ALSO INSIDE: Employment Law • Administrative Law • Business Law New Members Take Oath • 2021 Committee Sign Up

JULIA STREET STR

OKLAHOMA BAR ASSOCIATION 2020 VIRTUAL ANNUAL MEETING NOV. 9-13 BOUNCING BACK

FREE CLE | AWARDS | SPECIAL GUESTS | FUN



FRIDAY, October 23, 2020 9 R.M. - 4 P.M.



MCLE 7/1

FEATURED PRESENTER:

Jim Jesse, CEO/Founder, Rock N Roll Law

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TO REGISTER GO TO WWW.OKBAR.ORG/CLE



THE ESSENTIALS OF **MUSIC** COPYRIGHT LAW

LEARNING OBJECTIVES:

- The origins of copyright law and what is a copyright.
- The two copyright in every song.
- · How to register your copyrights and why it's important to do so.
- What is music publishing and what publishers do.
- All the exclusive right s you get with a copyright.
- All the revenue streams that songs can generate.
- The burden of proof and defenses to music copyright infringement cases.

ETHICS PORTION:

- The band/group is the client, not the individual members, unless there is informed consent.
- Who in the band do you go to? Is there a hierarchy of leadership? Can you go to manager or record label?
- This goes back to the importance of the operating agreement. Who are the leaders?
- · And much, much more!

TUITION: Registration for the live webcast is \$200. Members licensed 2 years or less may register for \$85 for either the in-person program or the live webcast. This program may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org or call 405-416-7029 to register.





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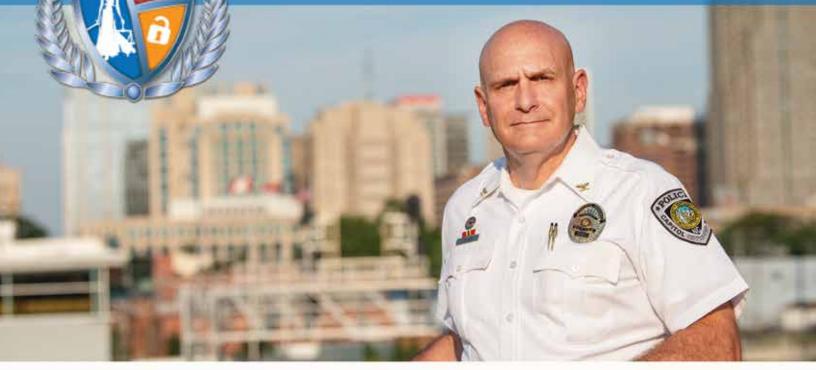
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FROM VERY STRAIGHTFORWARD INITIAL ANALYSIS TO TESTIFYING FOR YOU AS AN EXPERT, WE HAVE THE EXPERTISE TO SUPPORT YOUR CASE.

October 2020 • Vol. 91 • No. 8

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Bouncing Back, Virtually

By Susan B. Shields

THIS ISSUE OF OUR BAR JOURNAL focuses on the OBA's 116th Annual Meeting, which, as you know by now, will be our first-ever *virtual* Annual Meeting. One definition of resilience is bouncing back higher and stronger after challenges and setbacks, a concept that many of us can relate to this year. That's why we selected an Annual Meeting theme of "Bouncing Back" with an emphasis on attorney Dana and Keith Cutler, trial attorneys in Kansas City and stars of the TV show, *Couples Court with the Cutlers*.

Growing up as the daughter of an Oklahoma lawyer, I remember my father attending the Annual Meeting and how much he enjoyed seeing old friends from

wellness. Because our meeting will be online and because it has been a tough year all-around, we have made the decision that registration and all CLE offered at the Annual Meeting will be free to OBA members. Whether you

Life is not about how fast you run or how high you climb, but how well you bounce. ~ *Vivian Komori (with a nod to Tigger of Winnie the Pooh)*

are a brand new admittee, a retired attorney or somewhere in between, there will be something for you. And if you have never attended an Annual Meeting because of the cost and the time away from work, this year you have no excuse!

Annual Meeting programs will be spread out from Monday to Friday, the week of Nov. 9 - 13. This means you will be able to join the meeting for a few hours each day and also keep up with your law practice. As you can see from this



President Shields practices in Oklahoma City. susan.shields@mcafeetaft.com 405-552-2311

issue, we are planning CLE on relevant topics, including COVID-19 legal issues, wellness and resiliency presentations from Laura Mahr on "Five Things Every Lawyer Needs to Know About Burning Out and Bouncing Back" and "A Resilient Mind," a panel discussion with the Oklahoma attorneys involved in the first opioid case to go to trial nationally, tips on technology and much more.

Section and committee meetings will take place, award winners and new leaders will be announced, and we also are planning some fun evening social events including an online trivia game, a virtual happy hour and a special Diversity Committee online awards ceremony and evening with around the state each year. For me, too, Annual Meeting has always been a special event and something I really look forward to as a way to catch up with lawyers and judges I do not get to see often enough. I am disappointed

that we cannot gather together in person this year; however, we are working hard to make sure this first-ever virtual Annual Meeting is the best it can be.

I hope you will take advantage of the opportunity to take part in the upcoming Annual Meeting and to celebrate our profession and the OBA. Also, did I mention that the meeting registration and all of the CLE will be FREE?

I look forward to seeing you – virtually – in November! As always, please do not hesitate to contact me with your questions, comments and suggestions at susan.shields@mcafeetaft.com.

OCTOBER WELLNESS TIP

Plan for a stress-free and relaxing Annual Meeting experience Nov. 9-13 by joining from your desk, your couch, your back patio or wherever you find yourself. You can even bring your dog!

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HIGHLIGHTS

CONVENIENT MEETING FORMAT

In case you missed the announcement, the OBA's 116th Annual Meeting is going virtual, so you can participate from your office, your home or any other location using your phone or other mobile device. Programming and meetings will be available online using a combination of platforms like inReach and Zoom.

Dates have been expanded to five days to allow meetings to be spread out, so bar members can also devote time to their practice.

President Susan Shields will begin each day with a short welcome video, and in keeping with her yearlong focus on wellness, to be followed by a 30-minute Wellness Moment that could be meditation, yoga, Pilates or other health-enhancing activities.



REGISTRATION – EVERYTHING IS FREE!

Registration is free – including about 9 MCLE hours. Those who register will receive an email every morning with the day's program of events and links to those events. The first 500 who register will receive a goodie bag with an OBA face mask, Annual Meeting tote bag and other fun stuff!



FOR UPDATED DETAILS CHECK WWW.OKBAR.ORG/ANNUALMEETING



PRESIDENT'S RECEPTION VIRTUAL HAPPY HOUR

This year's reception, hosted by President Susan Shields, will definitely be different from years past. We may be distanced, but we will all be sharing the fun! A professional mixologist will share recipes and demonstrate imaginative cocktails (both with and without alcohol). An ingredients list will be provided in advance, so you can be ready to mix up the libations and enjoy at home. Think of it also as a free training session for impressing your guests when hosting your own happy hour.

OTHER SOCIAL EVENTS

Planning is still underway, and details are still being confirmed, but we can say one evening will feature a trivia game. Since it will be virtual, compete from whatever location you choose. And there will be prizes!

The OBA will join forces with the Oklahoma Bar Foundation for another social event guaranteed to perk up the pandemic blues.

Be sure to save Thursday evening for the Diversity Awards and their guest speakers, Keith and Dana Cutler, hosts of the nationally syndicated daytime TV show, *Couples Court with the Cutlers*.



FOR UPDATED DETAILS CHECK WWW.OKBAR.ORG/ANNUALMEETING





KEYNOTE SPEAKER

I'm Looking Forward to Seeing You at the Annual Meeting

By Laura Mahr

SMILE EVERY TIME I think about the virtual CLE I conducted in May for over 650 Oklahoma attorneys and judges. It's rare to find such delightful humor and heartfelt connection through a virtual "chat box" with so many people. Yet, as we moved through the content and practices of the webinar, "Calm in the Storm: Tools to Keep Your Cool in the Corona Crisis," you all did just that. I appreciated the creative banter, the genuine sharing and the feeling of togetherness created during our hour together. If you can do that at the outset of a pandemic, Oklahoma, you can do anything!

I thought the joy I felt at the end of the webinar after spending time with all of you would come to an end until I received an invitation from Susan Shields and John Morris Williams inviting me to present at your state bar's Annual Meeting. Of course, I accepted right away. It is with great gratitude and anticipation that I invite you to join me for three distinct presentations at the meeting. To help you orient to our time together in November, I'm sharing a description of each session I'll conduct.



A RESILIENT MINDSET: COMING BACK STRONGER AFTER A GLOBAL CRISIS

While most of us have honed a few coping skills for trying times, many of us are finding our skillset lacking during the pandemic and its aftermath - the unknowns are too vast and the tragedy too great. As we move forward, a resilient mindset may be the commodity that allows us to stay afloat mentally, emotionally and financially in these rocky waters. In this session, steeped in the neurobiology of resilience, you will learn how to cultivate a mindset that supports you in recovering from the repercussions of the pandemic. I will walk you through a five-step, resiliencebuilding process that helps you consciously create a mindset that allows you to stay buoyant and come back stronger in the upcoming months.

FIVE THINGS EVERY LAWYER NEEDS TO KNOW ABOUT BURNING OUT AND BOUNCING BACK

If you feel like your energy and enthusiasm for work is waning, and you'd like to know what to do about it, this CLE is for you. In this session, I will share the key elements that lead to burnout and how to avoid them. In addition. we will discuss common beliefs in our profession that lead to burnout, challenges finding work-life balance during the pandemic and warning signs that you or a colleague is burning out. You will learn how to build positive neuroplasticity (the ability of the brain to form new connections and pathways and change how its circuits are wired) so that you have more energy and enthusiasm for life outside of the law. You will come away with new mindfulness and neuroscience-based tools to bring you back from the edge ... or prevent you from ever getting close!

TAPPING INTO THE WISDOM OF THE BODY TO OPTIMIZE YOUR LIFE

While our brains do the heavy lifting in our professional lives, our bodies possess a unique kind of wisdom. Tapping into the wisdom of our bodies allows us to better recognize when we are stressed and gives us clues about how to optimize our well-being. As we navigate the complications of doing business during these challenging times, many of us are experiencing new stressors in an already stressful profession. We need new tools and new approaches to help us cope. In this ground-breaking session, you will learn three skills to tap into your body's intelligence, turn down the dial on stress and feel more tuned in at work and home.

I look forward to joining you at the Annual Meeting. I know that we will once again create a warm, virtual connection as we jointly traverse the topics of burnout prevention, resilience and optimizing life. In these difficult times with great separation, I imagine an even greater joy and strength in coming together.

ABOUT THE AUTHOR

Laura Mahr is a midwestern native, a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing well-being coaching, training and consulting for attorneys and law offices nationwide. Her work is informed by 13 years of practice as a civil sexual assault attorney, 25 years as a student and teacher of mindfulness and yoga, a love of neuroscience and a passion for resilience. Find out more about her work at consciouslegalminds.com.



PROGRAMS & EVENTS

Mon | Nov. 9

Welcome and Wellness Moment Speaker: President Susan Shields

Section & Committee Meetings

Tues | Nov. 10

Sponsor: Oklahoma Attorneys Mutual Insurance Co.

Welcome and Wellness Moment Speaker: President Susan Shields

Section & Committee Meetings

Wed | Nov. 11

Sponsor: Clio

Welcome and Wellness Moment

Speaker: President Susan Shields

Five Things Every Lawyer Needs to Know About Burning Out and Bouncing Back Speaker: Laura Mahr MCLE 1/1

Opioid Panel Discussion & Live Q&A Speakers: Reggie Whitten, Mike Burrage and Larry Ottaway

A Resilient Mindset: Coming Back Stronger After a Global Crisis

Speaker: Laura Mahr MCLE 1/1

Tapping into the Wisdom of the Body to Optimize Your Life

Speaker: Laura Mahr Sponsor: Lawyers Helping Lawyers Assistance Program MCLE 1/1

President's Reception: Virtual Happy Hour



For times, more details, links to programming and to register, go to www.okbar.org/annualmeeting

Thurs | Nov. 12

Sponsor: LawPay

Welcome and Wellness Moment Speaker: President Susan Shields

Employment Law in Pandemic Times: Leave, Return to Work, Testing, Remote Work

and OSHA Issues

Speakers: Charlie Plumb, Elizabeth Bowersox, and Jake Crawford MCLE 1/0

COVID AND THE HIPAA Privacy Rule

Speaker: Stacey Tovino MCLE 1/0

Diversity Committee Awards & Presentation

Speakers: Dana and Keith Cutler Topic: Never Say Never ... (The Best Parts of Our Legal Careers)

Fri | Nov. 13 Sponsor: McAfee & Taft

Welcome and Wellness Moment

Speaker: President Susan Shields

General Assembly

Speakers:

Chief Justice Noma Gurich, Oklahoma Supreme Court Presiding Judge David Lewis, Oklahoma Court of Criminal Appeals President Susan Shields

Award Winner Recognition

House of Delegates

Speaker: President-Elect Michael Mordy

Everything a Law Firm Should Know About Microsoft 365

Speaker: Catherine Sanders Reach MCLE 1/0

Free Online Client Development (Google My Business, Social Network and Communities)

Speaker: Gyi Tsakalakis MCLE 1/0



HOUSE OF DELEGATES

Dear County Bar Presidents:

Thank you to the county bar presidents of:

Adair, Alfalfa, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Choctaw, Cimarron, Cleveland, Comanche, Craig, Creek, Custer, Delaware, Ellis, Garfield, Grady, Grant, Harmon, Jackson, Kay, Latimer, Lincoln, Logan, Love, Major, Mayes, McClain, McCurtain, McIntosh, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Stephens, Texas, Tillman, Tulsa, Washington, Washita, Woods and Woodward counties for submitting your delegate and alternate selections for the upcoming OBA Annual Meeting. (**Reported, awaiting election)

Listed below are the counties that have not sent their delegate and alternate selections to the offices of the OBA as of Sept. 23. Please help us by sending the names of your delegates and alternates now. Ballots were mailed to the delegates Sept. 21.

In order to have your delegates/alternates certified, send delegate certifications to: OBA Executive Director John Morris Williams, c/o Debbie Brink, P. O. Box 53036, Oklahoma City, OK 73152-3036, fax: 405-416-7001 or email debbieb@okbar.org.

Atoka	Haskell	N
Cherokee	Hughes	С
Coal	Jefferson	С
Cotton	Johnston	R
Dewey	Kingfisher	S
Garvin	Kiowa	V
Greer	LeFlore	
Harper	Marshall	

Murray Okmulgee Osage Roger Mills Sequoyah Wagoner

In accordance with the bylaws of the OBA (5 OS, Ch. 1, App. 2), "The House of Delegates shall be composed of one delegate or alternate from each County of the State, who shall be an active or senior member of the Bar of such County, as certified by the Executive Director at the opening of the annual meeting; providing that each County where the active or senior resident members of the Bar exceed fifty shall be entitled to one additional delegate or alternate for each additional fifty active or senior members or major fraction thereof. In the absence of the elected delegate(s), the alternate(s) shall be certified to vote in the stead of the delegate. In no event shall any County elect more than thirty (30) members to the House of Delegates."

"A member shall be deemed to be a resident, ... of the County in which is located his or her mailing address for the Journal of the Association."



THURSDAY, October 22, 2020 9 A.M. - 2:50 P.M.



MCLE 6/1

WORKSHOP LEADERS:

Donna Jackson, JD, CPA, Donna J. Jackson & Associates, PLLC

A. Daniel Woska, Woska Law Firm, PLLC

Stay up-to-date and follow us on



TO REGISTER GO TO WWW.OKBAR.ORG/CLE



GUARDIANSHIPS: THE NEW NORMAL

Co-Sponsored by the OBA Estate Planning, Probate, and Trust Section

PROGRAM DESCRIPTION:

Overview of what Oklahoma Attorneys need to know about Guardianships and Resources available.

TOPICS INCLUDE:

- Overview of Guardian Ad Litem process and handbook
- Overview of Guardianships handbook and forms
- Ethics of Guardianship who is the client, duty
- Resources to help attorneys and the courts with wards with mental disorders
- Planning tools to avoid Guardianship

TUINION: Registration is \$175. Members licensed 2 years or less may register for \$85 (no walk-ins). This program may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org or call 405-416-7029 to register.



DIVERSITY AWARDS EVENT

Special Guests: The Cutlers

By Telana McCullough

HE OBA DIVERSITY

Committee is set to host its 2020 Ada Lois Sipuel Fisher Diversity Awards Virtual Ceremony. The Diversity Committee will honor its award recipients in an event that is part of this year's Annual Meeting. The event will feature a presentation by Keith and Dana Cutler, a husband and wife team who are trial lawyers in Kansas City, Missouri, and presiding judges of the two-time Emmynominated, nationally syndicated



daytime TV show, *Couples Court with the Cutlers*. Their topic will be Never Say Never ... (The Best Parts of Our Legal Careers). You'll find some of their entertaining TV show segments on YouTube, so check it out!

The ceremony is tentatively set for Thursday, Nov. 12, at 6 p.m. During the event, two judges, three attorneys and one organization will be honored for excellent diversity and inclusion work in Oklahoma. For more information about the event, please email diversityawards@okbar.org.

Be sure to register for the meeting at www.okbar.org/ annualmeeting, where you'll also find the most current information. Remember, the meeting and this event are free.

2020 ADA LOIS SIPUEL FISHER DIVERSITY AWARD WINNERS

Members of the Judiciary



Judge David B. Lewis Judge David B. Lewis was born in Ardmore. Gov. Brad Henry appointed him judge for the Oklahoma

Court of Criminal Appeals on Aug. 4, 2005. He served as presiding judge for 2013 to 2014 and is currently serving his second term as presiding judge. Judge Lewis earned a bachelor's degree with high honors from OU in 1980 and received his J.D. from the OU College of Law in 1983. After spending four years in private practice, he served four years as a Comanche County prosecutor and served as Comanche County special judge from 1991 to 1999. He was a district judge for Comanche, Stephens, Jefferson and Cotton counties from 1999 to 2005. He formerly served as president of the

Comanche County Bar Association, president of the Oklahoma Judicial Conference and is an OBF Fellow. He is also a Fellow of the American Bar Foundation and a member of the American Bar Association. Judge Lewis was selected as a member of the Class of 2008 Henry Toll Fellowship Program of the Council of State Governments and was inducted into the Order of the Owl at the OU College of Law in 2017. He serves on the Board of Visitors of the OU College of Law and is co-chair of the OBA Bench and Bar Committee, Judge Lewis also serves on the Board of Directors for the Girls Scouts of Western Oklahoma and has served as chairman of Reach Out and Read Oklahoma. He has two children - a son, David Jr., and a daughter, Danielle.



Haynes Timmons Prior to election to the district judgeship in 2014, Judge Timmons was a solo practi-

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

Judge Aletia

tioner at her

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.

Attorneys



Scott Biggs Scott Biggs grew up on a small farm in central Indiana. His engagement in activities through 4H and FFA led

him to OSU. After finishing his agricultural economics degree at OSU, Mr. Biggs went to work for Rural Enterprises of Oklahoma as a loan officer. Following his time at Rural Enterprises, he attended the OU College of Law, where he received his J.D. in 2006. While in law school, he began working as an intern for the Grady County District Attorney's office. He spent the following seven years as an assistant district

attorney in McIntosh County and later Caddo County. He became skilled at managing various felony dockets, misdemeanor dockets, civil case dockets and managing drug courts and juvenile dockets. In 2011, Mr. Biggs was elected to the Oklahoma House of Representatives, where he served five years. Through his service, he became a leading voice and strong advocate for law enforcement, victims' groups and the agricultural community.

In 2017 he was appointed to serve as state executive director for the U.S. Department of Agriculture Farm Service Agency (FSA) by President Trump. FSA employee demographics have changed under Mr. Biggs' leadership. From day one, a focus on civil rights issues and EEO training has resulted in expanded opportunities for employee career advancement. He has recruited and promoted more minorities and female managers than any other state executive director before him. Another emphasis for Mr. Biggs has been FSA outreach requirements for his team of 350. These efforts have resulted in a significant increase in new producers, many of which reside in historically underserved communities. His outreach efforts garnered national recognition when his team received the FSA Administrator Award in 2020, and he received a Certificate of Appreciation from the USDA Deputy Assistant Secretary of Civil Rights. His focus on fair treatment of employees and producers through new requirements and training has positively transformed the FSA for years to come.

Mr. Biggs currently resides on his family farm in Stillwater with his wife, Dr. Rosslyn Biggs, and two daughters, Maguire and Spencer. He maintains a part-time legal practice and was recently commissioned to the Oklahoma Air National Guard. He is assigned to the 138th Fighter Wing as an assistant staff judge advocate.



Mary Frances Edmonds

Mary Frances Edmonds is vice president and assistant general counsel of Williams Companies Inc.

She began her career in Williams Companies' legal department in 1996. During her tenure, Ms. Edmonds had very distinct roles in various business units, working on mergers and acquisitions, commodity trading and structured transactions, contracts administration and risk management, and Gulf of Mexico/offshore construction and commercial agreements. In 2011, she became vice president and assistant general counsel for Williams Companies' midstream unregulated operating areas.

Her family moved from New York to Tulsa in 1970, when American Airlines moved its computer headquarters. From an early age, she loved traveling with her father for business with American Airlines. The people she met brought new perspectives into her life, and thus began the thirst for diversity of thought, culture and opinion – just to name a few. In college, she lived in the international dorm at the University of Kansas. Watching international news and discussing international events with friends from Libya, Jordan, Ivory Coast and Venezuela were some of her most memorable times in college.

Each year, Williams Companies recognizes leaders who go above and beyond to create an inclusive work environment in which everyone feels respected, valued and connected through its Randy Barnard Leave the Ladder Down Award. The annual award was created by the Women's Business Resource Group to recognize a leader who fosters an environment that attracts a high-performing and diverse workplace. In 2008, the first year the award was given. Ms. Edmonds was the runner up, and in 2009, she won the Leave the Ladder Down Award. Outside of work, she serves on the Tulsa Global Alliance Board and the Women's Energy Network's national board. Both organizations promote diversity and inclusion through their programming and platforms.



Patti Palmer Ghezzi

Patti Palmer Ghezzi is an attorney who is known to be a strong advocate for criminal justice reform.

Ms. Ghezzi is currently an assistant federal public defender in the Capital Habeas Unit of the Western District of Oklahoma. Recently she has become well known for her representation of Patrick Murphy, a member of the Muskogee Tribe who was tried in state court and sentenced to death in 2000. In 2018. Ms. Ghezzi argued in front of the 10th Circuit Court of Appeals that Mr. Murphy was a tribal member who was alleged to have committed a crime on tribal land, meaning he should have been tried in federal court. The 10th Circuit ruled that Congress never

disestablished the Creek Nation's reservation, and Mr. Murphy should not have been tried in state court.

Oklahoma petitioned the U.S. Supreme Court to rule on the issue of the reservation, and during the 2018-2019 term, Ms. Ghezzi argued the issue in front of the U.S. Supreme Court. However, Justice Gorsuch had to recuse himself since he was involved in the 10th Circuit ruling, leaving a 4 to 4 deadlock. The case was held, and the Supreme Court took on a very similar case, McGirt v. Oklahoma, to allow Gorsuch to vote. This allowed the U.S. Supreme Court to find the Creek Nation's reservations were never disestablished, and most of Eastern Oklahoma remains Native American Country as it relates to the Major Crimes Act. This ruling has changed the area of criminal law as it relates to tribal members in Oklahoma.

Organization



Freedom Oklahoma Freedom Oklahoma is Oklahoma's sole state-

wide LGBTQ2S+ advocacy organization. They have a staff of five Oklahomans, working to secure lived equality and legal protection for lesbians, gays, bisexuals, transgender and queer people through advocacy, public education, coalition building and empowerment in the civic process. It envisions an Oklahoma in which every person has the guaranteed right to live an authentic life free of discrimination and inequity. Freedom Oklahoma is driven by the core belief that Oklahomans of every sexual orientation, gender expression and gender identity should

have equal protection under the law and true and full lived equality in their home state. Through community partnerships and the support of Oklahoma's diverse LGBTQ2S+ community and its allies, the organization is building an Oklahoma that is safe for all.

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

OKLAHOMA BAR ASSOCIATION 2020 VIRTUAL ANNUAL MEETING NOV. 9-13 BOUNCING BACK

2021 OBA BOARD OF GOVERNOR VACANCIES



OFFICERS

President-Elect

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

Vice President

Current: Brandi N. Nowakowski, Shawnee (One-year term: 2021) Nominee: Charles E. Geister III, Oklahoma City

BOARD OF GOVERNORS

Supreme Court Judicial District One Current: Brian T. Hermanson, Newkirk Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers, Washington counties (Three-year term: 2021-2023) Nominee: Michael R. Vanderburg, Ponca City

Supreme Court Judicial District Six Current: D. Kenyon Williams Jr., Tulsa Tulsa county (Three-year term: 2021-2023) Nominee: Richard D. White Jr.,

Tulsa

Supreme Court Judicial District Seven

Current: Matthew C. Beese, Muskogee Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee, Wagoner counties (Three-year term: 2021-2023) Nominee: **Benjamin R. Hilfiger, Muskogee**

Member At Large

Current: Brian K. Morton, Oklahoma City Statewide (Three-year term: 2021-2023) Nominee: Cody J. Cooper, Oklahoma City Nominee: Elliott C. Crawford, Oklahoma City Nominee: April D. Kelso, Oklahoma City 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 will be mailed Sept. 21 with a return deadline of Friday, Oct. 9. If needed, runoff ballots will be mailed Oct. 19 with a return date of Monday, Nov. 2.

Counties needing to certify Delegate and Alternate selections should send certifications TODAY to: OBA Executive Director John Morris Williams, c/o Debbie Brink, P.O. Box 53036, Oklahoma City, OK 73152-3036, fax: 405-416-7001 or email debbieb@okbar.org.

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS President-Elect

James R. Hicks, Tulsa

Nominating Petitions have been filed nominating James R. Hicks, Tulsa for President-Elect of the OBA Board of Governors for a one-year term beginning Jan. 1, 2021.

A total of 175 signatures appear on the petitions.

Vice President

Charles E. Geister III, Oklahoma City

Nominating Petitions have been filed nominating Charles E. Geister III, Oklahoma City for Vice President of the OBA Board of Governors for a oneyear term beginning Jan. 1, 2021.

A total of 231 signatures appear on the petitions.

BOARD OF GOVERNORS Supreme Court Judicial District No. 1

Michael R. Vanderburg, Ponca City

A Nominating Resolution from Kay County has been filed nominating Michael R. Vanderburg for election of Supreme Court Judicial District No. 1 of the OBA Board of Governors for a three-year term beginning Jan. 1, 2021.

Supreme Court Judicial District No. 6

Richard D. White Jr., Tulsa

Nominating Petitions have been filed nominating Richard D. White Jr. for election of Supreme Court Judicial District No. 6 of the OBA Board of Governors for a three-year term beginning Jan. 1, 2021.

A total of 32 signatures appear on the petitions.

Supreme Court Judicial District No. 7

Benjamin R. Hilfiger, Muskogee

Nominating Petitions have been filed nominating Benjamin R. Hilfiger for election of Supreme Court Judicial District No. 7 of the OBA Board of Governors for a three-year term beginning Jan. 1, 2021.

A total of 25 signatures appear on the petitions.

Member at Large

Cody J. Cooper, Oklahoma City

Nominating Petitions have been filed nominating Cody J. Cooper, Oklahoma City for election of Member at Large of the OBA Board of Governors for a three-year term beginning Jan. 1, 2021.

A total of 52 signatures appear on the petitions.

Elliott C. Crawford, Oklahoma City

Nominating Petitions have been filed nominating Elliott C. Crawford, Oklahoma City for election of Member at Large of the OBA Board of Governors for a three-year term beginning Jan. 1, 2021.

A total of 53 signatures appear on the petitions.

April D. Kelso, Oklahoma City

Nominating Petitions have been filed nominating April D. Kelso, Oklahoma City for election of Member at Large of the OBA Board of Governors for a threeyear term beginning Jan. 1, 2021.

A total of 56 signatures appear on the petitions.

Kara I. Smith, Oklahoma City

Nominating Petitions have been filed nominating Kara I. Smith, Oklahoma City for election of Member at Large of the OBA Board of Governors for a threeyear term beginning Jan. 1, 2021.

A total of 62 signatures appear on the petitions.

2021 LEADERSHIP & CANDIDATES



2020 President Susan B. Shields,

OKLAHOMA BAR ASSOCIATION

2020 VIRTU

NUV. 9-13 BOUNCING BACK

Oklahoma City Susan Shields is a shareholder with McAfee & Taft and practices in the areas of estate and family wealth planning, estate and trust administration, business planning and charitable organizations. She will serve a one-year term in 2021 as

immediate past president.

Ms. Shields was born in Bartlesville and earned her B.A. with honors from Stanford University in 1986 and her J.D. from the University of California, Los Angeles School of Law in 1989. After law school, she practiced with a large San Francisco law firm before returning to Oklahoma in 1991.

She is a member of the Oklahoma County, California and American bar associations. From 2009 to 2012, Ms. Shields served on the OBA Board of Governors. In 2014, she served as OBA vice president and as president-elect in 2019. She served as Oklahoma Bar Foundation president in 2013 and as an OBF Trustee from 2007 to 2014. She is a former OBA Estate Planning, Probate and Trust Section chair and a former member of numerous OBA committees.

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

Ms. Shields served as an Oklahoma County Bar Association director from 2014 to 2016 and has been a frequent speaker on a variety of estate planning, probate and nonprofit topics for OBA CLE and other seminars. She has also taught as an adjunct professor at the OU College of Law and has served on the boards of several local nonprofit organizations.



2021 President

Michael C. Mordy, Ardmore Michael "Mike" Mordy is a fourth-generation attorney who practices law in Ardmore with the firm of Mordy, Mordy, Pfrehm & Wilson PC. Elected as 2020 president-elect and serving one year in that position, he automatically becomes president Jan. 1, 2021. He

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

Mr. Mordy served as a member of the Judicial Nominating Commission from 2013 to 2018 and was chairman in 2019. He has served on the MCLE Commission, Clients' Security Fund Committee and OBF Board of Trustees. He served on the OBA Board of Governors from 2004 to 2006 and was vice president of the board in 2008.

He is involved in his community, where he is an active member of the First United Methodist Church. Mr. Mordy has served or currently serves on the boards of the Ardmore Habitat for Humanity, Dornick Hills Golf & Country Club, Southern Oklahoma Memorial Foundation and Ardmore YMCA. He and his wife, Christy, have two children and one granddaughter.

2021 NEWLY ELECTED BOARD OF GOVERNORS

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



President-Elect

James Hicks, Tulsa James "Jim" Hicks practices in Tulsa with the firm of Barrow & Grimm PC. His focus is on the litigation and transactional needs of individuals and businesses. He also represents clients in probate, estate planning and family law matters. He attended OU and obtained

a B.A. in finance before attending the TU College of Law. Admitted to practice in 1985, he served as a member of the OBA Board of Governors from 2015 to 2019. He also served as president of the Tulsa County Bar Association from 2013 to 2014 and of the Tulsa County Bar Foundation from 2017 to 2019. He has been recognized as an outstanding young lawyer by the TCBA and received the TCBA President's Award. In 1995, he was recognized as the outstanding young lawyer by the OBA.

Mr. Hicks participated as a member of Leadership Tulsa, Class XX. He was named by *Oklahoma Magazine* as "Best Attorney" in the 2011 and 2012 "Best of the Best" voting by its readers. He has served as senior warden of St. John's Episcopal Church in Tulsa since 2013 and continues to volunteer his time to several nonprofit organizations. Married to Nancy Hicks since 1983, he is most proud of his yearold granddaughter.



Vice President

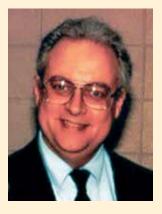
Charles E. Geister III, Oklahoma City

Charles "Charlie" Geister is a partner at the Oklahoma City law firm of Hartzog Conger Cason LLP. He has practiced law since 1980, with a focus on civil litigation and trial work. He also frequently serves as a mediator or arbitrator of disputes

and lawsuits and as a court-appointed discovery master. He has lectured in the areas of trial practice, civil procedure and insurance law.

Mr. Geister graduated with a B.A. from OU. He received his J.D., with honors, from the OU College of Law in 1980. He is admitted to practice in the State of Oklahoma, the U.S. District Court for the Western, Northern and Eastern districts of Oklahoma, and the 10th Circuit Court of Appeals.

He is a member of the American Bar Association and the Oklahoma County Bar Association. He has served as president of both the OCBA (2007 to 2008) and Oklahoma County Bar Foundation in addition to serving as a director for both organizations. He also has served as a member of various Oklahoma County and state bar committees, including the OBA Civil Procedure and Evidence Code Committee (1995 to 2000).



Supreme Court Judicial District One Michael Vanderburg,

Ponca City

Michael Vanderburg is currently consulting with Oklahoma Municipal Management Services and recently retired as the city attorney for Ponca City. During his career, he has also served as city attor-

ney for Okmulgee, Morris and Broken Arrow. Mr. Vanderburg was in private practice for six years. He obtained a B.A. in political science from the University of Arkansas in Fayetteville in 1971 and received his J.D. from the University of Arkansas School of Law in 1975. Last year he was inducted into the Oklahoma Hall of Fame of City and Town Officials in recognition of his long career.

He is one of the founders of the Oklahoma Association of Municipal Attorneys and currently serves on its Board of Directors, having previously served as president and general counsel. In addition to all Oklahoma courts, he is admitted to all three Oklahoma federal district courts, the 10th Circuit Court of Appeals and the U.S. Supreme Court.

Mr. Vanderburg currently serves as scholarship chair for the Kay County Bar Association, for which he has served in various offices, including president. He is a member of the International Municipal Lawyers Association and is one of only five Oklahoma IMLA Municipal Fellows. He has been a speaker for numerous CLE and law-related programs to organizations, including the Oklahoma Municipal League, Oklahoma Municipal Judges Association, Oklahoma Municipal Utilities Providers and many Oklahoma cities.



Supreme Court Judicial District Six

Richard D. White Jr., Tulsa Richard D. White Jr. is a shareholder at the Tulsa law firm of Barber & Bartz PC. During his 40 years of practice, he has represented businesses throughout the U.S. in commercial disputes. He has also maintained a substantial family

law practice and is a member of the Criminal Justice Panel representing defendants in the U.S. District Court for the Northern District of Oklahoma. He is licensed to practice in all Oklahoma courts, the U.S. District Courts for the Northern, Eastern and Western districts of Oklahoma, the U.S. District Court for the Southern District of Illinois, the 10th Circuit Court of Appeals and the 5th Circuit Court of Appeals.

Mr. White is a member of the Tulsa County Bar Association and has served as budget chair (2014 to 2015), treasurer (2015 to 2016), secretary (2016 to 2017), professionalism chair (2019 to 2020) and will serve as professionalism chair for the upcoming 2020 to 2021 term.

He is a long-standing member of the Commercial Law League of America, having served as chair of the southern region and a term on the Board of Governors. He has been a Tulsa City-County Law Library Commission member since 2011 and is currently serving his third year as commission chair. Mr. White received his bachelor's degree in criminal justice from California State University at Long Beach and his J.D. degree from the TU College of Law.



Supreme Court Judicial District Seven

Benjamin R. Hilfiger, Muskogee

Ben Hilfiger is an attorney at the Muskogee law firm of Cook and Hilfiger. He is married to Amber, and together they have three kids. He graduated from Loyola University New Orleans College of Law in

2019. Mr. Hilfiger has an undergraduate degree from OU and a master's degree from OCU. His practice focuses on criminal and family law.



OBA YLD Chair

April J. Moaning, Oklahoma City

April J. Moaning was elected as the 2020 Young Lawyers Division chair-elect and automatically becomes YLD chairperson Jan. 1, 2021. In that position, she will serve a one-year term on the Board of Governors. She earned a B.A. in

economics from OSU and received her J.D. from the TU College of Law. While pursuing her law degree, she served as vice president of the TU College of Law Black Law Students Association and maintained active involvement in community service organizations. She also received numerous honors and awards, including the CALI Excellence for the Future Award in torts and the Rocky Mountain Black Law Students Association Best Oral Advocate Award.

Ms. Moaning began her legal career practicing family and criminal defense law. She later served as staff counsel at Liberty Mutual Insurance Co., where she gained experience in the areas of insurance defense and civil litigation matters involving personal injury and property damage. Currently, she represents clients in family, personal injury and civil matters. She also continues to focus on her commitment to community outreach by serving on the OBA Diversity Committee and OBA YLD Board of Directors. She has served on the Board of Directors since January 2015 and has received multiple awards for her involvement and dedication to the division.

MEMBER AT LARGE ELECTION

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 were mailed to delegates Sept. 21 and must be received by Monday, Oct. 12. If there is a runoff, a ballot will be mailed Oct. 19 with a deadline of Monday, Nov. 2.



Cody J. Cooper, Oklahoma City

Cody J. Cooper represents individuals and companies in a wide range of intellectual property and civil litigation matters. His practice primarily concentrates on intellectual property, including patent prosecution and litigation, trademark and copyright matters and com-

mercial litigation in state and federal courts.

He graduated from the OU College of Law with honors. While in law school, he served as managing editor for the *American Indian Law Review*, magister (president) of the legal honors fraternity Phi Delta Phi and was on the Dean's Honor Roll. He was also a mentor on the Dean's Leadership Council for incoming law students and earned the American Jurisprudence Award for Civil Procedure II. He was a semi-finalist at the University of West Virginia Energy Law Moot Court Competition. Mr. Cooper received his bachelor's degree in business administration from OU, majoring in finance and management information systems. He has a general science and engineering background, which qualified him to become registered before the U.S. Patent and Trademark Office as a practicing patent attorney. As an undergraduate student, he worked for a Fortune 100 company as a systems analyst intern in the business and technology group, working with several complex software suites that provided critical services to the business.

He is actively involved in community and charitable organizations and has volunteered with a number of organizations, including NewView Oklahoma, Salvation Army, various public schools throughout the Oklahoma City metro and others.

Born and raised in Norman, he now lives in Oklahoma City with his wife, daughter, son and two dogs. In his free time, he enjoys spending time with friends and family, playing sports and attending Oklahoma City Thunder and Sooner sporting events.



Elliott C. Crawford, Oklahoma City

Elliott C. Crawford is the president and founder of the Law Office of Elliott C. Crawford PC. A native of Fort Worth, he graduated *cum laude* with a B.A. in political science from Texas A&M University in 2001. He received his J.D. in 2006 from the OCU School of

Law, where he was on the Dean's Honor Roll and received the CALI Award for federal jurisdiction. During law school, he also interned for the Oklahoma County District Attorney's Office in the General Felony and White Collar Divisions. After graduating, he opened his own law practice, which is devoted to representing the accused and focuses on federal criminal defense.

Mr. Crawford is admitted to practice in all state and federal courts in Texas and Oklahoma, the 5th and 10th Circuits, the U.S. Court of Appeals for the Armed Forces and the U.S. Supreme Court. He is also a member of the Holloway Inn of Court. Moreover, he is a proud member of the Criminal Justice Act Panel for the Western District of Oklahoma, a group of trial attorneys who represent indigent criminal defendants in federal court. In 2014, he received the OBA Golden Quill Award for his article, "Lights, Camera, Bar Action: Ethical Implications of Extrajudicial Statements and Pre-Trial Publicity in Criminal Proceedings." He has also consistently been recognized by the National Trial Lawyers for his work in the area of criminal defense.

In his spare time, Mr. Crawford is an amateur chef and enjoys cooking for family and friends. He hopes to one day sell his famous salsa. Most importantly, he is the husband of Kelsey and the father of three daughters.



April D. Kelso, Oklahoma City

April Kelso is an associate with Pierce, Couch, Hendrickson, Baysinger & Green in Oklahoma City, whose areas of practice include banking/lending litigation, insurance defense and coverage, as well as other areas of general civil litigation. She received her

J.D. from the TU College of Law in 2010. Ms. Kelso is a graduate of the sixth OBA Leadership Academy class and is active in the OBA Women in Law Committee, where she currently serves as co-chair for the Service Subcommittee. This year, through the Women in Law Committee, she organized a blood drive and a clothing drive to better serve the community. She is an OBF Fellow and is active in the Ruth Bader Ginsburg American Inn of Court and the Oklahoma County Bar Association.



Kara I. Smith, Oklahoma City

Kara I. Smith is the chief assistant attorney general of the Office of Civil Rights Enforcement Unit within Oklahoma Attorney General Mike Hunter's office. She is an adjunct professor of law at the OCU School of Law. In 1999, she received her B.A. in political science

and a minor in legal studies from OU. In 2002, she received her J.D. from the OCU School of Law.

Ms. Smith has served on the Board of Trustees for the OBF as chair of the Development Committee. She currently serves as chair of the OBA Awards Committee and serves as a member of several OBA committees/programs, including the Access to Justice Committee, Awards Committee, Diversity Committee, Oklahoma Lawyers for America's Heroes Program and Legislative Monitoring Committee. She is a past OBA Tellers Committee chair, past chair and past vice chair of the OBA Diversity Committee and is a former member of the Women in Law Committee and the Government and Administrative Law Practice Section. Ms. Smith is a graduate of the OBA Leadership Academy and an active member of the American Bar Association. She is a recipient of the OBA Ada Lois Sipuel Fisher Diversity Award (2017), OBA President's Award (2012) and OBF President's Award (2015 and 2017).

Ms. Smith is also active within the legal and civic communities. She serves as the board secretary and PR chair for the OCU School of Law Alumni Association and is on the Robert J. Turner Inn of Court executive board. She is the founder of A Step Ahead Preparatory Program that oversees ACT/ SAT prep to underrepresented students and is an active member of Alpha Kappa Alpha Sorority Inc. She previously served on the Board of Directors for YWCA Oklahoma City and as vice president of the Association of Black Lawyers – Oklahoma City.

Previously, she was a member of the General Counsel Unit within the Office of the Oklahoma Attorney General and served as general counsel to the Oklahoma Department of Veterans Affairs and the Oklahoma Veterans Commission. Before joining OAG, she was general counsel for the Oklahoma Office of Personnel Management and deputy general counsel for the Oklahoma Office of Management and Enterprise Services.

Out your OBA member benefits lately?

What are you waiting for? Visit www.okbar.org/ memberbenefits.



OBA AWARDS

AWARD OF JUDICIAL EXCELLENCE



Judge Bob Bacharach, Oklahoma City

Judge Bob Bacharach received his J.D. from the Washington University

School of Law in 1985. He began his career serving as a law clerk for then Chief Judge William J. Holloway Jr. of the 10th Circuit Court of Appeals. Following his clerkship, Judge Bacharach joined the Oklahoma City law firm of Crowe and Dunlevy, where he practiced in a variety of areas, first as an associate and later as a shareholder.

In 1999, he joined the Western District of Oklahoma as a magistrate judge, where he served until 2013. Between settlement conferences, criminal duty and a full civil caseload, Judge Bacharach also served as president of the Federal Bar Association and on the OBA's Lawyers Helping Lawyers Board of Directors. In March 2013, Judge Bacharach was appointed as a U.S. Circuit Judge for the 10th Circuit Court of Appeals.

LIBERTY BELL AWARD

Poetic Justice, Tulsa



Poetic Justice is a Tulsa nonprofit organization that facilitates restorative writing and creative art classes for women who are incarcerated. The organization was created in March 2014 at the Tulsa County Jail to empower women to change as they engage in self-reflective, therapeutic writing.

Today, Poetic Justice has over 100 volunteers who lead classes every week at the Tulsa County Jail, Creek County Jail, Mabel **Bassett Correctional Center and** Kate Bernard Correctional Center. In 2019, Poetic Justice began teaching classes at Las Colinas Detention Facility in San Diego and La Esperanza in Tijuana, Mexico. While prisons and jails are closed due to COVID-19, Poetic Justice is providing distance learning classes to over 120 women who are incarcerated. Since its creation, over 3,000 incarcerated women have been a part of the Poetic Justice classes.

JOE STAMPER DISTINGUISHED SERVICE AWARD



Retired Judge Richard Woolery, Sapulpa

The Joe Stamper Distinguished Service Award honors individuals who volun-

teer countless hours to further the goals of the OBA. Judge Richard Woolery earned a bachelor's degree in education from the University of Central Oklahoma in 1973. Upon graduation, he taught English, history and journalism at Sapulpa Public Schools. He received his J.D. from the TU College of Law in 1977.

Judge Woolery began his judicial career in 1978 as a municipal judge for the city of Sapulpa. He concurrently worked as an associate attorney for several law offices and later as a sole practitioner. He has served as YLD chairman, an **OBA Board of Governors member** and a trustee of the Oklahoma Bar Foundation. He also volunteered as a cub master with the Boy Scouts of America and was involved with the History Alive program. He was named Outstanding Young Lawyer in 1987 and was a co-recipient of the Alma Wilson Award in 2008. He retired Aug. 31 from his position as special judge for Creek County after 24 years on the bench.

ALMA WILSON AWARD



Judge Lisa Tipping Davis, Oklahoma City

The Alma Wilson Award is given to individuals who have made a significant

contribution to improving the lives of Oklahoma children. Judge Lisa Tipping Davis received her J.D. from the OU College of Law in 1984. She began her legal career in private practice before becoming assistant attorney general. She represented State of Oklahoma agencies and employees in civil litigation and was later contracted to the Oklahoma State Regents for Higher Education. In Dec. 2009, Judge Davis was appointed to serve as district judge for Oklahoma County, where she presided over both criminal and civil dockets. She was reassigned by Chief Justice Colbert as chief judge to the **Oklahoma County Juvenile** Justice Center in Feb. 2014.

During her tenure, Judge Davis developed a collaborative approach to handling the variety of issues facing children in foster care and helped implement the Program for Female Youth on Probation, Safe Baby Project, Road to Independence Program and Citizens for Children and Families organization. She assisted in transforming the Pauline Mayer Children's Shelter into The Family TREE, a one-stopshop for medical care and mental health and behavior services for foster children, foster families and biological parents. She passed away in April 2019, and the award is being presented posthumously.

NEIL E. BOGAN PROFESSIONALISM AWARD



Bob Burke, Oklahoma City Bob Burke graduated with a B.A. in journalism from OU in 1970 and received his J.D. from the OCU School of

Law in 1979. He has written more historical nonfiction books (137) than anyone else in history. Three of his books have been nominated for the Pulitzer Prize. He is a member of the Oklahoma Hall of Fame, Oklahoma Journalism Hall of Fame, Oklahoma Historians Hall of Fame and National College of Workers' Compensation Lawyers.

He has served on the governing boards of the Oklahoma Hall of Fame, Oklahoma Arts Council, Oklahoma Foundation for Excellence, Jim Thorpe Association, Oklahoma Historical Society, Oklahoma Sports Hall of Fame and the First Americans Museum. In 2019, Mr. Burke served as special master in the nation's first trial of a lawsuit against opioid manufacturers, *State of Oklahoma v. Johnson and Johnson*.

JOHN E. SHIPP AWARD FOR ETHICS



Judge Rebecca Brett Nightingale, Tulsa

Judge Rebecca Brett Nightingale has served as district judge since taking

office Jan. 1, 2003. She has called a felony criminal docket, a civil docket and the Veteran's Treatment Court docket for Tulsa County. Judge Nightingale also supervises the Alternative Courts program in Tulsa County, including Drug Court, DUI Court, Mental Health Court and Veteran's Treatment Court. She established Mental Health Court in Tulsa County in 2007 and served as the first female presiding judge of the 14th Judicial District for Oklahoma from May 2015 to December 2018.

Recently Judge Nightingale served as presiding judge on the Court on the Judiciary, Trial Division. Her best work is her family and service to her church and bible study fellowship.

OUTSTANDING COUNTY BAR ASSOCIATION AWARD

Canadian County Bar Association

The Canadian County Bar Association, led by President Austin Walters, has 75 members that consist mainly of small-firm members and solo practitioners. Members of the bar association have shown continued commitment to their community. In June, the CCBA was able to make a generous donation to the Piedmont Area Veterans Association in memoriam of former Canadian County District Judge Ken Dickerson. In November, members volunteered with Lawyers Fighting Hunger by preparing and distributing free turkeys and Thanksgiving food to low-income families. The next month, they participated in the Red Andrews Christmas Dinner, where members served meals and gathered monetary donations and donations of toys and coats for men, women and children. Members also participate yearly in the OBA's Law Day festivities and the bar association makes a yearly monetary donation to the Oklahoma Bar Foundation.

At the beginning of the COVID-19 pandemic, the CCBA recognized their community's growing need for personal protective equipment. The association bought and donated 500 face masks. Canadian County judges know they can rely on the bar association to provide necessities that the courthouse doesn't have extra funding for. When COVID-19 restrictions surfaced, officers organized Zoom meetings, including speakers and CLE credit.

EARL SNEED AWARD

OBA Family Law Section

The Earl Sneed Award honors those who are outstanding continuing legal education contributors. The OBA Family Law Section, led by Chairperson Brita Haugland-Cantrell, began in 1986 and is the OBA's largest section with more than 1,100 members. The section offers free yearly membership to members of the judiciary and nearly 12 free hours of CLE each year. In September 2019, the OBA FLS partnered with the OBA CLE Department to present the seminar "Plan for the Worst, Hope for the Best." The section also presents on family law-related CLE topics each year during the Solo & Small Firm Conference.

The OBA FLS has created the Family Law Practice Manual. which contains over 2,700 pages of black letter law footnoted with relevant case and statutory authority. The manual is used by more than 250 trial and appellate judges in Oklahoma who deal with family law issues. The funds raised through the sale of the manual were used to create the Oklahoma Family Law Section Trial Advocacy Institute, which has been held at the Oklahoma Bar Center since 2014. The 2020 OBA FLS Trial Advocacy Institute was canceled due to COVID-19; however, the section is already working on plans for the 2021 event.

GOLDEN GAVEL AWARD

OBA Estate Planning, Probate and Trust Section

The Golden Gavel Award is presented to OBA committees and sections that perform with a high degree of excellence. The **OBA Estate Planning, Probate and** Trust Section, led by Chairperson A. Daniel Woska, has almost 900 members. More than 100 section members have served on the section's subcommittees in the past year. The section planned and presented lunch and learn CLEs for its members on a variety of topics, including guardianships, remote notaries, estate planning, Standalone Retirement Trusts, ethics and oil and gas title issues. They also formed a subcommittee that created the Handbook on Adult Guardianships and Handbook on Minor Guardianships, which are available for all OBA members online.

When COVID-19 caused courthouses across the state to close and changed the way attorneys interacted with clients, judges and each other, the section aided its members and OBA members in several areas including assistance on the continuation and completion of estate planning and addressing title issues relating to notice requirements outlined in probate and guardianship statutes, which were already filed and pending while courthouses had limited availability.

OUTSTANDING YOUNG LAWYER AWARD



Brandi Nowakowski, Shawnee Brandi Nowakowski, a 2010 graduate of the OU College of Law and partner with the

Shawnee firm of Stuart & Clover, practices primarily in the areas of probate, adult guardianship, estate planning, real property and general civil litigation. She currently serves on the Supreme Court of the Absentee Shawnee Tribe, as counsel for the Pottawatomie County E-911 Trust Authority and as the municipal prosecutor for the City of Shawnee.

Ms. Nowakowski is the current vice president of the OBA and serves as the immediate past chair of the OBA Young Lawyers Division Board of Directors. She has actively served on that board since January 2012 as the District 8 director, secretary, treasurer, chairelect and chair. She has received the YLD Star of the Quarter Award, 2013 Director of the Year Award and 2014 Chair's Award. She has served as the YLD Community Service chairperson from 2013 to 2018 and on the executive committee of the YLD Board since January 2016. Previously, Ms. Nowakowski served on the OBA Law Day Committee and the Credentials Committee for the OBA House of Delegates from 2012 to 2018 and on the Clients' Security Fund Task Force and the OBA Budget Committee.

OUTSTANDING SERVICE TO THE PUBLIC AWARD



Christine Pappas, Ada Christine Pappas received her B.A., M.A. and Ph.D. from the University of Nebraska-Lincoln and

her J.D. from the University of Nebraska College of Law in 1997. In 2001, she became a professor at East Central University and currently serves as the chair of the Department of Politics, Law and Society. She teaches many classes in American politics, including tribal politics, constitutional law and women in politics. She has been an OBA member since 2010 and is currently a board member of Oklahoma Indian Legal Services.

Dr. Pappas has a passion for building citizenship skills and has assisted East Central University students in registering to vote. She has led the university's voter registration team that won the Voter Registration Contest sponsored by the Oklahoma State Regents for Higher Education every year since 2014 – approximately 2,000 students for Oklahoma elections. Last fall, she registered 9.4% of the full-time enrolled student body, the largest percentage of students on campus to vote than any other Oklahoma colleges or universities of similar size.

AWARD FOR OUTSTANDING PRO BONO SERVICE



Derek Burch, Oklahoma City Derek K. Burch received his J.D. from the OCU School of Law

in 1988. He

was partners with Ed Abel in Oklahoma City for several years handling personal iniury cases, before launching his own firm, Burch & George, in 1997. Since 2011, the firm has been known as Burch, George & Germany PC. The firm's cases involve catastrophic personal injury claims including automobile, trucking, product liability and wrongful death litigation. Mr. Burch is a member and on the Board of Directors of the Oklahoma Association for Justice and a member of the President's Club in the American Association for Justice.

He is an active member of Oklahoma Lawyers for Children, where he volunteers legal assistance and offers his experience as a trial lawyer on behalf of children in the Juvenile Division of the Oklahoma Country District Court. In 2010, he received the organization's highest honor, the Mona Salver Lambird Service to Children Award, in recognition of his work for the organization. In 2011, he received the OCU School of Law's Outstanding Pro Bono Alumnus of the Year Award, and in 2012 the Oklahoma County Bar Foundation awarded him the Howard K. Berry Sr. Award for service to justice and the justice system. In 2009,

Mr. Burch became a member of the American Board of Trial Advocates.

MAURICE MERRILL GOLDEN QUILL AWARD



Phillip J. Tucker, Edmond Phillip J. Tucker is awarded the Maurice Merrill Golden Quill Award for co-authoring

"The Inconvenient Truths about Inconvenient Forums in Child Custody Proceedings," which appeared in the February issue of the *Oklahoma Bar Journal*. He received his J.D. from the OCU School of Law in 1983 and is the founding partner of The Tucker Law Firm in Edmond. He was the 2004 chair of the Family Law Section, serves as a senior co-editor of the section's Family Law Practice Manual and is involved in the section's Legislative Committee.



Becky Bryan Allen, Oklahoma City Becky Bryan Allen is awarded the Maurice Merrill Golden Quill Award for

co-authoring "The Inconvenient Truths about Inconvenient Forums in Child Custody Proceedings," which appeared in the February issue of the *Oklahoma Bar Journal*. Ms. Bryan Allen is an associate attorney with Foliart, Huff, Ottaway & Bottom and was admitted to practice in Sept. 2019.



Virginia Henson, Norman Virginia Henson is

awarded the Maurice Merrill Golden Quill Award for her article

"Beyond Biology: Schnedler v. Lee and Third-Party Custody," which appeared in the May issue of the Oklahoma Bar Journal. She is a sole practitioner in Norman. She received her J.D. from the OU College of Law in 1980 and focuses her practice on family law. In addition to her practice, she has taught at East Central University as an assistant professor and director of legal studies, chaired and served as secretary of the OBA Family Law Section and has twice been named Outstanding Family Lawyer for the State of Oklahoma. Ms. Henson is a fellow of the American Academy of Matrimonial Lawyers.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD



OCU School of Law Emma Kincade, Tulsa Emma Kincade is a Hatton Sumners Scholar. She has been

on the Dean's List and Faculty Honor Roll every semester and has won numerous CALI awards. She is a member of the school's National Appellate Advocacy Competition team and was a top finisher in the school's first-year intramural competition. She is a member of the William J. Holloway Inn of Court and has served as a faculty research assistant, a law clerk for the OBA and an intern for the U.S. Senate Committee on Indian Affairs, as well as several Oklahoma firms and businesses.

As a citizen of the Cherokee Nation, her love for the law stems from her commitment to advocating for tribal sovereignty and improving access to health care for native nations. Ms. Kincade earned a bachelor's degree summa cum laude in communication sciences and disorders from OSU, where she served as a student leader at the Center for Sovereign Nations. Before law school, she was nationally recognized as a Udall Scholar for her commitment to Native American health care solutions. After graduation, she is excited to continue her passion for advocacy as an associate attorney for GableGotwals in Tulsa.



OU College of Law Allyson Shumaker, Highland Village, Texas Allyson Shumaker is a Comfort Scholar and has

earned nine American Jurisprudence Awards. She currently serves as the Oklahoma Law Review editorin-chief, and her student comment won the Gene H. & Jo Ann Sharp Outstanding Comment Award. Active in oral advocacy, her team placed first in the nation at the 2020 McGee Civil Rights Competition. She also placed second in the 2L Calvert competition and advanced to the quarterfinals in the 1L Moot Court Competition, where she earned a top-10 speaker award.

Ms. Shumaker has enjoyed connecting with other law students through her roles as a legal writing and research teaching assistant and as a student mentor. She has interned for GableGotwals, Hartzog Conger Cason and Legal Aid Services. Prior to law school, she graduated *magna cum laude* from the University of North Texas with a bachelor's degree in journalism. Between undergraduate and law school, she lived in six different states and spent several years working for a t-shirt company.



TU College of Law Jason Wietholter, Tulsa Jason Wietholter, with a GPA of 3.986, ranks first in

his class. He has received CALI Awards in trial practice, evidence workshop, evidence, legal writing III and civil procedure I & II. He served as the Tulsa Law Review executive IT editor from 2019 to 2020 and associate editor from 2018 to 2019. He is the author of an article soon to be published in the law review titled "Death and Taxes: The Only Guarantees a Patent Grant Provides?" He has served as Board of Advocates president, treasurer and competitor, winning first place in the Hager Torts Appellate Oral Argument. He also earned high placement in criminal closing arguments, civil motion hearing, family law negotiation, 1L negotiation and immigration law competition.

Since 2013, Mr. Wietholter has served as chief executive officer of the American Guild of Court Videographers. He has worked as a law clerk for Russ, August & Kabat in Los Angeles. From 2008 to 2017, he founded Opveon Litigation Services and subsequently created Opveon Court Reporting & Legal Video. He is a member of the American Society of Trial Consultants and a student member of the Tulsa County Bar Association. He earned a bachelor's degree in business management from OSU in May 2008.

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EMPLOYMENT LAW

The Goal to Become Equal: The Women's National Soccer League and the Equal Pay Game

By Katherine Mazaheri and Hannah Lunsford



LAY LIKE A GIRL. The Women's National Soccer League (U.S. League) are the women we want to lead our generation in the equal pay game. Fighting with the power they bring to the field, they aimed to win a gender discrimination suit and equal pay for the women in their league in the case Morgan v. United States Soccer Federation, Inc. The lawsuit was filed in 2019 against the U.S. Soccer Federation (the federation) in the U.S. District Court of Los Angeles, where the female players claimed they had not been paid and were not treated equally to their male counterparts. The U.S. Women's League asked for more than \$66 million in damages under the Equal Pay Act and Title VII of the Civil Rights Act of 1964.¹

Twenty-eight plaintiffs from the U.S. Women's League brought claims regarding the discrepancy of pay structure in their bargaining agreements as compared to the U.S. Men's League. One claim pointed specifically to the time period from March 2013 through Dec. 31, 2016, when the previous collective bargaining agreement expired, and the women players could potentially make a salary of \$72,000 plus bonuses for winning nontournament games, as well as World Cup appearances and victories and Olympic victories.² At the start of the suit, the female plaintiffs had their first victory in court when they were certified as a class in November 2019, allowing any player from the league since February 2015 to join the suit.³ Both sides submitted motions for summary judgment in February 2020. The federation asked for a dismissal of the suit, and the U.S. Women's League asked for the original damages as well as equality in pay and treatment as compared to the U.S. Men's League.4

Gender discrimination and equal pay lawsuits are not new to women's soccer around the world. Last year, the Reggae Girlz, the first Caribbean Women's Soccer League to qualify for the World Cup, used social media to demand equal pay from their federation, the Jamaican Football Federation, launching the "No pay, No play" boycott campaign.⁵ The Jamaican Football Federation agreed to pay the women players equally within a month of the start of the "No Pay, No Play" campaign. Last November, the

Matildas, the National Women's Soccer League in Australia, accomplished a huge win by ensuring that they would be paid as much as their male counterparts and get the same operational support in a four-year deal with their football federation.6 The fight for equal pay is not new to the U.S. Women's League either. In 2016, five women from the U.S. Women's League filed a similar complaint against the Equal Employment Opportunity Commission and the federation. The filing in the case noted that the women's team generated nearly \$20 million more than the men's team in revenue the previous year but were paid about a quarter of what the men made.

The arguments on both sides of *Morgan v. United States Soccer Federation, Inc.* were persuasive, as detailed below, and the federation did not back down against the U.S. Women's League. The federation relies on *Stanley v. University of Southern California*⁷ as their defense. In *Stanley v. University of Southern California*, Marianne Stanley, the former head coach of the women's basketball team at the University of Southern California (USC), was terminated

after her first contract with the university expired and many successful years of coaching under her belt. Coach Stanley asked for pay equal to her male counterpart and was denied. Shortly after being denied, she brought claims that USC was violating the Equal Pay Act and sought a declaratory judgment, stating the university's conduct was discrimination based on sex. She based her claims on language in the Equal Pay Act that she should be paid equal to her male counterpart because her job "requires equal skill, effort and responsibility, and [is performed] under similar working conditions."8 However, the court felt differently and ruled in favor of USC, stating that the evidence presented to them showed "significant differences in job pressure, the level of responsibility, and in marketing and revenue-producing qualifications... such factors taken into consideration does not prove gender bias or violate the Equal Pay Act."9 In Morgan, the federation is clearly using *Stanley* to bolster the claim that the U.S. Women's League has significant differences in skill,

effort and responsibility from the U.S. Men's League, therefore, there is no gender bias or violation of the Equal Pay Act.¹⁰

The women of the U.S. Women's League fought back, arguing that the federation is guilty of gender-based decision making and relies heavily on the contracts they have with the federation. The women claimed the federation is paying them less than their male counterparts "for substantially equal work and by denying them at least equal playing, training, and travel conditions; equal promotion of their games; equal support and development for their games; and other terms and conditions of employment."¹¹ Moreover, the class of plaintiffs relied on comments in court documents by **U.S. Soccer Federation President** Carlos Cordeiro and predecessor Sunil Gulati in which statements were made that the U.S. Women's League players had less physical ability and responsibility than the U.S Men's League.¹² The revelation of this statement sent waves through the legal and soccer community resulting in President

Cordeiro stepping down early March 2020. Mr. Cordeiro apologized and refuted the argument, stating the statements in the legal filing caused great offense, and he never intended for such statements to be used.¹³

The result of these events ironically led to not only a woman but a former player of the U.S. National Women's Soccer League taking President Cordeiro's place. Before stepping down as president, he released an open letter early in the lawsuit with financial data from 2010 to 2018 of what the male and female players were paid. The women's salaries totaled just under \$8 million more than the male team members' during that time period.¹⁴ However, multiple articles and representatives say that is "utterly false."¹⁵ The reasoning of the false claim was not revealed, but the reality of the U.S. Women's League having more success than the U.S. Men's League by winning four World Cups and four Olympic gold medals points to a potential reason. Governed by the contracts between each team and the federation, winning World Cups and

In *Morgan*, the federation is clearly using *Stanley* to bolster the claim that the U.S. Women's League has significant differences in skill, effort and responsibility from the U.S. Men's League, therefore, there is no gender bias or violation of the Equal Pay Act.

Olympic medals garnered more attention with interviews, promotions and advertising; therefore, the U.S. Women's League received more revenue than the U.S. Men's League.

Both the women's and men's leagues' pay is determined by collective bargaining agreements (CBA). The CBA for the U.S. Women's League and the U.S. Men's League differ in structure. The U.S. Women's League's CBA had guaranteed compensation, fringe benefits and performance benefits. The U.S. Men's League's CBA, which expired at the end of 2018, was a "pay-to-play" contract and depended on performance. The U.S. Men's League had no guaranteed compensation. However, the main difference in pay comes from performance bonuses. Women's leagues are consistently paid less than men for their performance in tournaments. For example, the FIFA World Cup provided \$400 million in prize money for the men's league but only \$30 million for the women's league.

Judge R. Gary Klausner for the Central District of California ruled on dueling summary judgment motions. Defense for the federation claimed that giving summary judgment to the plaintiff is contrary to the law by essentially rewriting the plaintiff's collective bargaining agreement to give them more than a higher reward, when they never took the risk of asking for one. Additionally, the federation claimed that the U.S. Women's League has been making millions of dollars more than their male counterpart in recent years. Judge Klausner ruled in favor of the federation's summary judgment. Judge Klausner granted the summary judgment for the federation in the Equal Pay Act claim because he judged the women's

league made more money than the men's league. Judge Klausner sided with the defendant's argument that the women's league plays more games and wins more games, therefore, making more money. From 2015 to 2019, the U.S. Women's League earned approximately \$24 million and averaged \$220,747 per game. On the other hand, the U.S. Men's League earned approximately \$18 million and averaged \$212,639 per game.

In the Title VII claim, the plaintiff's U.S. Women's League argued they are paid less than similarly situated U.S. Men's League players, and they are subjected to unequal working conditions. The federation motioned for summary judgment on the Title VII claim, arguing that it did not fall within the scope of employment discrimination. The U.S. Women's League claims that they work in unequal working conditions referred to the amount of money allocated to playing fields, using commercial airlines instead of charter flights, travel expenses (including room and board), medical training and support and differences in head coach compensation. The judge found that field services, charter flights and hotels and medical and training support were within the scope of employment discrimination.¹⁶

When judging whether to grant the federation's summary judgment regarding the Title VII claim, the court found that a reasonable fact-finder could not find discrimination existed because the women were subjected to turf fields more than men, but there was discriminatory motive in the charter flights. Although the U.S. Women's League did play more games on turf fields rather than grass fields than men, the court found that the federation did not discriminate in subjecting

the U.S. Women's League to turf fields. Assuming that the U.S. Women's League had established a prima facie case of discrimination, the federation argued it had legitimate reasons for doing so. The U.S. Women's League countered it was pretext, using a human resources expert to say the federation had violated its HR policy to focus on the players' safety and health and the federation's Chief Commercial Officer Berhalter's deposition testimony that the federation did not consider equal treatment or player safety when considering playing fields.¹⁷ However, the judge did not find the plaintiffs' arguments persuasive and granted the federation's summary judgment. The federation did not motion for summary judgment on the issue of medical and training support, so no decision was issued on that for summary judgment.

Similar to the discussion of the playing fields, the plaintiffs were able to meet the three elements of a discrimination claim – they are a protected class, they performed their jobs adequately and they were subjected to an adverse employment claim. However, in this issue, the court stated that the circumstances "[gave] rise to an inference of discrimination" in the issue regarding hotels and airfare.¹⁸ Again, the federation argued it had legitimate reasons for the circumstances, such as the business class flight would not cause a competitive disadvantage in one of the U.S. Women's League games, there were limited commercial flight options for a specific U.S. Men's League game, and since the U.S. Men's League was struggling to qualify for the 2018 World Cup, the federation wanted to supply any competitive advantages.¹⁹ The court found the federation provided legitimate

reasons, and the plaintiffs argued that it was pretext using the HR expert and Cordeiro's statements. The court found the plaintiff's evidence was enough to raise a question regarding the federation's reasons as pretext, because the court regarded them as weak for such a big discrepancy between the women's and men's allotted funds, \$5 million and \$9 million respectively.²⁰

Although the U.S. Women's League lost on most of their claims, they were able to succeed on their Title VII claim for discrimination in hotels and airfare. All eyes have been on the U.S. Women's Soccer League, and one thing is certain, the women of the U.S. Women's Soccer League have continued to score small steps of awareness and conversation, not only involving gender pay inequity within soccer but of professional women in all playing fields.

ABOUT THE AUTHORS

Katherine Mazaheri is the founder and managing attorney of Mazaheri Law Firm, an all-female team of attorneys who have gained a reputation for taking on cases that attack various social injustices and help families in crisis. She's passionate about employment litigation and educating on legal issues in online seminars regarding COVID-19 and employment law, sexual harassment and other Title VII best practices.

Hannah Lunsford is a recent graduate of the OU College of Law. She found a love of employment law while working at Mazaheri Law. She looks forward to a career that allows her to help her community and strive for integrity in everything she does.

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1. Anne M. Peterson and Ronald Blum, "U.S. Soccer Head Quits Over Argument in Pay-Gap Suit that Women have Less Ability than Men," Time (March 13, 2020), www.time.com/5802351/ carlos-cordeiro-guits-us-soccer-pay-dispute.

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- 15. *Id.*

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- 19. Id. at *21.
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Further Changes to Exhaustion of Administrative Remedies

By Kimberly Lambert Love and Jason Callaway

TN GAD V. KANSAS STATE

Liniversity,¹ the 10th Circuit held that exhaustion of administrative remedies was no longer a question of subject-matter jurisdiction but, instead, was a "condition precedent" to suit.² The Supreme Court's recent decision in *Fort Bend County, Texas v. Davis*³ comes to the same conclusion, but in making its decision, the court issued the latest in a line of cases reforming what it means for a statutory requirement to be "jurisdictional."

LEGAL BACKDROP

Practitioners in areas like employment law, prisoner's rights litigation, administrative law and similar areas with statutorily created rights are all too familiar with the need to exhaust administrative remedies. Put simply, before plaintiffs can have their day in court, they must first have their day before an administrative agency. For example, before a plaintiff can bring a claim of employment discrimination against an employer under Title VII of the Civil Rights Act of 1964, they must file a charge of discrimination with the U.S. Equal Employment Opportunity Commission and receive a notice of right to sue.4

In the not-too-distant past, courts considered the failure to accomplish the administrative process to be not simply a bar to suit but a jurisdictional prerequisite.⁵ In other words, completing the administrative process was part and parcel of the court's subject-matter jurisdiction, and so a failure on that front could be raised at any time.6 The exhaustion requirements were many and varied, ranging from filing a claim with the administrative agency,⁷ to naming all of the appropriate respondents⁸ and including all the potential claims,⁹ to simply signing the resulting charge¹⁰ and cooperating with the agency.¹¹

The tide began to turn when the Supreme Court, in cases like Arbaugh v. Y&H Corp.,12 began to consider what it means for a statutory requirement to be jurisdictional. In Arbaugh, the court addressed a different type of statutory requirement than exhaustion, namely Title VII's requirement that a covered employer must have 15 or more employees (the "numerosity" requirement).¹³ At the trial court level, the employer first raised numerosity after it lost at trial. The district court, lamenting the waste of effort and judicial resources, nevertheless felt compelled to dismiss the case because past cases described numerosity as jurisdictional and subject-matter jurisdiction can be raised at any time.¹⁴ In what has become a refrain

for these cases, the Supreme Court on review stated, "Jurisdiction...is a word of many, too many, meanings."15 The court stated that the numerosity requirement, though an essential element of a claim for relief under Title VII, was not "jurisdictional" in the sense that it affected a court's subject-matter jurisdiction.¹⁶ Numerosity, unlike the amount-in-controversy requirement for federal diversity jurisdiction, was not a part of Title VII's jurisdictional text, and so it was better understood as part of the merits of the claim.¹⁷ Thus, the court concluded the numerosity defense could not be raised late in the lawsuit after a trial on the merits.¹⁸

The court's ruling in *Arbaugh* led many courts to reconsider prior rulings holding that statutory requirements to suit, like Title VII's numerosity requirement, were part of the merits of the claim rather than being necessary parts of federal subject-matter jurisdiction. The 10th Circuit's ruling in Gad and its progeny followed that line of reasoning to conclude Title VII's requirement that an EEOC charge be "verified" (i.e. signed) was not jurisdictional.¹⁹ However, not all courts reconsidered their prior rulings, leading to a split in the circuits. In some circuits, these requirements could still be raised at any time as a challenge to



subject-matter jurisdiction, but in other circuits, they could not.²⁰

THE SUPREME COURT STEPS IN

On June 3, 2019, the court resolved the circuit split with its opinion in Fort Bend County, Texas v. Davis. The plaintiff at the trial court level, Lois Davis, submitted an intake questionnaire to the EEOC in February 2011 and a charge of discrimination in March 2011, both asserting retaliation for reporting sexual harassment.²¹ After Fort Bend County discharged her for what she believed was religious discrimination, Ms. Davis supplemented her intake questionnaire by handwriting the word "religion" on it, though she did not make any change to the charge itself.²² After she filed a lawsuit alleging religious discrimination and retaliation, the district court granted summary judgment in favor of the county on both claims.²³ On appeal, the 5th Circuit affirmed as to the retaliation claim but reversed on the religious discrimination claim, sending the case back to the district court.24

Only then, after the case returned to the district court, did the county assert that the court lacked subject-matter jurisdiction because Ms. Davis had not administratively exhausted her religious Some readers of the Davis opinion may come away with the impression that plaintiffs no longer need to comply strictly with the various procedural requirements at the administrative stage. We do not read the opinion this way, and it could be dangerous to do so.

discrimination claim.²⁵ The district court dismissed the claim, but the 5th Circuit reversed the dismissal, concluding the charge-filing requirement was not jurisdictional, and the county had waived its right to the argument by failing to raise it.²⁶ The Supreme Court took the case to settle the issue once and for all.

Writing for a unanimous court, Justice Ginsburg focused on the distinction between a jurisdictional requirement and what she terms a "claim-processing rule," which is a procedural step in the process of litigating under certain federal laws.²⁷ The former "speak to a court's authority" rather than to "a party's procedural obligations."28 The charge-filing provision, because it is a discrete part of statute separate from Title VII's jurisdictional provision, "is a processing rule, albeit a mandatory one, not a jurisdictional prescription delineating the adjudicatory authority of courts."29 The court rejected the county's argument that making the requirement jurisdictional would further Congress's aims in requiring the EEOC to be involved prior to a lawsuit, noting,

"A prescription does not become jurisdictional whenever it 'promotes important congressional objectives.""³⁰ As the court concluded, "A rule may be mandatory without being jurisdictional, and Title VII's charge-filing requirement fits that bill."³¹

MOVING FORWARD

The Supreme Court's ruling in *Davis* is limited, but like *Arbaugh*, it is another example of the court's recent push to prevent the use of the term "jurisdictional" for any-thing other than the very limited set of requirements for federal subject-matter jurisdiction. To the extent any of those old "jurisdictional" concerns remain, they are likely to fall by the wayside sooner rather than later at the federal level.

What does this mean for state laws, though, like the Oklahoma Anti-Discrimination Act?³² The OADA, much like Title VII, provides employees who have suffered employment-based discrimination a legal remedy. However, as state courts are courts of general jurisdiction, the OADA does not have a separate jurisdictional provision like Title VII or other federal laws. Instead, it seems to paint at least some of what the Supreme Court called claim-processing rules as a function of standing: "In order to have **standing** in a court of law to allege discrimination arising from an employment-related matter...an aggrieved party must, within one hundred eighty (180) days from the last date of alleged discrimination, file a charge of discrimination in employment....."³³

"Standing refers to a person's legal right to seek relief in a judicial forum."34 More importantly for this discussion, standing "may be assessed at any point during the judicial process, and may be raised by [the court] sua sponte."35 If this is true, then by classifying the procedural requirements of the OADA as matters of standing, the Oklahoma Legislature may have created the opposite of the situation in *Davis*: a situation where procedural requirements like the charge-filing requirement are a fundamental part of accessing the courts and may be raised at any point during the litigation. To our knowledge, no published appellate

decision has ever addressed the OADA's procedural requirements in the standing context, but practitioners should be aware that this is one area where treatment of a plaintiff's claim of employment discrimination under federal law may differ from treatment of the similar claim under the OADA.

Aside from the impact on the OADA and similar state laws, we must also consider the impact of the court's ruling on actual practice. Some readers of the Davis opinion may come away with the impression that plaintiffs no longer need to comply strictly with the various procedural requirements at the administrative stage. We do not read the opinion this way, and it could be dangerous to do so. As Justice Ginsburg said, the problem for the county in Davis was not that it could not raise the failure to exhaust defense at all, it was that the county waited too long to do so.³⁶ What has changed is that these requirements are now waivable by the defendant employer. However, as the court cautions, "A Title VII complainant would be foolhardy to consciously take the risk that the employer would forgo a potentially dispositive defense."37 Plaintiffs, therefore, should

continue to carefully meet the various procedural prerequisites to filing suit. Defendants should likewise continue to be vigilant as a failure to assert the defense can lead to waiver of what may otherwise be a dispositive defense.

ABOUT THE AUTHORS

Kimberly Lambert Love is a partner with Titus Hillis Reynolds & Love in Tulsa. With more than 30 years of experience, Ms. Love practices in all areas of employment law. She is a past chair of the OBA Labor and Employment Law Section.

Jason L. Callaway is currently an associate attorney with Johnson & Jones PC in Tulsa. He graduated from the University of Oklahoma College of Law in 2014 and is a former clerk of Judge Claire V. Eagan.

ENDNOTES

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5. E.g. Woodman v. Runyon, 132 F.3d 1330, 1341 (10th Cir. 1997).

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- 9. See Jones v. U.P.S., Inc., 502 F.3d 1176, 1187 (10th Cir. 2007).
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- 11. See McBride v. CITGO Petrol. Corp., 281 F.3d 1099, 1106 (10th Cir. 2002).
 - 12, 546 U.S. 500 (2006).
 - 13. Id. at 505 (citing 42 U.S.C. §2000e(b)).
 - 14. Id. at 509.
- 15. Id. at 510 (quoting Steel Co. v. Citizens for Better Envir., 523 U.S. 83, 90 (1998)).
 - 16. Id. at 515.

 - 17. Id. at 516.
 - 18. Id.
- 19. Gad. 787 F.3d at 1040. 20. Compare, e.g., Davis v. Fort Bend Cnty, 893 F.3d 300, 306 (5th Cir. 2018) (finding the

charge filing requirement non-jurisdictional), with Jones v. Calvert Grp., Ltd., 551 F.3d 297, 300 (4th Cir. 2009) (concluding the charge filing requirement is jurisdictional).

- 21. Davis, 139 S. Ct. at 1847.
- 22. Id.
- 23. Id. at 1348.
- 24. Id.
- 25. Id.
- 26. Id
- 27. See id. at 1849-50.
- 28. Id. at 1850-51 (quoting E.P.A. v. EME Homer City Generation, L.P., 572 U.S. 489, 512
- (2014) and Arbaugh, 546 U.S. at 515).
 - 29. Id. at 1851.
 - 30. Id. (quoting Reed Elsevier, Inc. v.
- Muchnick, 559 U.S. 154, 169 n.9 (2010)).
 - 31. Id. at 1852.
 - 32. 25 O.S. §1101 et seq.
 - 33. Id. §1350(B) (emphasis added).
 - 34. Hendrick v. Walters, 1993 OK 162, 865
- P.2d 1232, 1236.

35. Hall v. Galmor, 2018 OK 59, ¶15 n.49, 427 P.3d 1052.

36. See Davis, 139 S. Ct. at 1846 ("Prerequisites to suit like Title VII's charge-filing instruction are not of that character; they are properly ranked among the array of claim-processing rules that must be timely raised to come into play.").

37. Id. at 1851.

BUSINESS LAW

Mind Over Matter: Exploring the Fault Line Between Restraint of Trade and Protecting a Competitive Advantage

By Mbilike M. Mwafulirwa and Melissa A. East

THIS ARTICLE EXPLORES

an important question for businesses. Suppose a business hires an engineer – *i.e.*, a thought leader in an emerging industry to develop a certain product or process. In fact, the business only developed its product or process because it employed the engineer. But assume also that the engineer decides to join a competitor, and they take their technical knowhow with them and confidential documents about the product or process. That information, the engineer claims, was drawn entirely from their technical know-how, which they brought with them.

That, in turn, leads to the question that is the subject of this article – when exceptionally knowledgeable individuals perform creative work for companies in an industry, what right do they have to take those ideas with them? Simply, do employers own the knowledge in their workers' heads? Oklahoma is an employment at-will state. That matters because in this state, an employee has rights to exploit their expertise and knowledge in the market. But the law also protects an employer's right to protect its proprietary information and legitimate competitive advantages.

Thus, the question presented applies to different industries where creative work is done (which should be several businesses). What follows in this article is an analysis that attempts to tackle the question presented head-on, while also outlining the governing legal principles.

ANALYTICAL FRAMEWORK FOR THE PROBLEM OF THE CREATIVES – THE PUBLIC AND PRIVATE DICHOTOMY

When a business makes a useful discovery or a creative expression, it can deal with that information in one of two ways. The business can publicly share the intimate details of its discovery or creative expression with us - We the People - through either the patent or copyright registration systems. In exchange for that disclosure, the government gives the inventor or the author (as the case may be) a limited monopoly to enjoy the fruits of its innovation.¹ Trademark law, on the other hand, which protects words or phrases that

identify the source of goods or services,² gives the owner a perpetual monopoly.³ A business can also decide to keep the intimate details of its discovery or creative expression private.⁴ In doing so, the business, in effect, relies on trade secrets, noncompete concepts and varied other state statutory and common law theories to protect its competitive advantage.⁵

Ownership Interest in Publicly Registered Intellectual Property Developed During Employment For those who make useful and

innovative contributions, America's copyright and patent laws give them a temporary government monopoly,⁶ but trademark law affords trademark owners a perpetual monopoly.⁷ Either route, the trade-off is the same: (potentially) anyone can learn from the creative work and improve upon it to create a unique competitive advantage for themselves.⁸ And in the employee/employer context, this dynamic presents difficult questions. Copyright laws, for example, apply the "work for hire" rule. Under that rule, an employer has copyrights over any creative work

Trade Secret

an employee generates within the course and scope of their employment unless a written agreement provides to the contrary.⁹ Trademarks generally don't pose the same ownership dilemmas; ownership rights accrue to those who use the mark in commerce in priority over others.¹⁰ In other words, use rather than creation determines trademark ownership.¹¹

Not so with patent law. The default rule is that inventors own their inventions.¹² Unless an agreement with the employer displaces the default rule, the worker owns what they invented.13 Two exceptions bear on this rule. The first is called the "hired to invent" rule. Under that rule, if an employee was hired to invent a specific thing or solve a specific problem, the employee may have to assign their rights to the employer.¹⁴ The rule is anchored in implied contract concepts and requires a fact-sensitive inquiry into the employment relationship.¹⁵ The second exception to the default

rule is called the "shop right." Under that rule, an employer may acquire a limited license to use the employee's invention if it was invented using, for example, the employer's resources and on its time.¹⁶ The fact-sensitive nature of the analysis in this area will *almost always* invite litigation.

Eliminating Doubt and Future Headaches: Intellectual Property Assignment Rights Agreements in the Employer-Employee Context Intellectual property rights assignment agreements resolve many problems in this area. State contract law generally governs the rights and obligations of the parties.¹⁷ Intellectual property agreements generally take three primary forms: 1) complete assignment of all rights to another for a sum certain or as a gift; 2) assignment of all rights to another for a limited period or geographical area; and 3) limited, nonexclusive rights to exercise the owner's intellectual property rights for a

period.¹⁸ If all state law contract prerequisites are satisfied, courts will enforce those agreements.¹⁹

But even if there is a valid assignment agreement, the penultimate question is usually the same: whether, as written, the agreement succeeded in conveying intellectual property rights. Thus, for example, it is settled that when an agreement states the employee "agree[s] to assign,"²⁰ or executes this "agreement to assign"21 or agrees that intellectual property "will be assigned," the agreement does not create a present interest.²² Instead, a separate agreement is needed to complete the transfer of rights to the employer.²³ But if the transfer language states that the employee "agrees to and does hereby grant and assign" or "I will assign and do hereby assign," those words are enough to complete the transfer of rights.²⁴ All this matters because, as shown below, the question of ownership of valuable information (and even the right to possess) is central to

the applicability of most misuse or misappropriation tort claims.

THE OTHER SIDE OF THE COIN – WHEN A BUSINESS DECIDES TO KEEP THE INTIMATE DETAILS OF ITS DISCOVERIES PRIVATE

Overview of Trade Secret Law Considerations

When an employer in Oklahoma decides to keep the intimate details of an intellectual property discovery private, both statutory and common law protections come into play.

Defend Trade Secrets Act 2016. Effective May 11, 2016, the Defend Trade Secrets Act 2016 (the DTSA) added a federal dimension to trade secret protection. Historically an exclusive area of state statutory and common law, the DTSA created a federal cause of action for "any misappropriation of a trade secret, (as defined in [the DTSA]) ... which ... occurs on or after the date of the enactment of [the] Act."25 To assert a DTSA claim, the complaint must generally allege the plaintiff: 1) possessed secret information that relates to a product or service used or intended for use in interstate commerce; 2) the defendant used, disclosed or acquired for use that information without the plaintiff's consent; and 3) the defendant acquired the information or disclosed it by improper means.²⁶

If there is any doubt about ownership rights in intellectual property between employer and employee, this is a fertile area for a trade secret misappropriation lawsuit. The DTSA creates a cause of action for the *"owner* of a trade secret."²⁷ That is why courts closely monitor trade secret claims. The DTSA defines a trade secret as all forms of financial, technical, economic and engineering information.²⁸ Even with such a broad definition, federal courts require "sufficient particularity *to* separate [the trade secret] from matters of general knowledge in the trade or of special persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies."²⁹

In fact, "[a]lleging mere possession of trade secrets is not enough" to state a DTSA misappropriation claim.³⁰ Neither is simply alleging, without more, that a former employee has quit and is working for a competitor performing their old job.³¹ Instead, the DTSA and federal cases require there to be the acquisition of a trade secret belonging to another by a person who knows or should know it was acquired through improper means or without the owner's consent.32 "Improper means," the statute defines as, "theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy, or espionage."33 While the DTSA requires the owner of protected information to reasonably secure it, the law does not require absolute secrecy.³⁴ Most courts have found the requirement satisfied when a business has, for example, confidentiality policies and internal data control measures.³⁵ In most cases, this is a fact question for the fact-finder.³⁶

Oklahoma Uniform Trade Secrets Act: The state analog to the DTSA. In 1986, Oklahoma adopted the Uniform Trade Secrets Act (UTSA).³⁷ Although the UTSA's definitions for trade secret and misappropriation "are nearly identical to the DTSA," a plaintiff must also allege "use" and "detriment."38 A misappropriation claim under the UTSA has three elements. A plaintiff must show: 1) the existence of a trade secret; 2) misappropriation of the secret by another; and 3) use of the secret to the intellectual property owner's detriment.³⁹ The UTSA entails a fact-intensive inquiry, and the

plaintiff has the burden of proving the existence of a trade secret.⁴⁰ Parties should track measures taken by an employer to guard the secrecy of the alleged trade secret, as Oklahoma courts tend to focus on that factor.⁴¹ Under the UTSA, "use" exists when a product or process is substantially derived from the trade secret, even if it is with independent improvements or modifications.⁴² Detriment means adverse consequences for the trade secret user.⁴³

Under the UTSA, ownership is not the dispositive consideration; rather, the right to possess or use the information is.44 Thus, owners, licensees and all others with the right to possess or use the information could perhaps assert UTSA trade secret rights. That especially matters in an employer/employee setting because while an employee may initially own an invention or an idea, when they share it with their employer that might affect their rights. The Oklahoma Supreme Court, recognizing this possibility, has come down in favor of a multi-factor balancing test.45

The employee's rights are on their strongest footing when they are both the inventor and developer, and the source information is drawn from their knowledge and skill. If the employee developed the subject matter of the claimed trade secret, through their own initiative, based on their own skill and experience, a duty not to disclose the trade secret may arise because the employee would have an interest in the subject matter equal to or better than that of their employer.⁴⁶ But if the employee learns of the coveted information in the course and scope of their employment, the stronger the employer's rights.⁴⁷ Thus, the issue becomes one of a balancing act, and the analysis hinges on the equities of the given set of

circumstances out of which the trade secret arose.⁴⁸ Ultimately, the question becomes how closely tied the development is to the highly developed skill and knowledge of the innovator, and if the development emerged with no secret being divulged by the employer, the more likely a court will find no trade secret.⁴⁹

HOW UNFAIR COMPETITION LAWS CAN AFFECT THE EMPLOYER-EMPLOYEE DYNAMIC WHEN CREATIVE INFORMATION IS INVOLVED

Oklahoma Noncompete and Nonsolicitation Law A typical fact-pattern in the world of creatives sees a creative person develop a product or service and then depart to join a competitor. And as so often is the case, the employee has a noncompete or nonsolicitation agreement to contend with. Typical agreements: persons including (work colleagues) from previous employer.

Noncompete agreements. Restrictive covenants against trade, competition and the ability to practice a profession are void unless they hew closely to the requirements of Oklahoma law.50 Consider first noncompete clauses that prohibit an employee from taking any job in any capacity with a competitor. Applying and clarifying longstanding precedent, the Oklahoma Court of Appeals has held that a noncompete is void when it prevents employees from taking jobs with competitors in any capacity at all.⁵¹ Second, noncompetes that encompass large geographical areas and provide no temporal limits are also problematic. Oklahoma courts have stricken noncompetes that impose countywide bans,⁵² or those whose reach exceeds 100 miles from where the employee was employed.53 Likewise, courts have



 preclude an employee from taking any job in any capacity with a competitor or within the industry;
 impose timeless and geographical-less limitations; and 3) prevent the employee from soliciting all stricken noncompetes longer than two years⁵⁴ and those that have sought to prevent "competition *from an employee who has not gained some competitive advantage or opportunity from the employment* "⁵⁵

Thus, it matters where the employee gained their expertise and experience. If the employee brought the expertise and knowledge with them to the job, like our industry leader in our hypothetical, a noncompete that restricts their use of that knowledge is perhaps unlawful. But if they gained the expertise and experience "directly from the employment with employer," then it may be a reasonable subject for noncompetes.⁵⁶ To this perhaps also adds any specific discoveries that an employee might make in the course and scope of their employment; that is arguably information that comes directly from the employment.⁵⁷ Putative litigants in this area should brace themselves for context-specific analyses that consider several factors, including the terms of the noncompete agreement and the foundation of the expertise and knowledge the employer seeks to restrict.

Nonsolicitation agreements. Oklahoma law also restricts unreasonable nonsolicitation agreements. Nonsolicitation provisions that "go beyond a prohibi*tion on active solicitation* and thus prevent fair competition have been *declared void.*"⁵⁸ Newer cases have clarified that the law only permits restrictions on solicitation of established customers. Established customers are "those businesses and customers wherein a relationship was ongoing and anticipated to continue into the future."59 What about nonsolicitation of former colleagues? The Oklahoma Supreme Court has weighed in. The court invalidated a nonsolicitation clause that completely prevented former employees from engaging with a competitor, even those who sought *employment from a competitor of* their own accord.60

Today's market places a high premium on talent and creativity, so firms feel inclined to take strong measures to protect their talent and maintain their competitive advantage.

Computer Fraud and Abuse Act Through the Computer Fraud and Abuse Act (CFAA), Congress sought to curb and punish abuses of computers. The act creates criminal offenses for conduct like hacking into computers, stealing information and damaging a "protected computer," among others.61 A protected computer is one that is used either in interstate or foreign commerce or communications.62 To complement the criminal laws, Congress also created a civil action under which a party that has suffered harm listed in the statute can recover compensatory damages or injunctive or other equitable relief.63

In the employment context, employers typically sue employees for appropriation of proprietary information or the destruction of a computer that causes loss. They do so mostly based on theories of unauthorized or excess use or destruction of data.⁶⁴ The employer typically authorizes the employee to access its computers, but what triggers liability is when the employee accesses the information in violation of their duty of loyalty.⁶⁵ This could be by the employee emailing themselves the information to use for purposes adverse to their employer or for personal gain.⁶⁶ The definition of "economic damages" or "loss" under the CFAA is broad. The definition

encompasses loss of business, the cost of repairs to computer systems and taking protective measures.⁶⁷

Varied Oklahoma Common Law Considerations The Legislature in Oklahoma has declared that, unless abrogated, the common law remains a vital part of this state's law. The bar is already familiar with most of these common law theories that only deserve honorable mentions - breach of contracts, tortious interference with business relations or prospects, conversion, civil conspiracy, aiding and abetting and perhaps breach of fiduciary duty.⁶⁸ We say perhaps because courts continue to struggle with this question: At what point does an employee-at-will stop innocently preparing to depart their employment to breaching fiduciary duties they might owe their employer? For employees without noncompetes, the law permits them to take preparatory steps for competition with their employers, but employees must tread lightly when doing so.69

The law, however, frowns upon an employee's wrongful acts when preparing to leave.⁷⁰ But what is wrongful? An employee leaving after lining their pockets with the employer's trade secrets, existing client lists or sabotaging the employer's information systems all qualify.⁷¹ Then there is everything else. There are "no ironclad rules as to the type of conduct which is permissible ... since the spectrum of activities in this regard is as broad as the ingenuity of man itself."72 Even so, courts have laid down some bright markers. If the allegation is misappropriation, the subject information must first be "exclusive or proprietary" to the employer. So, if the information can be acquired from another source, that undermines the claim.73 Second, the employer cannot prevail if the conduct did not deprive it of objective, tangible business opportunities. A mere hope that "business relationships would continue" or the "possibility [of] future economic benefit[s]" is insufficient.74

CONCLUSION

In this age of the creatives, the line between catering to a rational self-interest and engaging in unfair competition is a fine one. Today's market places a high premium on talent and creativity, so firms feel inclined to take strong measures to protect their talent and maintain their competitive advantage. Caught in the middle is the law, trying to strike a balance between these competing concerns. This article, we hope, shows (in several ways) how challenging that task is.

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ENDNOTES

1. See Russo v. Ballard Med. Prod., 550 F.3d 1004, 1011-1013 (10th Cir. 2008) (Gorsuch, J.) (discussing that innovators can choose to share publicly their discoveries or keep them private); *Am. Steel Foundries v. Robertson*, 262 U.S. 209, 215 (1923) (patent monopoly); *United States v. Paramount Pics.*, 334 U.S. 131, 158 (1948) (copyright monopoly).

2. See Robert A. Gorman, *Copyright Law* 7 (2d ed. Fed. Jud. Cntr. 2006).

3. Apple, Inc. v. Samsung Elect., Inc., 786 F.3d 983, 991 (Fed. Cir. 2015), rev'd and remanded on other grounds, 137 S.Ct. 429 (2016) ("Trademark law allows for a perpetual monopoly ...") (emphasis added).

4. We do not mean to suggest that trademarks and copyrights only exist after registration. Trademarks, for example, can exist even without federal registration. Matal v. Tam, 137 S.Ct. 1744, 1751-1753 (2017). But the point is that registration affords the owner important rights, like public notice of ownership. Id. This is also true, to a limited extent, with copyrights. See 2 Melville B. Nimmer & David Nimmer, Nimmer on Copyright §8C.02 (Matthew Bender, ed., 2016) ("In general, the rights under common law copyright rights are at least co-extensive with the rights commanded under the Copyright Act."). This is mainly for sound recordings before Feb. 15, 1972. See 17 U.S.C. §301(c). But or all other copyrights federal copyright law controls. See 17 U.S.C. §301(a).

5. See generally Russo, 550 F.3d at 1011-1013. 6. See Am. Steel, 262 U.S. at 215 (patent); Paramount Pics., 334 U.S. at 158 (copyright). 7. Apple, 786 F.3d at 991 (trademark).

8. See, e.g., Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 575 (1994); see also, e.g., Leatherman Tool Grp. v. Cooper Ind., Inc., 199 F.3d 1009, 1011-1012 (9th Cir. 1999); State Indus. Inc. v. A.O. Smith Corp., 751 F.2d 1226, 1235–36 (Fed.Cir.1985) ("[D]esigning new and possibly better or cheaper functional equivalents [of a competitor's product] is the stuff of which competition is made."); see also Russo, 550 F.3d at 1012.

9. See 17 U.S.C. §201(b); Comm. for Creative Non-Violence v. Reid, 490 U.S. 730, 737-738 (1989); see also Georgia v. Pub. Res. Org., 140 S.Ct. 1498, 1508 (2020). But when the author is an independent contractor, and the work was performed at the insistence and expense of the hirer, the presumption of ownership lies in favor of the hirer. See Playboy Ent., Inc. v. Dumas, 53 F.3d 549, 554 (2d Cir. 1995).

10. See Sengoku Works Ltd. v. RMC Int'l, Ltd., 96 F.3d 1217, 1219 (9th Cir.1996) ("It is axiomatic in trademark law that the standard test of ownership is priority of use. To acquire ownership of a trademark it is not enough to have invented the mark first or even to have registered it first; the party claiming ownership must have been the first to actually use the mark in the sale of goods or services."), cert. denied, 521 U.S. 1103 (1997).

11. Id.

12. Banks v. Unisys Corp., 228 F.3d 1357, 1359 (Fed. Cir. 2000).

13. *Id.*

14. *Gellman v. Telular Corp.*, 449 Fed. App'x 941, 945 (Fed. Cir. 2011) (the hired-to-invent "doctrine is expressly equitable, and creates only an obligation for the employee to assign to his employer").

15. Id; see also Banks, 228 F.3d at 1359.

16. See Melin v. United States, 478 F.2d 1210, 1213 (Fed. Cir. 1973) (citing *Gill v. United States*, 160 U.S. 426, 433-434 (1809)).

17. See, e.g., Jim Arnold Corp v. Hydrotech Sys., 109 F.3d 1567, 1572 (Fed. Cir. 1997) ("[T]he question of who owns the patent rights and on what terms typically is a question exclusively for state courts."). 18. See, e.g., Herbert F. Schwartz, Patent Law & Practice 34 (2d ed. Fed. Jud. Cntr. 1995).

19. See generally id.

20. *IpVenture, Inc. v. Prostar Comp., Inc.*, 503 F.3d 1324, 1327 (Fed. Cir. 2007).

21. See generally id.

22. Arachnid, Inc. v. Merit Indust., Inc., 939 F.2d 574, 1580-1581 (Fed. Cir. 1991).

23. See IpVenture. F.3d at 1327.

24. *Gellman*, 449 Fed. App'x at 944 (citations omitted).

25. Camick v. Holladay, 758 Fed. App'x 640, 644 (10th Cir. 2018) (quoting DTSA, 130 Stat. at 381-82).

26. *Video Gam. Tech., Inc. v. Castle Hill Stud., LLC,* 2018 WL 3437083, at *4 (N.D. Okla. Jul. 17, 2018).

27. 18 U.S.C. §1836(b)(1) (emphasis added). 28. *Id.* §1839(3).

29. Vendavo, Inc. v. Price f(x)G, 2018 WL 1456697, at *4 (N.D. Cal. Mar. 23, 2018) (emphasis added).

30. Pellerin v. Honeywell Int'l, 877 F. Supp. 2d 983, 989 (S.D. Cal. 2012) (citations omitted).

31. *Id.*

32. 18 U.S.C. §§1839(5)(A)-(B).

33. 18 U.S.C. §1839(6).

34. Blue Star Land Servs., LLC v. Coleman, 2017 WL 6210901, at *5 (W.D. Okla. Dec. 8, 2017).

35. Select Energ. Servs., Inc. v. Mammoth En. Servs., 2019 WL 1434586, at *6 (W.D. Okla. Mar. 29. 2019).

36. *Id.* at *5.

37. 78 O.S. §§85-94.

38. Blue Star, 2017 WL 6210901, at *7.

39. MTG Guarnieri, 2010 OK CIV APP 71, ¶12,

239 P.3d at 209.

40. *Id.* ¶13.

41. See, e.g. ProLine Products, L.L.C. v. McBride, 2014 OK CIV APP 34, 324 P.3d 430. 42. MTG Guarnieri Mfg., Inc. v. Clouatre, 2010

42. M/G Guarnier/Mg., mc. v. Clouare, 20 OK CIV APP 71, ¶17, 239 P.3d 202, 211. 43. See Blue Star, 2017 WL 6210901, at *7.

44. Gaedeke Hold. VII Ltd. v. Baker, 683 Fed. App'x 677, 683-684 (10th Cir. 2017) (Oklahoma law).

45. Amoco Production Co. v. Lindley, 1980 OK 6, 609 P.2d 733.

46. Id. ¶¶46-47, 609 P.2d at 744-745.

47. Id.

48. Id. ¶47, 609 P.2d at 745.

49. *Id.*

50. See 15 O.S. §§217-219.

51. Autry v. Acosta, Inc., 2018 OK CIV APP 8, ¶30, 410 P.3d 1017, 1023 (quoting Howard v. Nitro-Lift Techs., L.L.C., 2011 OK 98, ¶22, 273 P.3d 20, rv'd on other grounds, 568 U.S. 17 (2012)).

52. *Herrington v. Hackler*, 1937 OK 720, ¶10, 74 P.2d 388, 391 (restrictive covenant "void to the extent that it prevents [a party] from engaging in a like business beyond the confines of the county.").

53. See Cardio. Surg. Spec. Corp. v. Mammana, 2002 OK 27, ¶17, 61 P.3d 201, 214-215 (finding noncompete void because it effectively banned a surgeon "from practicing ... within 100 miles" of the community where he had previously been employed).

54. *Tatum v. Colo. Life & Acc. Ins. Co. of Am.* 1970 OK 27,¶7, 465 P.2d 448, 451 (Approving two years).

55. Loewen Grp. Acq. Corp. v. Matthews, 2000 OK CIV APP 109, ¶21, 12 P.3d 977, 982.

56. *Id.* ¶¶21-22, 12 P.3d at 982. (emphasis in original).

57. Cf. Callmann on Unfair Comp., Tr. & Mono. §14:18 (4th ed.) (Nov. 2019 Update).

58. *Mammana*, 2002 OK 27, ¶17, 61 P.3d at 214-215 (emphasis added).

59. *Howard*, 2011 OK 98, ¶26, 273 P.3d at 29. 60. *Id.* ¶22, 273 P.3d at 28.

61. See 18 U.S.C. §1030.

62. Id. §1030(e)(2)(B).

63. *Id.* §1030(g).

64. Id. §§1030(a)(4)&(a)(5)(A).

65. Int'l Airports Ctrs. v. Citrin, 440 F.3d 418, 420 (7th Cir. 2006).

66. Nilfis-Advance, Inc. v. Mitchell, 2006 WL 827073, at *2 (W.D.Ark., Mar.28, 2006); Ervin & Smith Adv. & Pub. Rel. Inc. v. Ervin, 2009 WL 249998, at *8 (Feb. 3, 2009).

67. Creative Comp. v. Getloaded.com LLC, 386 F.3d 930, 935 (9th Cir. 2004); *EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577, 585 (1st Cir. 2001).

68. See OUJIs Nos. 4.16; 23.1; 24.1; Gaylord En't Co. v. Thompson, 1998 OK 30, 958 P.2d 128 (civil conspiracy); Keel v. Hainline, 1958 OK 201, 331 P.2d 397 (aiding and abetting).

69. Sw. Stainless, L.P. v. Sappington, 2008 WL 3013548, at *26 (N.D. Okla. Aug. 1, 2008), aff'd in part, rev'd in part, 582 F.3d 1176 (10th Cir. 2009) ("[A]n agent is not prohibited from taking actions, not otherwise wrongful, to prepare for competition following termination of the agency relationship."). 70. Id.

71. Feddeman & Co. v. Langan Assoc., 530 S.E. 2d 668, 672 (Va. 2000).

72. Auxton Comp. Enterp. v. Parker, 174 N.J. Super. 418, 424 (1980).

73. See Williams v. Dominion Tech. Part'nrs, 576 S.E. 2d 752, 758 (Va. 2003).

74. Id. at 758-759.



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New Attorneys Take Oath

DOARD OF BAR EXAMINERS

BChairperson Juan Garcia announces that 201 applicants who took the Oklahoma Bar Examination on July 28-29 were admitted to the Oklahoma Bar Association on Tuesday, September 22 or by proxy at a later date. Due to the social distancing requirements caused by the COVID-19 state of emergency, Oklahoma Supreme Court Chief Justice Noma Gurich administered the Oath of Attorney to the candidates on the steps of the Oklahoma Judicial Center in a morning ceremony and virtually to those unable to attend that afternoon. A total of 268 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Tommy R. Dyer Jr., Jay; Robert Black, Oklahoma City; Micah Knight, Durant; Nathan Lockhart, Norman; Bryan Morris, Ada; Loretta F. Radford, Tulsa; Roger Rinehart, El Reno; and Tom Wright, Muskogee.

The new admittees are:

Hollie Dannette Alexander Rayna Marie Alexander Kaitlin Nicole Allen Mitchel Phillip Allen Matthew Scot Andrus Caleb Josiah Anthony Aston McNeill Armstrong Hayley Lynn Arthur Carolina Maria Attaway Kaylind Nichole Baker Brennan Thomas Barger Samuel David Barlass Ameen Y. Behbahani Jacob Parker Black Logan Phillips Blackmore James Edward Blaise William Scott Blocker Maurits Gerardus Boon Van Ostade **Baylor Cole Boone** Jaycee McKenzie Booth Cassandra Michelle Bosch Gunner Zaine Cy Briscoe Ryan Daniel Brown Ann Michelle Butler Caitlin Grace Campbell Jared Levi Cannon Britney Maria Carattini Zachary Alexander Carson Aleena Navid Chaudry Allison Brooke Christian



Family members could watch the swearing-in ceremony livestream on the OBA's Facebook page at www. facebook.com/okbarassociation.

Shelby Elizabeth Clark Robert James Clougherty III Akayna Marie Cobbs Arianna Leigh Cole Joshua Henry Cole Makayla Shane Coppedge Norma Gabriela Cossio Jessica Dawn Cox Alauna Faith Crawford Evan James Crumpley Justin Lee Franklin Cullen Ryan Glen Curry Brennan Allen Davis Rebecca Elizabeth Davis



About 100 candidates were admitted to the OBA Sept. 22 during a rainy, morning ceremony.



Candidates raise their right hands as they take the Oath of Attorney on the steps of the Oklahoma Judicial Center.



Supreme Court Chief Justice Noma Gurich administers the Oath of Attorney.

Brian James Deer Travis Kale Dennis Shannon Jeane Desherow Charlie Cheyenne DeWitt Jessica Lee Dice Eric A. DiGiacomo Dale Hance Dilbeck Ryan Leigh Dobbs Courtney Nicole Driskell Evan James Edler Alyssa Lea Erwin Ana Deisy Escalera Levon Danner Eudaley Kasey Kyle Fagin Hannah Marie Fields Michael Martin Flesher Kaitlin Iris Forest Taylor Jordan Freeman Peshehonoff Benjamin Newcomb Frizzell James Tanner Frye Elizabeth Grace Fudge Heath William Garwood Blake Howard Gerow Caitlin Alicia Getchell Tyler Allen Gilmore Kelli Jane Goodnight Jonathan Chase Gordon Abby Jennifer Donnie Gore

Thomas Patrick Goresen Marci Jean Gracey Chase Addison Grant Kchristopher Bonard Griffin Thomas Lee Grossnicklaus Matthew Arthur Hall Austin Levi Hamm Miranda Lea Harris Kelsey Marie Harrison Sarah Rebecca Herrera Andrew Scott Hiller Britton Lindsey Hobbs Andra Quinn Holder Abigael Jonette Hood Markayla Belle Hornung Alisha Rene Hounslow Jordan Ann Howell **Ridge Cooper Howell** Joshua David Huckleberry Eric Andrew Hughes Whitney Nicole Humphrey Matthew William Irby Joy Elizabeth Jackson Joshua Robert Jacobson Mandy Marie James Natalie Marie Jester William Olson Jewell Chase Logan Johnson

Elijah Jed Johnson Jourdan Lenard Johnson Karson Joseph Katz Courtney Danae Keeling Bryan Edward King



From left President Susan Shields, Chief Justice Gurich and Oklahoma Board of Bar Examiners Board Member Robert E. Black pose for a photo just before the outdoor ceremony began.



Carmany Jin-Joo Phillips displays her wall certificate.

Andrew Alexander Kirby Brandon Edward Koelzer Dakota Gibb Lamb Jakob Ryan Lancaster Garrett Dwayne Lessman Robert Baxter Lewallen Maeve Patricia Lindsey Riley William Lissuzzo Ryan Kyle Loewenstern Elizabeth Anne Low Lena Anastasia Mahoney Justin Mitchell Mai Angel Nicole Marchese Nicholas Andrew Marr Madalynn McCall Martin Daryan Paige Martinez Haley Jo Maynard Colleen Lilah McCarty Mitchel Kevin McIlwain Elke Chantal Meeus Armando Gabriel Melendez Jason Elliot Mewhirter Andrew Collier Mihelich Sofia Miranda Darrell Paul Mori Isaac Keith Morris Amber Mequel Morton Nina Desiree Mottwiler Mark David Myers Leilah Kathryn-Rose Naifeh Jared Henry Needham Matthew Thomas Nieman Cole Patrick Nimmo Jesse Steven Ogle Amy Michelle Oliver Michael Speight Olson **Opeoluwa Bolanle** Omololu-Adegbuyi

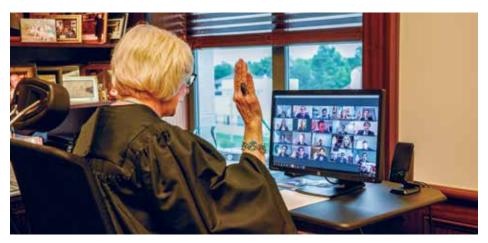
Anissa Elaine Paredes



James Tanner Frye signs the roll of attorneys.

Seth Ward Paxton Jade Montana Pebworth Tara Morgan Penick **Thomas Justin Pfeil** Jacquelyne Karie Phelps Carmany Jin-Joo Phillips Ashton Bailey Poarch Anthony Lewellyn Purinton Mary Nahz Rahimi Cody Austin Reihs James Ryan Reynolds Pierre DeAnte Robertson Jonathan Lloyd Rogers Brissa Rodriguez Rosa Robert Earl Rozell Magdalena Anna Rucka Elizabeth Vail Salomone Rhylee D'shea Sanford Anna Mckenna Sanger Madeline Elaine Sawyer Timothy John Schaefer Laurie Lea Schweinle

Patricia Ann Scott Grant Patrick Scowden Sajida Shahjahan Tiffani Jordan Shipman Steven Blake Smith Justin Wayne Stevenson Lyndi Jan Steverson Emilee Ann Stinemetz Casey Dean Strong Gabriel Merritt Sweat Alan Michael Taylor Olivia Kay Terry Justin Evan Tharp Taylor Elizabeth Thompson Melissa Dawn Thompson-Terrel Veronica Jane Threadgill John Wilson Toal Emily Rebekah Turner Nicole Monet Vafeades Madeline Mary Vasquez Laura Mason Waddill CyRinda Rachelle Wadley Grayson Powell Walker Joseph D. Weiss Matthew Taylor Wellman Mitchell William Wells Sierra Lauren White Fox Yitzchak Simon Peter Whitworth Allyson Leigh Wilcox Alexander Philip Wilkison Matthew Travis Williams **Robert Austin Williams** Kendra Michelle Wills Victoria Rose Wilson Lauren Suzanne Winslow Stephen Eric Yoder



In a separate ceremony on the same day, Chief Justice Gurich administers the Oath of Attorney virtually to about 20 new bar members. Candidates also had the third option of a private oath administration by a judge of their choice.

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

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OFFICIAL DIRECTORY of the OKLAHOMA BAR ASSOCIATION

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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
- Law Day Plans and coordinates all aspects of Oklahoma's Law Day celebration
- Law Schools
 Acts as liaison among law schools and the Supreme Court
- Lawyers Helping Lawyers
 Assistance Program
 Facilitates programs to assist lawyers
 in need of mental health services
- Legal Internship Liaisons with law schools and monitors and evaluates the legal internship program

- Legislative Monitoring Monitors legislative actions and reports on bills of interest to bar members
- Member Services Identifies and reviews member benefits
- Military Assistance Facilitates programs to assist service members with legal needs
- Professionalism Among other objectives, promotes and fosters professionalism and civility of lawyers
- Rules of Professional Conduct Proposes amendments to the ORPC
- Solo and Small Firm Conference Planning
 Plans and coordinates all aspects of the annual conference
- Strategic Planning Develops, revises, refines and updates the OBA's Long Range Plan and related studies
- Women in Law Fosters advancement and support of women in the practice of law

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Annual Meeting: Lights, Camera, Action

By John Morris Williams

S YOU HAVE PROBABLY heard by now, the 2020 OBA Annual Meeting is coming to a computer or mobile device near you. FREE. Yes, it's going to be online and free. In addition to various committee and section CLE, there will be nine hours of free OBA CLE. The complete schedule can be found at www.okbar.org/ annualmeeting.

We have changed the dates to Nov. 9-13 and spread the schedule out so everyone can take viewing breaks. All CLE will be offered through our online provider and requires registration to get the free credit. Also, the first 500 registrants will receive a free OBA gift bag that includes the wildly popular OBA face mask. not have otherwise been possible. Also, there is some fun stuff. Don't miss the Cutlers from the TV show, *Couples Court*.

As with all things COVID, it's different. However, that doesn't mean less or worse. This is the busiest Annual Meeting schedule I think I have ever seen. The daily schedule will be posted. Programming that is recorded will be available for a few days after the meeting in case you missed something of interest.

The General Assembly, awards and House of Delegates will also be online. At the present time, it is anticipated these will be the most efficient meetings you have ever

I have a little inside information since I have been involved in the planning. The programming is top notch. Being able to do the meeting virtually has allowed the OBA to put together programming that might attended. There is a contested election, and delegates will be voting by mail with the results announced at the House of Delegates.

We are trying to make this as simple as possible with the resources we have. You don't have to download a bunch of software or remember 15 different passwords. The nonCLE portions will be on a click and play platform, Zoom or BlueJeans. You will be sent links ahead of the event you register for. OBA staff will be available for any technical assistance you need. I suggest you test your systems beforehand.

I will miss seeing everyone. I already miss seeing everyone. When COVID ends, there will be a huge party at Susan Shields' house, and I'm cooking! Maybe not. I can guarantee when COVID ends, we will be planning events to get us all back together. For now, I ask for your patience and participation in the 2020 OBA Annual Meeting.

Please let us know your questions or how we can assist you in attending. I can't wait to see you online! Until then, it's lights, camera, action!

John When William

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



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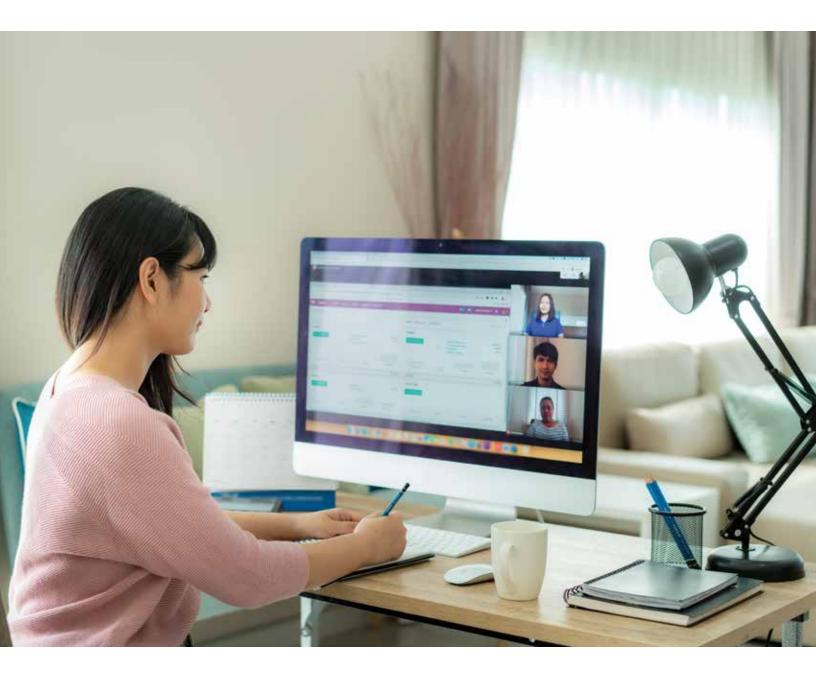
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Fall and Winter 2020: Plan Now to Succeed in This Unprecedented Time

By Jim Calloway



was the often-repeated warning phrase in the HBO megahit Game of Thrones. Fall and winter 2020 are now coming, and like the rest of 2020, it will present more challenges than we can forecast. Law firms and courthouses have reopened, although conditions are definitely not the same.

Colder weather brings new management challenges for law firms in 2020. Let's focus on three areas that should be an important focus of your planning for the next several months.

EMPLOYEES AND LAWYERS **BECOME TEMPORARILY UNAVAILABLE TO REPORT TO THE OFFICE**

Like it or not, cold and flu season will have a whole different meaning during pandemic times. Perhaps the number of people wearing masks means we won't have an extreme cold and flu season, but like so many things, we just don't know. What we do know is people will become ill, and sometimes the symptoms might be similar to COVID-19.

People are likely going to be exposed and have to self-quarantine. Schools and colleges may be changing to virtual only, impacting your employees' lives (in fact, if you read between the lines, several institutions seem to be planning on all virtual after Thanksgiving). Many possible scenarios lead to employees needing to self-quarantine. If any employee who is paid hourly is supposed to quarantine, do you really want them to choose between their livelihood for two weeks or coming into work, especially when they don't "feel sick"?

Lawyers have been working from home for some time now, off and on. So, let's consider the rest of the team. The successful law firm should now be positioned where any quarantined employee can easily switch to working from home as needed. We may see a lot of this throughout the remainder of the year. Success comes from planning. Law firms need to plan for something that is at least a distinct possibility. At this point, it is triage time, because winter is almost here.

I am now addressing smaller firms and solo practitioners. Larger law firms working with their IT departments have already addressed many remote access challenges.

Address This Challenge Software. Lawyers need their important data to be stored safely in the cloud where it can

be accessed and used. While we strongly recommend practice management software as a longterm solution, the triage solution is to subscribe to Microsoft 365 Business Standard (formerly Office 365 Business Premium) for \$12.50 per month or Microsoft 365 **Business Premium (formerly** Microsoft 365 Business) for \$20 per user per month with an annual contract. You can purchase and set it up within a week and store all current documents and forms in OneDrive where they can be easily accessed. We are still believers that Oklahoma lawyers should be using a full-featured practice management solution, but the change of going to these tools is not something you can easily implement in a week. While you won't learn nearly all the features of Microsoft 365 in a week, you can easily have the basics operating in that time. Many law firms use the Teams function for videoconferencing. This is an upgrade you need to make.

Hardware. If you are going to have law firm staff working from home, the safest and most appropriate solution is to provide them the computer to use for work. Yes, the small law firm needs to provide laptops for remote workers. The most important reason to

provide a laptop for an employee to take home is that the device will be used only for office work and not schoolwork or other recreational browsing. Family members may tend to visit less secure websites. You also do not need to preload much software as your Microsoft 365 license allows installation on more than one computer used by the same individual. If the laptop will be used for videoconferencing frequently, then you do not want a cheap, underpowered laptop. See my prior column, "A Videoconferencing Guide for Oklahoma Lawyers."1

Wi-Fi Router. It may be a good value for the law firm to give a bonus to some employees in the form of a brand-new Wi-Fi router. Many employees do not know Virtual Receptionist Services and Virtual Legal Assistants. Some may explore setting up a virtual receptionist service like OBA member benefit Ruby or online legal assistant services like Legal Typist. If a firm is understaffed, transferring the phone answering duties for a few hours can be very helpful. The service can text you or forward a call to your cell phone if you are waiting on an important call.

KEEPING THE CLIENTS SATISFIED IN COVID-19 TIMES

Long ago, there was a phrase, "The customer is always right." For lawyers, it did not work that way with clients because sometimes the rules of professional conduct wouldn't allow lawyers



when they bought their router or what security standard they are using. It is often simpler to just buy them a new router than try to determine whether what they have is appropriate. Plus, there will probably be a performance boost. Some standards are out of date. The current standard is WPA2-PSK (AES), the most secure option. On some devices, you may just see "WPA2" or "WPA2-PSK." to do everything the client asked. Lawyers could still improve client satisfaction by promptly returning phone calls, meeting any deadlines and generally doing what you said you would do when you said you would do it.

With COVID-19 protocols in the office, the customer (aka client) can be always right. You don't want to lose any clients because they were concerned you were not sensitive to their health-related opinions. We are already seeing law firm websites in Oklahoma mention "contact free" and "virtual legal services." No matter what the public opinion is on the street, you don't want your clients or law firm team exposed to serious health risks you can take action to mitigate or avoid. Toss aside your personal opinions, whatever those may be, and design a law office experience for that one potential client with congestive heart failure who is also undergoing chemotherapy for cancer. Everyone will benefit. Mask wearing has become a flashpoint of controversy, but it still seems better to err on the side of too many precautions protecting your diverse clientele than not enough. You likely have been in other businesses servicing the public and have some ideas.

Address This Challenge

- Have hand sanitizer in several locations, accessible to the clients.
- Remove some chairs from the waiting room or block some off with tape.
- Discuss changes to the intake processes, including offering appointments by video conference.
- Give clients the option to call in from the parking lot and wait in their car until it is time for someone to escort them inside.
- Have a supply of disposable masks for clients who may show up without one.
- Purchase a Plexiglas barrier for the reception desk with a passthrough opening for documents and payments.

DIGITAL 'TOUCHLESS' OFFICE PROCESSES ARE HERE TO STAY

Hopefully, we will get this pandemic under control, and we will not experience another of this magnitude during our lifetimes. But some things have changed. We will see people wearing masks in public for a long time, particularly at airports and during cold and flu season.

Law firms will be coping with these changes, which is nothing new for our profession. But, for many lawyers who love their paper files and paper-based processes, it becomes more apparent every day that digital processes are superior in so many ways, including easily locating information. Law firms focusing on serving consumers, as opposed to businesses, are compelled to consider many "upgrades." The digital office checklist now includes:

 All documents in client files are maintained in digital format, secure and accessible to the law firm team from any location.

- A website describing the services your law firm provides to the public.
- ✓ Sharing documents with clients securely via a portal or encrypted transmission.
- A social media account to share information quickly. It is fine if you do not use this account frequently, just so you have it available to tweet or post great accomplishments (with the client's permission, of course).
- Online digital payment processes are in place and communicated to the client.
- More use of the cloud so that data is always continuously backed up while still available for use.
- ✓ The ability to video conference on demand. See my previously noted videoconferencing guide.
- Clients being able to schedule appointments online.
- Understanding when and how you can use electronic signatures and online notary services in your practice.
- Appropriate cybersecurity measures are installed and maintained.

CONCLUSION

We know this is a lot to take in. Pick one area that needs improvement and upgrade it this month. Winter is coming, but hopefully, so is a new year that will be better than this one.

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.

ENDNOTE

1. www.okbar.org/lpt_articles/ a-videoconferencing-guide-for-oklahoma-lawyers.

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Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City and remotely on Friday, July 24.

REPORT OF THE PRESIDENT

President Shields reported she attended multiple planning meetings with OBA staff and speakers for the 2020 OBA Annual Meeting. She also participated in the interview of a potential candidate for a new staff position and drafted the August bar journal president's message.

REPORT OF THE VICE PRESIDENT

Vice President Nowakowski, unable to attend the meeting, reported via email she attended the Annual Meeting planning meeting, Oklahoma Bar Foundation meeting and Awards Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Mordy reported he attended the Lawyers Helping Lawyers Assistance Program meeting at which they discussed the program's information on the website and requests for changes. Executive Director Williams said he has hired a director of strategic communication who will start soon, and the requests will be looked at again. He also attended the Oklahoma Bar Foundation meeting and met with Executive Director Williams and his executive assistant concerning his duties as president next year.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he conducted interviews for a new staff position and attended the Military Assistance Committee meeting, YLD Board meeting, staff directors meeting, conference with President-Elect Mordy regarding 2021 planning in addition to numerous calls and meetings on various issues.

REPORT OF THE PAST PRESIDENT

Past President Chesnut reported he attended the Lawyers Helping Lawyers Assistance Committee meeting.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Legal Internship Committee meeting. Governor **Davis** reported he wrote an article on alternative dispute resolution in Title IX cases for the bar journal. Governor DeClerck reported he consulted with Garfield County Bar Association officers, and it has been decided they will not hold meetings for the balance of the year. Governor Edwards reported he attended a training seminar for the use of a smartboard at the Pontotoc County District Court. Governor Hermanson reported he attended meetings with Gov. Stitt in Perry and Ponca City, virtually a DAC Technology Committee meeting, DAC Executive Committee meeting, DAC board meeting, ODAA board meeting, ODAA

Annual Meeting, OBA Legislative Monitoring Committee's Legislative Debrief program and numerous Zoom and Microsoft Teams meetings. Governor McKenzie reported he attended the OBA Awards Committee meeting. Governor Morton reported he attended the Military Assistance Committee meeting. Governor Pringle reported he wrote an endof-season legislative session recap for the Oklahoma Bar Journal, coordinated the Legislative Monitoring Committee's Legislative Debrief program and moderated a panel with lawyer legislators recorded for the debrief program. Governor Williams reported he contacted and provided pro forma documents to a potential candidate for his expiring Judicial District No. 6 Board of Governors position, attended the **OBA** Diversity Committee meeting and Tulsa County Bar Association Board of Directors meeting. He also finalized his last trial panel report for the OBA Professional Responsibility Tribunal as a presiding master and conducted its annual meeting as chief master.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Haygood reported the division voted to move the Kick It Forward tournament originally set for September to April. He has chaired two YLD board meetings and helped assemble bar examination survival kits.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported out-of-state attorney registrations have increased this year with 30 more than last year. She said they held their first virtual disciplinary hearing yesterday using Microsoft Teams. A written report of PRC actions and OBA disciplinary matters for June was submitted to the board for its review.

BOARD LIAISON REPORTS

Communications Director Manning said the Awards **Committee** recommendations will be on the agenda for the next board meeting. Governor DeClerck said the Disaster Response & Relief Committee is coordinating with Access to Justice Foundation **Executive Director Katie Dilks** regarding landlord/tenant issues that have escalated because of the pandemic. Governor Williams said the Diversity Committee is looking for nominations for its awards due July 31. Governor Hermanson said the Law Day Committee will meet in August to begin planning. Past President Chesnut said the Lawyers Helping Lawyers Assistance Program Committee, which had in-person discussion groups prior to COVID-19, has seen numbers of participants increase significantly for virtual meetings. He also said the consensus is the new counseling company has been doing a good job. Governor Pringle said the Legislative Monitoring **Committee** Debrief had more

than 400 people participate both in person and online. More topics were covered this year since less bills were filed. Governor Morton said the Oklahoma Lawyers for America's Heroes Program was discussed at the Military Assistance Committee meeting. Program Coordinator Ed Maguire will receive clerical assistance from OBA staff member Nickie Day, and he will not represent program clients in court. The committee decided to implement a cut-off period for a client waiting for a volunteer lawyer to help them and to add disclaimers on the website that the program is only a referral service. There is a need to recruit more volunteers to replace those lost to retirement. The committee is suggesting an OBA award be created honoring a program volunteer and that it be named for a bar member killed while on active duty.

ANNUAL REPORT OF THE LICENSED LEGAL INTERNSHIP COMMITTEE

As committee liaison, Governor Beese reviewed highlights of the report, which included changes as a result of the pandemic. He said their efforts were impressive.

LEXOLOGY NEWSSTAND

Management Assistance Program Director Calloway reported the Member Services Committee heard a presentation from Lexology as a potential member benefit that would provide bar members free of charge with legal news delivered via email. The Business and Corporate Law Section has received the newsletter for the past several years, and members like it. The volume of email could be an annoyance if members don't customize the newsletter for selected topics. The

Governor DeClerck said the Disaster Response & Relief Committee is coordinating with Access to Justice Foundation Executive Director Katie Dilks regarding landlord/tenant issues that have escalated because of the pandemic.

OBA would provide member email addresses, which is an exception to its policy not to share member email addresses. Director Calloway suggested if this benefit is approved to allow a two-month education/promotion process before the email begins. There was discussion about whether members could opt out before it begins. It was decided all board members would receive a one-month trial description. Discussion followed. The email sender would be Lexology on behalf of the OBA. The board will make a decision at its meeting next month.

CLIENTS' SECURITY FUND APPOINTMENT

The board approved President Shields' appointment of Joseph "Hank" Young, Oklahoma City, to complete the unexpired term of Dan Sprouse, which expires 12/31/2021, and appointment of lay person Michelle S. Chilton, CPA, Oklahoma City, to complete the unexpired term of CPA Robert Sunday, which expires 12/31/2022.

POTENTIAL PROSECUTORS FOR THE COURT ON THE JUDICIARY

The board voted to ratify the email vote naming Danny Williams Sr., Tulsa; Carlye Jimerson, Tulsa; Stanley Monroe, Tulsa; Tracy Schumacher, Norman; and Josh Lee, Vinita; as potential prosecutors for the Court on the Judiciary.

HOUSING ISSUES

Executive Director Williams reviewed the state's current housing situation resulting from the pandemic. Resources are available, but people are not aware of them. He said the OBA is part of a program called Let's Talk Housing to divert legal action to mediation. Board members were asked to talk to others to encourage mediation. Chief Justice Gurich will send a letter to district courts. A news release is going out saying the OBA is a partner in this issue. President Shields said as information comes together, there will be an opportunity for lawyers to help. Discussion followed.

BAR CENTER UPDATE

Executive Director Williams said meetings held in the bar center will be kept to a minimum. The number of confirmed COVID cases will be watched from now to the end of the year, and people entering the building will be limited if needed.

NEXT MEETING

The Board of Governors met in August and September. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be Oct. 23.



Stange Law Firm, PC Announces Several Key Promotions Within the Firm

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Pandemic Impacts the Nonprofit Sector and OBF Grantees

By Candice Pace

IFE CHANGED dramatically in March 2020. We have all been presented with new challenges as we learn to navigate life during a pandemic. Many businesses have suffered – from the retail industry to dine-in restaurants. One industry that has been hit particularly hard is the nonprofit sector. Anytime there is economic disruption, nonprofit organizations see both a dramatic increase in client needs and a dramatic drop in program funding and resources. The COVID pandemic has brought abrupt operational changes to nonprofits, challenging them to come up with new strategies to assist clients during this crisis.

The Oklahoma Bar Foundation seeks to help sustain Oklahoma nonprofits through times like these. The **OBF** Grants & Awards Committee recently interviewed applicants from 29 Oklahoma nonprofit organizations who are requesting over \$1.1 million in OBF grant funding. These organizations provide critical legal services to a wide range of people in need – children and families, domestic violence victims, immigrants and refugees, juveniles and low-income Oklahomans with other needs. During the interview process, the applicants were asked how the pandemic is affecting their programs. Also, in April 2020, the OBF surveyed its current grantees

on the COVID-19 impact on their operations. Here are three examples of how nonprofits in Oklahoma are being negatively impacted:

First, nonprofits are seeing a huge spike in client needs. Results of the pandemic have been devastating for low-income populations. The Legal Services Corporation (LSC) published an article in July reporting, "Ninetyfour percent of grantees surveyed said that they are seeing clients who are newly eligible for LSC-funded legal aid. On average, grantees are reporting a 17.9% increase in the number of eligible clients due to the pandemic."¹ For many of these individuals and families, turning to a nonprofit for help is their only hope to put food on the table, stay in their homes or leave abusive relationships.

Oklahoma nonprofits are certainly feeling this impact. The application interviews and survey

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responses revealed a dramatic increase in the number of new clients and needs related to the pandemic. Some OBF grantees reported working at four times normal capacity to keep up. Legal matters resulting from the pandemic included cases of unemployment, domestic violence, landlord/tenant disputes, evictions, collections, repossession, bankruptcies and foreclosures.

Second, nonprofits are seeing a drastic reduction in their funding sources. The nonprofit sector relies heavily on in-person fundraising to pay for programs and special community initiatives. Lockdowns and social distancing have put a sudden halt to large gatherings and in-person meetings. A survey conducted by Charity Navigator and Reuters News of 4,598 nonprofit sector representatives in early April 2020 concluded, "As the pandemic



has inhibited organizations' ability to host in-person events, 74.8% of respondents reported having to cancel a fundraising event."2 This is a huge hit for nonprofit programming relying on income from in-person fundraisers and meetings. In addition, incomes of businesses and individuals have been negatively affected by the economic disruption, resulting in less donations for nonprofit annual campaigns. OBF grantees confirmed this devastating news in their survey responses, reporting their big fundraising events have been cancelled, donations are down and some state and federal grants have diminished.

Third, nonprofits are experiencing a lack of volunteers able to assist clients due to safety measures like social distancing and quarantining. The same survey by Charity Navigator and Reuters News concluded, "35.8% of respondents report a shortage of volunteers." This has a major impact on nonprofits because it is volunteers who provide much of the legal support, court advocacy and other services to those in need, and without volunteers, many organizations are forced to turn clients away. OBF applicants and current grantees reported an absence of volunteers for their programs and an immediate need for funding to find and

train new volunteers to help take on the increased client load. They also reported having to limit the number of people allowed in each training class, which in turn slowed down the training process and put more of a strain on program staff.

WAYS TO HELP

Nonprofit organizations work tirelessly to help as many people as possible with limited funds and resources. Sadly, the need is always higher than the funds available to meet the demand for services. The pandemic has brought with it greater needs and challenges, pushing many nonprofits into crisis mode. These organizations need the legal community now more than ever. Here are five ways you can help OBF grantees:

 Join the OBF Fellows and Community Fellows Programs. OBF Fellows make annual donations to sustain funding for Oklahoma nonprofits providing legal services and education.
 Already a Fellow or Community Fellow? Consider increasing your donation to help fill the funding gap for our local law-related nonprofit organizations.

3. Participate in online fundraising campaigns like the OBF Grantee COVID Relief Fund. This campaign raised an additional \$29,500 over the summer for OBF grantees providing additional legal services due to the pandemic. 4. If you have an IOLTA trust account, make sure your bank is on the OBF list of Prime Partner Banks who pay higher interest rates and deduct fewer fees on IOLTA accounts. IOLTA is the major source of funding for OBF grantees.

5. Visit the new statewide Pro Bono Opportunity Portal by OBF grantee, the Oklahoma Access to Justice Foundation. The site okprobono.org has many opportunities for pro bono legal assistance. You can search for the right opportunity for you by practice area or remote work. The nonprofit community needs you now more than ever.

Ms. Pace is the OBF director of development and communications.

ENDNOTES

1. "LSC Survey Finds Major Impact of COVID-19 Pandemic on Legal Aid," Legal Services Corp., 24 July 2020, www.lsc.gov/ media-center/press-releases/2020/lsc-surveyfinds-major-impact-covid-19-pandemic-legal-aid (accessed Aug. 31, 2020).

2. "Impact of the Pandemic & Economic Shutdown on the Nonprofit Sector," Charity Navigator, April 17, 2020, www.charitynavigator.org/index. cfm?bay=content.view&cpid=7900#:~:text=Of% 20those%20nonprofit%20organizations%20 experiencing.to%20cancel%20a%20fundraising %20event (accessed Aug. 31, 2020). YOUNG LAWYERS DIVISION

October a Busy Month Despite the Pandemic

By Jordan Haygood

T'S OCTOBER, and unfortunately, I didn't get to go to the fair and get my annual corn dog, turkey leg, funnel cake and unlimited supply of lemonade. But despite the limitations the pandemic has placed on our personal and professional lives, members of the YLD have been quite busy.

YLD members attended this year's American Bar Association Young Lawyers Division virtual annual meeting. YLD Treasurer Dylan Irwin and YLD Chair-Elect April Moaning represented Oklahoma in the ABA YLD Assembly. While the annual meeting lacked the social aspect of getting to see old friends and colleagues, it still allowed for the YLD to have a voice in the governance of young lawyers across the nation. OBA YLD members have always been active in the ABA. Since we have been limited to our activities, I thought I would shed some light on what some of our members have been doing to navigate their skills during the pandemic.

SERVICE ON A NATIONAL LEVEL

Some of you may not know that our very own Caroline Schaffer-Sussex, OBA YLD secretary, represents both Oklahoma and Arkansas as the District 24 representative and voting member to the ABA YLD Council. As a district representative, she provides input, recommendations and resolutions used in the adoption positions by the ABA YLD and the ABA; provides hands-on assistance to affiliates, such as the OBA YLD, implementing ABA YLD programming and projects; and attends ABA YLD Council meetings at the division's four conferences and two ABA YLD Assembly sessions at the ABA annual and mid-year meetings.

She also attended a rigorous leadership conference and FEMA training in Chicago that allows her to help coordinate Disaster Legal Services programs within



Caroline Schaffer-Sussex

the district in partnership with the Federal Emergency Management Agency (FEMA). With the tornados and flooding that District 24 experiences, this is a very important role to be in. I previously held this two-year term position in 2015 and 2016, so I know the amount of time and effort that goes into acting as a liaison between the district's relevant affiliates and the ABA YLD. It is always great to have someone from the OBA YLD representing us on a national level.

Caroline was also recently published in the ABA's *After the Bar*, which is a digital publication designed to guide new lawyers through the early stages of their legal careers. Her article, titled "Practical Tips to Maximize Billing," focuses on helping new attorneys entering the legal field to develop good, billable habits. It provides several practical tips with examples for new lawyers to utilize. I personally would like to thank Caroline for her hard work and service to the OBA YLD and ABA YLD.

WELCOME NEW BAR MEMBERS

October is also an exciting time for the OBA YLD as we get to welcome a class of new attorneys to our division. On behalf of the entire division, I would like to congratulate all the new attorneys





YLD District 5 Director Brittany Byers with her Junction Coffee drink.

The YLD welcomed new attorneys during the Sept. 22 swearing-in ceremony by sponsoring a doubledecker coffee bus. Junction Coffee served hot drinks, cranberry orange scones and chocolate croissants.

who have been admitted and welcome them to reach out to me for anything they need as they start their new journey. I know I would neither be in my chair position today, nor in my role with SSM Health, without a couple of YLD mentors, and I hope to be the same to the new members.

I hope all my fellow colleagues have stayed safe and healthy during this time, as well as your close friends and family. If this pandemic has taught me anything, it is we are stronger when we support each other. If there is any way the YLD or I can help you, your committee or firm, please let us know.

ELECTIONS

October also means time for YLD board elections! Election ballots were sent out by email Oct. 1, with polls staying open until Oct. 23 at midnight. Details about the candidates and positions are available in the Oklahoma Bar Journal September issue and online at www.oba.org/yld/ elections. Please look at the candidates in your district, and don't forget to vote! Winners will be announced at the November YLD meeting in conjunction with the Annual Meeting.

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.

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Oklahoma Bar Association Lawyers Helping Lawyers Assistance Committee

FOR YOUR INFORMATION



JUDGE TREVOR PEMBERTON APPOINTED TO COURT OF CIVIL APPEALS

Gov. Kevin Stitt announced the appointment of Judge Trevor S. Pemberton to the Oklahoma Court of Civil Appeals Aug. 24. Judge Pemberton's appointment fills the vacancy for District 4, Office 2, created by the retirement of Judge Larry Joplin.

Judge Pemberton has served as chief district judge of the Oklahoma County Juvenile Division since May 2019. An active member of the Oklahoma City community, he also currently serves on the Board of Directors for the Salt and Light Leadership Training (SALLT) and the OCU Law Alumni Association. Previously, he served as a district judge for Oklahoma County from January 2018 to May 2019 and a special judge for Oklahoma County from May 2017 to January 2018. Prior to taking the bench, Judge Pemberton was in private practice from 2008 to 2017. He received his J.D. from the OCU School of Law, where he graduated cum laude in 2008.

OU LAW HONORS CIVIL RIGHTS PIONEER

Through a transformational gift of \$910,000 from an anonymous donor, alongside collective efforts from nearly 80 supporters, OU Law has endowed a chair to honor alumna Ada Lois Sipuel Fisher. The Ada Lois Sipuel Fisher Chair in Civil Rights, Race and Justice in Law will focus on teaching and research and will support and empower future lawyers to carry on the work she began. To further support this vision, the donor has pledged to match up to \$90,000 for continuing donations to the fund.



Ada Lois Sipuel Fisher signs Roll of Attorneys. (Collections at the Oklahoma Historical Society)

The effort to endow a chair in her honor and recruit outstanding faculty members in civil rights, race and justice in the law began last year in conjunction with the 70th anniversary of Ms. Fisher's law school admission. She was the first African American student to be admitted to OU Law. Her admission, however, was preceded by a three-year legal battle due to the segregation of Oklahoma schools at the time. The battle ultimately reached the Supreme Court, who ruled unanimously in her favor. Her landmark case laid the groundwork for the elimination of segregation in public education nationwide. After graduating, Ms. Fisher practiced law in Chickasha and later joined the faculty at Langston University. In 1992, she was appointed to the OU Board of Regents. She died Oct. 18, 1995.

VISIT COURTFACTS.ORG FOR INFORMATION ON JUSTICES AND JUDGES

Election day is less than a month away! Find information about the eight judicial candidates who will be on the retention ballot at www. Courtfacts.org. Be sure to share this resource with other voters.



OBA MEMBER RESIGNATIONS

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

Elizabeth Kimmins Davis, OBA No. 19790 3904 Tamarac Court Edmond, OK 73003

Richard S. McLain, OBA No. 10396 7201 N. Classen Blvd., Ste. 103 Oklahoma City, OK 73116

2021 PROPOSED BUDGET

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association, Michael C. Mordy, president-elect and Budget Committee chairperson, has set a public hearing on the 2021 Oklahoma Bar Association budget for Thursday, Oct. 22, at 10 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, in Oklahoma City. Budget details were published in the Oct. 2 *Oklahoma Bar Journal* court issue.

ON THE MOVE

John B. Board has retired after serving 20 years as judge of the 181st District Court, Potter and Randall Counties, Texas. He received his J.D. from the OU College of Law in 1988.

John Shears, Robert Powell and Preston Hanner have formed the law firm of Shears Powell & Hanner, located at 710 Cedar Lake Blvd., Ste. 101, Oklahoma City, 73114. The firm will focus on workers compensation defense, civil litigation, family law and business development. Mr. Shears received his J.D. from the OU College of Law in 2001. Mr. Powell received his J.D. from the OCU School of Law in 2002. Mr. Hanner received his J.D. from the TU College of Law in 2004.

Steven L. Stice, former special judge, has joined the Norman law firm of Talley, Turner, Stice & Bertman as a partner. Mr. Stice retired from the bench in July and will practice primarily in the areas of criminal law and mediation. He received his J.D. from the OU College of Law in 1996. Shawna Baker was sworn into office as a Cherokee Nation Supreme Court justice Aug. 27. Justice Baker is one of only three women to serve as a Supreme Court justice in Cherokee Nation history. She received her J.D. from the TU College of Law and her LL.M. from Columbia Law School. Most recently, she served on the Cherokee Nation Gaming Commission.

M. Dan Caldwell has joined the Oklahoma City law firm of Lytle Soulé & Felty PC as a director. Kristi Bynum Funck, Eric L. Combs and Will T. Jordan have joined the firm as preferred shareholders. Mr. Caldwell practices in the areas of workers compensation and insurance law. Ms. Funck practices in the area of workers compensation. Mr. Combs practices in the areas of commercial, oil and gas and other complex litigation. Mr. Jordan practices in the areas of oil, gas and energy law, as well as outside general counsel services.

Alex Pearl will join the OU College of Law for the fall 2020 semester. He practices primarily in the areas of water law, climate change law and policy, indigenous legal and social issues and statutory interpretation. For the past six years, Mr. Pearl was the director of the Texas Tech University School of Law Center for Water Law and Policy.

Matthew S. Andrus has joined the Oklahoma City law firm of DeBee Clark PLLC as an associate attorney. He received his J.D. from the OCU School of Law in 2020 and will practice primarily in business transactions.

Chase L. Johnson has joined the Oklahoma City law firm of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC as an associate attorney. He received his J.D. from the University of Colorado School of Law in 2020 and will focus on the representation of insurance companies and their insureds.

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 December issue must be received by Nov. 1.

The Oklahoma City law firm of Fuller Tubb & Bickford has changed its name to Fuller Tubb Bickford Warmington & Panach PLLC. Courtney Warmington and Matthew Panach have been named partners of the firm, and Emma Payne has joined as an associate attorney. Ms. Warmington joined the firm in 2016 and practices in the areas of employment law and litigation. Mr. Panach joined the firm in 2013 and practices in the areas of employment law and civil litigation. Ms. Payne received her J.D. from the OCU School of Law in 2016 and previously worked for McAfee Taft's Oil & Gas Practice Group.

Pandee Ramirez has been appointed by Gov. Kevin Stitt to serve as district judge in Oklahoma's 24th Judicial District, including Creek, Okfuskee and Okmulgee counties. Judge Ramirez has served as a special judge in Okmulgee county since 2015. Formally, she was a criminal defense lawyer and a prosecutor for 15 years. She has also worked for the Oklahoma Indigent Defense System in Okmulgee, Creek and Okfuskee counties and in the Henryetta Division of the District Attorney's Office for Okmulgee and McIntosh counties.

Stuart Lee Tate has been appointed by Gov. Kevin Stitt to serve as district judge for Osage County, which is in the 10th Judicial District. Previously, Judge Tate served Osage County as a special judge from 2010 to 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 cases as well as probate, guardianship, adoption and general family law cases. He received his J.D. from the OCU School of Law in 1991.

John G. Browning was appointed to the 5th Court of Appeals by Texas Gov. Greg Abbott. His term will expire Dec. 31, or when a successor is elected. Previously, Justice Browning was a partner at the Plano, Texas office of Spencer Fane LLP and an appointed municipal judge for the city of Lavon, Texas. He received his J.D. from the University of Texas School of Law.

KUDOS

Angela Marsee was elected president of the District Attorneys Association for 2021. Matt Ballard will serve as president-elect, and Jeff Smith will serve as secretary and treasurer. Also serving as board members in 2021 are Chris Boring, Laura Austin Thomas, Brian Hermanson, Jack Thorp, Chuck Sullivan, Allan Grubb and Steve Kunzweiler.

THE IMMIGRATION LAW FIRM OF STUMP & ASSOCIATES TAKES PLEASURE IN ANNOUNCING THAT

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onald B. Atkins of Tulsa died Aug. 21. He was born Sept. 3, 1929, in Ardmore. Mr. Atkins graduated from OU with a bachelor's degree in accounting in 1951. He joined the U.S. Air Force, where he served for almost two years, mainly in Greenland. Following his service, he returned to Tulsa to work as a CPA and attend TU, where he received his J.D. from the TU College of Law in 1958. Mr. Atkins practiced law in Tulsa for over 50 years, founding Atkins and Atkins PC in 1989. Memorial contributions may be made to St. John's Episcopal Church or St. Simeon's Episcopal Home in Tulsa.

arry Eugene Evans of Tulsa Lidied July 21. He was born Oct. 1948 in Moline, Illinois. Upon graduating from the University of Illinois, he served in the U.S. Army from 1970 until 1972. Mr. Evans received his J.D. from the TU College of Law. He began his legal career practicing law in the oil and gas industry and actively served on the OBA **Title Examination Standards** Committee of the Real Property Law Section for several years. Memorial contributions may be made to your favorite charity or animal rescue organization.

William W. Gorden Jr. of Oklahoma City died Aug. 23. He was born Dec. 8, 1948, in Tulsa. After earning his undergraduate degree in political science from OU, he received his J.D. from the OCU School of Law in 1975. He taught at Redlands Community College and was ordained a deacon in the Catholic Church in 2002. Memorial contributions may be made to the St. Charles Borromeo Dorothy Day Center. **G** len Douglas Hickerson of Bristow died Aug. 24. He was born Sept. 8, 1961, in Oklahoma City. Mr. Hickerson received his J.D. from the OU College of Law in 1988. During his 32-year legal career, he served as an assistant district attorney and defense attorney in several Oklahoma counties.

onald Lee Johnson of Ardmore died Aug. 19. He was born May 26, 1948, in Ardmore. He earned his bachelor's degree in sociology from East Central University and his master's degree from OSU. Upon graduation, he taught sociology at East Central University, worked as an alcoholic's counselor at Southern **Oklahoma Mental Health Services** and was a community activist for the Neighborhood Services Organization. In 1977, Mr. Johnson received his J.D. from the OCU School of Law. He began in private practice, but after a few years became the assistant attorney general for Oklahoma and was appointed executive director of the Human Rights Commission. After several years in that position, he returned to private practice until his retirement. Memorial contributions may be made to the Black Student Alumni Association of East Central University.

William D. McCullough Jr. of Norman died Aug. 27. He was born Jan. 6, 1953. After graduating from OU with a bachelor's degree in journalism, he became a general assignment reporter for the Duncan Banner. He was named sports editor of the Pauls Valley Daily Democrat in 1978 and was hired as managing editor of the Guthrie Daily Leader the following

year. Mr. McCullough received his J.D. from the OU College of Law in 1984. In 1989, he began working as an attorney on behalf of news organizations for the Oklahoma Press Association. He served as general counsel for OPA and lead counsel of OPA's Legal Services Plan. Mr. McCullough was the founding member of Freedom of Information Oklahoma, where he served as a board member, president and advisory board member. In addition, he served as the chief counsel and attorney general for the Wyandotte Nation Tribe for the past 28 years. During that time, he successfully adjudicated two landmark landinto-trust cases on behalf of the tribe and was selected "Wyandotte Nation Person of the Year" for 2020. Mr. McCullough also worked with the Iowa Tribe of Oklahoma for over 35 years.

Robert Theron Williams of Overland Park, Kansas, died Aug. 13. He was born March 18, 1974, in Lexington, Kentucky, and was raised in Tulsa. Mr. Williams graduated from Oral Roberts University and received his J.D. from the TU College of Law. He worked as an estate attorney for Creative Planning in Overland Park.

2020 ISSUES

NOVEMBER Alternative Dispute DECEMBER

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

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

2021 ISSUES

JANUARY

Meet Your Bar Association Editor: Carol Manning

FEBRUARY

Marijuana and the Law Editor: Virginia Henson virginia@phmlaw.net Deadline: Oct. 1, 2020

MARCH

Probate Editor: Patricia 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.



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THE DEPARTMENT OF ENVIRONMENTAL QUALITY is hiring an attorney in the Water Quality Division. The job duties include: legal research, statutory or regulatory drafting and interpretation, and representing the agency in council meetings and enforcement cases, including hearings and appeals. Bi-weekly salary up to \$2,478.94. Please send a resume and writing sample to Jennifer Boyle at jennifer.boyle@deq.ok.gov.

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.

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.

POSITIONS AVAILABLE

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.

THE OKLAHOMA BOARD OF BAR EXAMINERS is seeking an Administrative Director to oversee day-today operations of the Office of Bar Examiners. Deadline to apply is Oct. 13, 2020. See www.okbbe.com for complete details including position overview, qualifications and required skills.

THE OKLAHOMA TEACHERS' RETIREMENT SYSTEM (TRS) IS SEEKING A LEGISLATIVE DIRECTOR. This person will represent the interests of TRS at the State Capitol during legislative sessions. The candidate should have experience in the legislative process, tracking legislation, and communicating with legislators. A law degree is desirable; not a requirement. Salary range is \$55,689 - \$113,027. Excellent health and retirement benefits. See application procedures at www.ok.gov/TRS.

THE CHOCTAW NATION OF OKLAHOMA is now hiring Assistant Prosecuting Attorneys. Some Assistant Prosecutor positions will be assigned to ICW deprived cases and other positions will handle criminal prosecution. Salary range for these positions is \$65,000-\$85,000 commensurate upon experience. For more information see https://jobs.choctawnation.com/jobs/ assistant-prosecuting-attorney-8129.

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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, <i>McAfee & Taft</i>
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, <i>Oklahoma</i> <i>County District Judge</i>
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)

THE BACK PAGE

Flashback: 1988 Annual Meeting









Top row: Former OBA President Burck Bailey speaks during the 84th Annual Meeting. The President's Reception Annual Banquet included English trumpeteers, singers, jugglers, magicians and fire-eaters, followed by dancing until midnight.

Left: OBA members during a CLE Seminar. 12 hours of MCLE credit on recent developments in Oklahoma law was offered.

Above: 1964 OBA President James Fellers sits in the front row of a meeting. The 1988 Annual Meeting was held Dec. 7-9, at the Westin Hotel in downtown Tulsa.



FRIDAY, October 30, 2020 9 R.M. – 2:50 P.M.



MCLE 6/1

PROGRAM PLANNER:

Eric L. Johnson, OBA Financial Institutions and Commercial Law Section

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2020 BANKING AND Commercial Law UPDATE

Co-Sponsored by the OBA Financial and Commercial Law Section

PROGRAM DESCRIPTION:

The 2020 Banking and Commercial Law Update will educate participants on new developments in these areas of law including Uniform Commercial Code Articles 3, 4, 4A and 9, banking issues, and CFPB updates of interest to the banking and commercial law practitioner. Instructors include a law school professor, commercial and consumer law practitioners. The Update also contains one hour of ethics credit.

TUITION: Registration for the live webcast is \$175. Members licensed 2 years or less may register for \$85 for the live webcast. This program may be audited (no materials or CLE credit) for \$50 by emailing ReneeM@okbar.org or call 405-416-7029 to register.

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