practicing in the areas of energy and litigation law. He received his J.D. with highest honors from the TU College of Law. Mr. Rogers will be a member of the firm's litigation team. He received his J.D. from the OU College of Law.

Reagan E. Bradford and **Ryan K. Wilson** have established the law firm of Bradford & Wilson PLLC, located in Oklahoma City at 431 W. Main St., Ste. D. The firm will focus on civil litigation, including class action litigation, commercial litigation and oil and gas litigation. Mr. Bradford received his J.D. from the OU College of Law in 2008. Mr. Wilson received his J.D. from the OU College of Law in 2017. The firm can be reached at 405-698-2770.

Judge Stuart Lee Tate was appointed by Gov. Stitt to serve as district judge for Osage County, District 10. Judge Tate previously served Osage County as special judge from 2010 until 2019, when he was elected associate district judge for the county. While serving on the bench, he has overseen traffic, wildlife, criminal misdemeanor and criminal felony, probate, guardianship, adoption and general family law cases. He received his J.D. from the OCU School of Law in 1991.

Tamara Pullin has joined the Ft. Worth, Texas, law firm of McDonald Sanders PC as an associate. Ms. Pullin practices in the area of employment law, focusing on matters concerning banking regulatory compliance, especially with respect to fair lending and UDAPP compliance, as well as laws and regulations pertaining to deposits, lending and loss mitigation.

Arianna Cole, Ryan Curry and **Tanner Frye** have joined the Tulsa office of GableGotwals as associates. **Brennan Barger** has joined the firm's Oklahoma City office as an associate. Ms. Cole practices primarily in the areas of labor and employment law, bankruptcy, tax, health care, family law and corporate transactions. Mr. Curry's experience includes legal research and drafting research memos on topics including IRS revenue procedures, easement disputes and insurance appraiser competency standards. Mr. Frye practices primarily in the areas of general corporate and health care transactions. Mr. Barger practices in litigation matters, including research involving civil procedure, public nuisance, groundwater law and employment law.

Jacob Black, Robert Clougherty, Evan Crumpley, Thomas Goresen, Courtney Keeling, Haley Maynard, and **Elke Meeùs** have joined the Oklahoma City law firm of McAfee & Taft as associates. Mr. Black practices in the areas of business and commercial transactions as well as complex business litigation. Mr. Clougherty practices in the areas of business and commercial transactions. Mr. Crumpley practices in the areas of corporate and business matters. Mr. Goresen practices in the areas of environmental litigation and regulatory compliance with state and federal environmental health and safety regulations. Ms. Keeling practices in the areas of corporate and business matters. Ms. Maynard practices in the area of business transactions. Ms. Meeùs practices in the area of complex business and commercial lawsuits.

Natalie M. Jester and **Laurie L. Schweinle** have joined the Oklahoma City law firm of Phillips Murrah as associate attorneys for the firm's Litigation Practice Group. Ms. Jester and Ms. Schweinle will represent individuals and privately held and public companies in a wide range of civil litigation matters.

Nathan L. Cook, Whitney N. Humphrey, Elizabeth V. Salomone and **Anna M. Sanger** have joined the Oklahoma City office of Doerner, Saunders, Daniel & Anderson LLP as associates. Mr. Cook will be a member of the firm's Litigation and Transactional Practice Groups. Ms. Humphrey

practices in the areas of corporate and business transactional matters and business litigation. Ms. Salomone practices in the areas of general and corporate litigation. Ms. Sanger practices in the area of civil litigation.

Lorena Rivas, Mary McMillen and **Sara Schmook** have established The Lawyers of Kendall Whittier. The firm, located in Tulsa at 2417 E. Admiral Blvd., focuses on immigration, criminal and family law issues. **Elissa Stiles** and **Elijah Johnson** have joined Ms. Rivas' team at Rivas & Associates as immigration attorneys. The firm can be reached at 918-505-4870.

Christine Little has been selected by the U.S. District Court for the Northern District of Oklahoma to serve as a U.S. magistrate judge for the district. Her appointment, effective Nov. 1, fills a vacancy created by the retirement of Magistrate Judge Frank H. McCarthy. For the past eight years, Judge Little has served as the career law clerk for Chief Judge John Dowdell. Previously, she was a private practitioner for over 17 years, representing clients in business, contract, tort and class action litigation as well as handling numerous criminal appeals and habeas matters. She received her J.D. with highest distinction from the OU College of Law.

Judge Nathaniel Hales was selected to serve as special judge following the retirement of Judge Steven Stice. He was sworn in Oct. 9. Judge Hales was an assistant district attorney for District 21, including Cleveland, McClain and Garvin counties and oversaw criminal, juvenile and civil dockets. He has served as the Anna McBride Mental Health Court assistant district attorney and as an associate to the Norman CrimeStoppers group. He received his J.D. from the OU College of Law in 2013.

Eric Di Giacomo has joined the Tulsa law firm of Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco as an associate. Mr. Di Giacomo practices primarily in the area of civil litigation with an emphasis in research. He received his J.D. with highest honors from the TU College of Law in 2020.

Stephen Bonner, a longtime associate district judge, was presented with a decree upon his retirement that named the Cleveland County drug court program the "Stephen W. Bonner First Choice Recovery for Children and Families." He established the family drug court program in 2008 to help families reunite and receive treatment for addiction. The program has since helped over 570 people. Retired Judge Bonner was appointed associate district judge of the 21st District and sworn in on Nov. 7, 2003. He was named 2011 Judge of the Year by Court Appointed Special Advocates for Children, and he received the Mary Abbott Children's House's Wayne Martin Memorial Award in 2017 for his outstanding work for children.

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 January issue must be received by Dec. 1.

In Memoriam

Valerie Lynn Baker of Yukon died Sept. 29. She was born June 21, 1970, in Gallipolis, Ohio. Ms. Baker received her J.D. from the OCU School of Law in 1997.

Judge Rebecca A. Cryer of Norman died Sept. 29. She was born Oct. 9, 1946, in Shawnee. She received her J.D. from the OU College of Law in 1976. Early in her legal career, she served as staff attorney for Legal Aid of Western Oklahoma, assistant district attorney for Cleveland and McClain counties and enforcement attorney for the Oklahoma Department of Securities. While working at the Journal Record Building, she suffered serious injuries during the Alfred P. Murrah bombing. Her name is inscribed on the Survivor Wall at the Oklahoma City National Museum and Memorial. Most recently, Judge Cryer served as magistrate and appellate magistrate for the Southern Plains Region of the Court of Indian Affairs and district judge of the Choctaw Nation District Court. She was a member of the Citizen Potawatomi Nation of Shawnee. Memorial contributions may be made to ASPCA, Catholic Charities USA or the charity of your choice.

Joseph Fallin of Tulsa died April 19. He was born Nov. 11, 1946, in Tulsa. After graduating from the Oklahoma School for the Blind, Mr. Fallin received his bachelor's degree from OSU and his J.D. from the OU College of Law in 1972. He practiced law for over 40 years and was a champion for disability rights. In 2005, he was named Advocate of the Year by the Oklahoma Department of Rehabilitation Services. Mr. Fallin was a member of the Metropolitan Tulsa Transit Authority Board for many years and served as president of the Oklahoma Council of the Blind. Memorial contributions may be made to the Oklahoma Council of the Blind or Jeri's House Inc.

Robert A. Forbes Jr. of Oklahoma City died Aug. 23. He was born May 23, 1948, in Columbia, Missouri. Mr. Forbes was an All-City selection in football his senior year of high school and received a scholarship from the University of Missouri to play football. After receiving his bachelor's degree in elementary education, he taught 8th grade at an inner-city St. Louis school. He received his J.D. from the OCU School of Law in 1975. Upon graduation, he practiced law in Oklahoma City and Midwest City.

Allen K. Harris Jr. of Oklahoma City died Sept. 4. He was born Aug. 24, 1941, in Amarillo, Texas. A graduate of Bishop McGuinness Catholic High School, he attended George Washington University before receiving his J.D. from the OCU School of Law in 1970. Throughout his legal career, Mr. Harris served as an oil and gas title examiner and oil and gas conservation attorney, counsel for the Oklahoma State Senate LP Investigating Committee, special counsel to Gov. David Boren for Federal Energy Regulatory Commission Litigation and as the first Oklahoma Utility Ratepayer Consumer Advocate before the Federal Energy Regulatory and the Oklahoma Corporation Commission. He also served as OBA Legal Ethics Committee chairman, was elected to the American Law Institute and was a member of the Downtown Oklahoma Rotary Club, Mineral Lawyers Society of Oklahoma City, National Groundwater Management Districts Association and several bar associations. Memorial contributions may be made to Bishop McGuinness Catholic High School, OCU or OU.

Orvan Jerome Hanson Jr. of Mesa, Arizona, died July 15. He was born Aug. 12, 1941, in Sioux City, Iowa. Upon graduating from Augustina College, Mr. Hanson taught school and coached for seven years in Missouri and Iowa. He received his J.D. from the TU College of Law in 1972. He practiced law in Kansas City, Missouri, Sioux City and Tulsa before being appointed associate district judge for Buffalo in 1985. He held that position until 1991 when he was appointed associate district judge for Miami. He then worked as a private practitioner in Miami until his retirement in 2006. Mr. Hanson was a member of the Masonic Lodge and Lions Club as well as the Oklahoma, Missouri and Iowa bar associations.

Gerri Inman of Tulsa died Sept. 26. She was born April 3, 1957, in Tulsa. After earning her bachelor's degree in accounting and working as a CPA, she received her J.D. with honors from the TU College of Law in 1995. Ms. Inman practiced in the area of business law, with a focus on employment and contract law, and received the nickname "Red-Headed Bulldog" for her cross-examination skills. She served as executive director of the South Tulsa Community House from 2013 until 2017, when she

became a consultant, COO and then CEO for The Tulsa Hub Syndicate. Throughout her legal career, she was involved with several pro bono programs, including the OBA and OETA Public Television.

William Earl Sparks of Tulsa died Aug. 26. He was born Aug. 10, 1956, and was raised in Seminole. Mr. Sparks earned a bachelor's degree from OCU in criminal justice and corrections and received his J.D. from the TU College of Law in 1982. In 2017, he received his LL.M. from the Pepperdine University Rick J. Caruso School of Law. Mr. Sparks' passion for the law spanned over 35 years. He was a litigator in numerous state and federal courts, served as a mediator and was inducted to the College of Workers' Compensation Lawyers in 2014 in recognition of his extensive advocacy of workers' compensation in Oklahoma. Memorial contributions may be made to the John 3:16 Mission, the EQUUS Foundation or DEW Pug Rescue.

Donald J. Sullivan of Poteau died Sept. 2. He was born July 29, 1944. **Mr. Sullivan served in Vietnam in the U.S. Army.** After receiving his J.D. from the TU College of Law in 1972, he practiced law for many years and was a member of the LeFlore County Bar Association and American Bar Association.

Charles Scott Woodson of Sand Springs died Sept. 23. He was born Aug. 23, 1929, in Ft. Smith, Arkansas. He attended the Oklahoma Military Academy and Poteau High School. After graduating from OU, he received his J.D. from the TU College of Law in 1957. He worked as a private practitioner until being appointed district judge. Judge Woodson served on the bench for 29 years before retiring in 1999. He was a member of the First United Methodist Church of Drumright, the Rotary Club and the Elks Lodge. Memorial contributions may be made to the Alzheimer's Association or the Dean McGee Eye Institute.

EDITORIAL CALENDAR

2020 ISSUES

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@vhensonlaw.com
Deadline: Oct. 1, 2020

MARCH
Probate
Editor: Patricia Flanagan
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, 2021

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

OELA Oklahoma Employment Lawyers Association
Attorneys Dedicated to the Protection of Employee Rights

2020 EMPLOYMENT LAW SEMINAR

When: Friday December 4, 2020 from 9:00 a.m. to 4:30 p.m.
(Lunch included)

Where: Crabtown in Bricktown, 303 E. Sheridan Ave., Oklahoma City, OK 73104
(Seminar will also be livestreamed)

CLE: 8 hours proposed *(including at least 1 hour of ethics)*

Tuition: $180.00 (registration by Nov. 12); $200 after Nov. 12
(E-Materials provided)
($50.00 discount for OELA members & gov/public service attorneys)

Registration: Online at www.OELA.org

PROGRAM

COVID-19: The Pandemic's Impact on ADA/FMLA Claims, The Families First Coronavirus Response Act (FFCRA) & Employer's Best Practices	Philip R. Bruce, *McAfee & Taft*
But-For Causation: Justice Gorsuch Reinforces the But-For Standard's Low(ish) Standard	Mark E. Hammons, *Hammons, Hurst & Associates*
Tips from the Bench: Practical Tips for Ethical Litigation	Honorable Susan Stallings, *Oklahoma County District Judge*
***Bostic v. Clayton Cty.*: Employers' Best Practices for Preventing Discrimination Against LGBTQ Employees**	Michael C. Redman, Interim Legal Director, *ACLU of Oklahoma*
Trial from Both Sides of the Aisle: Tips from Experienced Trial Attorneys	Barrett Bowers, *Barrett T. Bowers, PLLC;* Victor F. Albert, Sam R. Fulkerson & Kim Tran, *Ogletree Deakins;* Geoffrey Tabor, *Ward Glass*
ESI Update: Tips & Techniques for Data Preservation & E-Discovery	Gavin W. Manes, *Avansic E-Discovery & Digital Forensics*

**Contact for Questions: Amber Ashby (amberashby@hammonslaw.com)*

Classified Ads

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WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to P.O. Box 13557, Denver, CO 80201.

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OKC attorney has client interested in purchasing large or small producing or non-producing mineral interests. For information, contact Tim Dowd, 211 N. Robinson, Suite 1300, OKC, OK 73102, (405) 232-3722, (405) 232-3746 - fax, tdowd@eliasbooks.com.

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Reliable Professional Experienced
Suzanne P. Grimes, Attorney at Law ready to appear for you before district courts throughout the State of Oklahoma.
(405) 463-6819 or www.suzannegrimes.com

FOR SALE

NEW 5TH EDITION. Sentencing in Oklahoma, 2020-21, by Bryan Dupler. Up-to-date, practical guide. 25 copies left of First Printing. $35. Email orders to oksentencinglaw@gmail.com.

1ST PACIFIC REPORTER (1883-1931), beginning with Volume 17, approximately 284 books, $975. Call 918-261-2955 or email CrainLawOffice@yahoo.com.

OFFICE SPACE

60 YEAR LAW PRACTICE IN YUKON. One paralegal retired in May and the other wants to work part-time as does this lawyer. Looking for attorney that wants his or her own law practice. Office has six rooms and storage; library/conference room; two bathrooms and file room. Good client base/business. Financial arrangements negotiable. Fenton Ramey (405) 650-9885.

PRIME COMMERCIAL SPACE FOR LEASE IN MIDTOWN TULSA, 31st & Harvard. Ideal for an attorney or law firm that desires easy access to Broken Arrow expressway and front door parking. Newport Square Shopping Center has 1 suite available with 1,173 sf. Suite is already built out with high-quality finishes. Signage available on building awning as well as double sided pylon street sign. Competitive rental rates. Make this charming, unique, red brick, classy property your new professional home! Call Newport Square, LLC, for more information. (918) 921-4695.

OFFICE AVAILABLE IN OKC. Senior AV-Rated Attorney moved to upscale building on MW Expressway with beautiful city-wide view and has large office available with all amenities for a lawyer. Furnishings available. $575 monthly. 405-858-0055.

OKC OFFICE SPACE FOR LEASE. Near downtown (5 minutes or less to all three courthouses). Furnished. Two conference rooms. Full kitchen. Room for receptionist and file storage. Security System. Cleaning service bi-weekly. Price negotiable. Please call (405) 413-1646 if interested.

TWO EXECUTIVE OFFICES IN MIDTOWN (OKC). Receptionist provided. Each office from $900 - $1,750 / month depending on sq. ft. Contact Larry Spears or Jo at 405-235-5605.

LARGE EXECUTIVE OFFICE IN OKC, 325 SF, Huddleston Law Office, 2200 Shadowlake Dr., 73159. Near SW 104th on Penn. Offers receptionist, large conference room with full kitchen, high speed internet, utilities, security system, janitorial service, copier with fax. $750 month or $850 furnished. No deposit. Contact Terrie Huddleston 405-209-0640.

POSITIONS AVAILABLE

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.

THE 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.

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.

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.

POSITIONS AVAILABLE

SEEKING EXPERIENCED PROSECUTOR TO WORK IN OSAGE AND PAWNEE COUNTIES. Must have at least two years' experience prosecuting felonies in the Oklahoma D.A. system. Minimum salary of $62,000 along with full State benefits. Please send resume and writing sample to Sharie Yates at sharie.yates@dac.state.ok.us.

BALL MORSE LOWE is accepting applications for an Associate Attorney to join the Litigation Practice Group in our downtown Oklahoma City office. Qualified candidates will have 1 to 3 years of civil litigation experience (experience with business transactional matters is a plus). Health, vision, dental insurance and 401K match available. Pay commensurate with experience. Please send resume, references, law school transcript and writing sample to office@ballmorselowe.com.

POSITIONS AVAILABLE

SOUTH OKLAHOMA CITY LAW FIRM has opening for attorney with Workers' Compensation experience and attorney with Social Security experience. Please send replies to Box CP, Oklahoma Bar Association, P. O. Box 53036, Oklahoma City, OK 73152.

LAWYER 1-5 YEARS, self-starter, and excellent writing and legal research skills. Great opportunity to gain litigation experience in high profile cases with an emphasis in entertainment litigation. Salary commensurate with experience. Please send confidential resume, references and writing sample to: dlzuhdi@billzuhdi.com.

CAIN LAW OFFICE is seeking to hire an attorney with 2 – 5 years of experience. Prior experience in personal injury litigation, excellent research and writing skills preferred. The firm offers competitive compensation and bonuses commensurate with experience and excellent benefits including 401K. Interested applicants send resume to michelle@cainlaw-okc.com.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for:

District Judge for Oklahoma County,
Seventh Judicial District, Office 13

This vacancy is created by the appointment of the Honorable Trevor Pemberton to the Court of Civil Appeals on September 1, 2020.

Office 13 is an at-large position. To be appointed to the office of District Judge for Oklahoma County, Office 13, one must be a legal resident and registered voter of Oklahoma County, Seventh Judicial District at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms can be obtained online at www.oscn.net (click on "Programs", then "Judicial Nominating Commission", then "Application") or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, November 13, 2020. Applications may be mailed or delivered by third party commercial carrier. No hand delivery of applications is available at this time. If mailed, they must be postmarked on or before November 13, 2020 to be deemed timely. Applications should be mailed/delivered to:

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

Oklahoma Lawyers for Children

Oklahoma Lawyers for Children & Friends Cookbook Fundraiser

Oklahoma Lawyers for Children has created a cookbook that will be available during the holidays. The cookbook will be full of recipes from our staff, Board of Directors, court partners, local restaurants and more! Pre-orders for The OLFC & Friends Cookbook are available now until November 15th, 2020 for $40.

Pre-orders can be purchased using this QR code, or on our website at WWW.OLFC.org/cookbook

Oklahoma Lawyers for Children is the only local nonprofit that provides high quality legal representation for kids in the foster care system. Without the support we receive from our community our efforts would not be possible.

The OLFC & Friends Cookbook is co-sponsored by the OBA Juvenile Law Section and OCBA Community Service Committee.

Memories of RBG

By Kay Bridger-Riley

I FIRST MET JUSTICE Ruth Bader Ginsburg before she was a judge. I had served as vice president of the ABA's Law Student Division during my third year of law school. During my second year, a case came down in California, which for the first time found reverse discrimination. A white man named Bakke was contesting the quota system used to admit medical students at the University of California – the Bakke case. This threw many people into a tailspin, and the ABA appointed a group to look into the issue called the Post-Bakke Task Force.

I was a minority on that task force in two ways – race and gender. I shared that distinction with one other person – Ruth Bader Ginsburg. We were among all the icons of male, Black civil rights attorneys. It was an amazing experience. RBG served on that task force until she was appointed to the D.C. Circuit Court of Appeals (about a year later, as I remember). Many years later, when the OBA finally created the Women in Law Committee (we were the last state to create one) during the 1997 presidency of Willie Baker, I was appointed to chair it. In that capacity, I invited Ruth (who was by then on the Supreme Court) to come to Tulsa and be our speaker for a weekend conference. I never will forget the fact her initial response was that if she could come, she would, but I should know Marty (her husband) always traveled with her.

From left, Justice Ginsburg poses for a photo with Kay Bridger-Riley, Deborah Bruce and Linda Martin. Ms. Bridger-Riley and Ms. Martin co-chaired the conference held Aug. 27 & 28, 1997, at the Marriott Southern Hills Hotel in Tulsa.

The weekend conference was a huge success. During that event, I was able to introduce my children and my mother to Justice Ginsburg. Later that year, my youngest daughter, Shannon (in the third or fourth grade), had a project in her school class in which they had to pick a character from the government in D.C. to play. She decided to play the role of Justice Ginsburg. After that project, I suggested she write Justice Ginsburg and tell her about it. She did, and sure enough, Justice Ginsburg wrote her back. I then got a call from RBG, asking me the name of Shannon's teacher. I gave it to her, and a few days later we got a letter to her teacher from Justice Ginsburg thanking her for teaching civics to the children. We framed it and gave it to Shannon's teacher as a Christmas present. Her teacher was, needless to say, thrilled.

Then when my longtime ABA friend, Karen Mathis, appointed me to serve on the ABA's Center for Human Rights, I was again serving on the Executive Board (a group of 11) with Justice Ginsburg along with Jerry Shestack, Father Robert F. Drinan and other icons in the area of international human rights. We met in her chambers at the Supreme Court in D.C. on one occasion. The thing I remember most was that Justice Ginsburg was always so very measured in her comments and although soft spoken, when she spoke, everyone listened. Even among the giants of the profession, it seemed as though her few quiet words held more weight than anyone in the room.

Oklahoma Supreme Court members with U.S. Supreme Court Justice Ginsburg at the 1997 conference. From left are Justice Joseph Watt, Justice Robert Simms, Chief Justice Yvonne Kauger, Justice Ruth Bader Ginsburg, Vice Chief Justice Hardy Summers and Justice Alma Wilson.

After 40 years of civil rights and business litigation in Tulsa, Ms. Bridger-Riley retired from her practice and became a sorority house director last year in Missouri and currently at AXO in Norman.

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continuing legal education

35TH ANNUAL ADVANCED BANKRUPTCY SEMINAR

THURSDAY & FRIDAY, DECEMBER 3 & 4, 2020

10 A.M. - 2:50 P.M.

LIVE WEBCAST Only

MCLE 4/0 DAY ONE
MCLE 4/1 DAY TWO

DAY ONE:

Update Regarding Subchapter V, the Small Business Reorganization Act
Mark A. Craige, Crowe & Dunlevy, Tulsa

The Dark Side of Business Bankruptcy:
Practice Pointers for Restructuring Professionals
Salene Mazur Kraemer, Bernstein-Burkley, P.C.

Survey of Recent Oil and Gas Industry Developments
Chuck Carroll, FTI Consulting, Inc., Dallas, TX

Survey of Recent Oil and Gas Bankruptcy Litigation in Oklahoma, Texas and Colorado
Eric M. Van Horn, Spencer Fran LLP, Dallas, TX

DAY TWO:

Sid & Sam Show
Sidney Swinson, Gable Gotwals, Tulsa
Sam G. Bratton II, Doerner Saunders Daniel & Anderson, LLP, Tulsa

Shelley's Frankenstein and Bankruptcy Tax: A Study in Monsters
Professor Jack F. Williams, Georgia State University, Atlanta, GA

The Ethics and Realities of Paying Debtors' Counsel in Bankruptcy Cases
The Honorable Terrence L. Michael,
U.S. Bankruptcy Court for the Northern District of Okla., Tulsa

Bankruptcy Court Panel
The Honorable Dana L. Rasure U.S. Bankruptcy Court Northern District of Okla.
The Honorable Tom R. Cornish U.S. Bankruptcy Court Eastern District of Okla.
The Honorable Janice D. Loyd U.S. Bankruptcy Court Western District of Okla.
The Honorable Sarah Hall U.S. Bankruptcy Court Western District of Okla.
The Honorable Terrence L. Michael

TUITION: $125 webcast per day or $200 webcast bundle both days.
$85 licensed 2 years or less for the webcast

PROGRAM PLANNER/ MODERATOR:

Brandon Bickle,
Gable Gotwals, Tulsa

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