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History Repeats Itself

By Mike Mordy

I TRAVELED EUROPE WITH TWO FRIENDS IN the summer of 1977 between the time I graduated from undergraduate school and started law school in the fall. You could buy a Eurail train pass back then for not much money and follow a guide titled “Europe on \$10 a Day.” We wound up in Munich, Germany, at some point during the trip and traveled to the Dachau Concentration Camp Memorial 10 miles north of Munich. Dachau was a Nazi concentration camp opened in 1933 and liberated by U.S. forces April 29, 1945. The Nazis used the camp to imprison, torture and kill mainly innocent Jewish people but also Romanians, Polish people and foreign nationals from other countries Germany occupied or invaded. Forced labor was required of the prisoners, and worst of all, prisoners were tortured and killed in medical experiments. There were 32,000 documented deaths at the camp, and thousands of deaths were undocumented.

This experience had a profound effect upon me not just because I was astonished by the barbaric brutality committed by the Nazis upon the Jewish people, but because I did not know and appreciate the extent of the Nazis’ amoral tyranny. I felt this history had been glossed over and had not been given the attention in my education that it

should have been given. My age group studied World War II, but I remember thinking back in 1977 when I was at Dachau that the attempted extermination of the Jewish race and the killing of six million Jewish men, women and children by the Nazis was not given the attention and study it deserved.

I bring this up because I know history repeats itself, and therefore, we need to be vigilant in making sure history is taught, studied, discussed and appreciated. There seems to be a movement in our current culture to ignore our history or despise it or, in some cases, attempt to destroy it. We as attorneys know our laws and interpretations of those laws are based upon history, and we

should make sure we better promote the study and awareness of history.

The framers of our Constitution, our forefathers, knew and appreciated history and used that knowledge when they drafted the U.S. Constitution. They had experienced strong governmental oppression by the British; however, they still adopted some of their ideals while avoiding the monarchical British system in favor of a democratic government. The framers knew their Greek and Roman history and used that knowledge to avoid a demagogue from being able to wrestle power from the people. The founders did not ignore the history of the brutal and oppressive Greeks and Romans but rather used that history to prevent history from repeating itself.

Bad and evil have happened in the history of humanity and are a stain, but history, both good and evil, is important and must be considered so we can appreciate its impact. Studying history and imparting history to the younger generations supports and promotes the rule of law because we see the effects on mankind where the rule of law is not adopted, administered, adjudicated and enforced fairly and efficiently.

The Dachau Concentration Camp Memorial is a memorial to those who perished there; however, it is also a reminder to watch for tyranny and to avoid any type of government that is intolerant of others. The recent public awareness of the Tulsa Race Massacre of 1921 is a current example, in our faces, of making sure we know, and all generations know, of even the bad history of our society so that history does not repeat itself. It has been famously quoted that, “Those who do not remember the past are condemned to repeat it.” The same holds true if history is not taught. We need to be vigilant to teach, study and discuss all history, good or bad, to avoid that history and to be assured that the rule of law is maintained.



A handwritten signature in dark ink, appearing to read "Mike Mordy".

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OKLAHOMA JUDICIAL CENTER

Wells, Whipple and the Election of Remedies

By Dustin Vanderhoof

THE FOLLOWING IS A DISCUSSION OF RECENT Oklahoma Supreme Court cases addressing workers' compensation exclusivity and intentional torts, election of remedies and the constitutionality of the Oklahoma Legislature's limitation of workers' compensation death benefits to spouses, children and legal guardians of employees killed in work-related incidents.

CURRENT STATUS OF THE PARRET EXCEPTION TO WORKERS' COMPENSATION EXCLUSIVITY

It has long been the law in Oklahoma that the exclusive remedy for accidents arising out of and in the course of one's employment was found within the Oklahoma Workers' Compensation Court/Commission. In 2005, things changed, and an exception to the exclusivity provisions was born. Later referred to as "Parret claims," a new type of hybrid tort was solidified by the Oklahoma Supreme Court in *Parret v. UNICCO Service Co.*¹ In *Parret*, the deceased, an employee of defendant UNICCO Service Co. (UNICCO), was electrocuted and killed while replacing emergency lights at the Dayton Tire Plant owned by Bridgestone/Firestone Inc. (Bridgestone) in Oklahoma City.² UNICCO assisted the widow in filing and ultimately receiving workers' compensation death benefits.³ The widow then pursued an action in the Western District of Oklahoma against multiple defendants, alleging "her

husband's death resulted from the defendants' willful and intentional acts of having the decedent work on the lights despite their knowledge of the substantial dangers associated with the task."⁴

The Western District asked the Oklahoma Supreme Court to certify the "standard of intent necessary for an employee's tort claim against an employer to fall outside the protection of the Oklahoma Workers' Compensation Act."⁵ Under the Workers' Compensation Act in place at the time, an employer was liable "for the disability or death of an employee resulting from an accidental injury sustained by the employee arising out of and in the course of employment, without regard to fault."⁶ The act also made the employers' liability under the act "exclusive and in place of all other liability of the employer."⁷ In other words, the act provided the exclusive remedy for employees (or a surviving spouse) seeking redress from employers for injuries occurring on the job.

However, the Supreme Court noted, under the common law,

employees could seek redress outside the workers' compensation scheme for injuries caused by an employer's intentional conduct.⁸ The question facing the court was what level of intent was required for a tort to fall outside the Workers' Compensation Act's exclusivity protection. While clearly outside the act's protection, the court rejected a *specific intent* to harm standard as being necessary for a plaintiff to circumvent the act's exclusivity provision. Instead, the court adopted a *substantial certainty* standard. In its certified answer to the Western District, the court held that an employer's conduct is the functional equivalent to an intentional tort (and thus exempted from the jurisdiction of Oklahoma's Workers' Compensation Court) where the employer "(1) desired to bring about the worker's injury or (2) acted with the knowledge that such injury was substantially certain to result from the employer's conduct."⁹

In 2010, the Oklahoma Legislature amended the exclusivity provision of the Workers' Compensation Act to exclude

an employer's intentional torts from the Workers' Compensation Act's reach.¹⁰ The Legislature also appeared to try to limit the reach of the *Parret* decision by attempting to remove the substantial certainty language from the definition of an intentional tort:

An intentional tort shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that such injury was substantially certain to result from its conduct shall not constitute an intentional tort. The issue of whether an act is an intentional tort shall be a question of law for the court.¹¹

The Legislature carried over this characterization of intentional tort when it enacted the Workers' Compensation Code in 2011¹² and again when it limited the protections afforded to injured Oklahoma workers in the enactment of the Administrative Workers' Compensation Act in 2013.¹³

The Legislature's characterization of an intentional tort was put to the test in *Wells v. Okla. Roofing & Sheet Metal, L.L.C.*¹⁴ In *Wells*, the deceased, a roofer, was killed when he fell from a three-story building.¹⁵ To cross over two co-workers while on a roof, the deceased was required to unhook a lanyard used to prevent a fall and walked 10 feet untethered when he fell.¹⁶ The decedent's daughter, individually and as the administrator of the decedent's estate, filed a civil action against the decedent's employer. The daughter specifically alleged an intentional tort by the employer. Specifically, her petition alleged the employer knew its fall prevention system was faulty (the

employer had been cited for its fall prevention in the past) and knew the system would lead to the decedent's death.¹⁷ Her petition also challenged the constitutionality of the Legislature's newly created characterization of "intentional tort."¹⁸

The district court ultimately found the newly crafted exclusivity provision in Okla. Stat. tit. 85, §12 constitutional and granted the employer's motion to dismiss, holding "while [plaintiff's] allegations met the 'substantial certainty' element set forth in *Parret v. UNICCO Serv. Co.*, 2005 OK 54, 127 P.3d 572, it did not satisfy the specific intent definition prescribed in §12."¹⁹ On appeal, the Court of Appeals reversed and found Section 12 unconstitutional as a special law. The employer sought *certiorari* review with the Oklahoma Supreme Court.

The Oklahoma Supreme Court granted *certiorari* but never reached the constitutionality of Section 12. Instead, the court clarified its ruling in *Parret*. The court held that *specific intent* and *substantial certainty* were only different "nomenclatures of an intentional tort."²⁰ As the court noted, "In short, *Parret* did not recognize two types or levels of intentional torts ... Rather, *Parret* clarified what kinds of conduct constitute an intentional tort."²¹ The court also noted:

An employer's "specific intent" to injure, or knowledge that an injury is "substantially certain to result," equate to an intentional tort. Both require a knowledge of foreseeable consequences and are interpreted to mean intentionally knowing culpable acts. The belief that one has a different level or degree of a tortious act, and thereby concluding that specific intent and substantial certainty are different animals, is a fallacy.²²

Finally, the court held that the "willful, deliberate, specific intent of the employer to cause injury, and those injuries that an employer knows are substantially certain to occur, are both intentional torts that are not within the scheme of the workers' compensation system or its jurisdiction."²³ The court reversed the district court and remanded the case for further proceedings.

THE PRECLUSIVE EFFECT OF WORKERS' COMPENSATION

Awards on Subsequent Intentional Tort Claims

Even though intentional torts fall outside the Workers' Compensation Commission's exclusive jurisdiction, a plaintiff can still be precluded from bringing an intentional tort claim if the plaintiff successfully recovered for the same injuries before the commission. In May 2020, the Oklahoma Supreme Court addressed this issue in *Farley v. City of Claremore*.²⁴ In *Farley*, the plaintiff was the spouse of a former Claremore firefighter killed while responding to an emergency request for assistance during a flash flood.²⁵ Months before filing the district court action, the plaintiff sought and successfully obtained death benefits before the Workers' Compensation Commission.²⁶ The city did not contest the workers' compensation award, stipulated to the underlying facts and did not appear at the hearing before the commission.²⁷ Ten months after the commission's order awarding death benefits, the plaintiff filed a wrongful death action against the city.²⁸ The city specially appeared and moved to dismiss on several grounds, including that the "Workers' Compensation remedy was the sole remedy for plaintiff, and plaintiff had previously and successfully

pursued that remedy and was seeking a double recovery.”²⁹ Without stating a ground, the district court dismissed the plaintiff’s action. The plaintiff appealed and argued that the “District Court erred because the Petition alleged death as a result of an ‘intentional tort.’”³⁰

On appeal, the Supreme Court examined whether the plaintiff was barred from bringing a subsequent district court action after successfully pursuing death benefits in the Workers’ Compensation Commission. The court held that a successful death benefits award from the commission bars or precludes a subsequent wrongful death action against the employer – even if the action is for an intentional tort under *Wells*.³¹ The court relied on its precedent in *Pryse Monument Co. v. District Court*³² and *Dyke v. Saint Francis Hosp. Inc.*³³

permitted an intentional tort against an employer in state court outside the workers’ compensation scheme, it did not “recognize multiple causes of action for the same wrongful death or injury.” In discussing *Wells*, the court stated:

Wells explained the workers’ compensation statutes provide a remedy for accidental injuries but a remedy for willful or intended injuries lies in a District Court, and ... an intentional injury includes those injuries which an employer possessed knowledge that an injury was substantially certain to result. *Wells* did not recognize multiple causes of action for the same wrongful death or injury. We did not approve the concept that an injured employee possessed one cause of action with

intentional conduct as shown by the substantial-certainty standard. *Wells* did not authorize double or multiple recoveries for the same injury.³⁶

Based on the spouse’s successful recovery before the commission, the court affirmed the district court’s dismissal of the intentional tort claims against the same employer for the same injury with prejudice.³⁷

A possible dent in the employer’s single recovery armor can be found in the original *Parret* case. After the Oklahoma Supreme Court issued its answers to the Western District’s certified questions,³⁸ the employer moved for summary judgment because, as the employer argued, under *Pryse* and *Dyke*, the plaintiff was barred from recovery. In the summary judgment briefing before the Western District, the employer in *Parret* argued that the plaintiff:

[E]lected to pursue her remedy in workers’ compensation court and is now precluded from maintaining a civil action for the same injury. ... Under the *Pryse Monument* “election of remedies” rule, an employee who has two remedies for the same injury and has prosecuted one of them to conclusion is barred from resorting to another remedy.³⁹

The court noted under *Pryse*, the “waiver by election” rule only applies when three elements are met: “(a) two or more remedies must be in existence (b) the available remedies must be inconsistent [and] (c) choice of one remedy and its pursuit to conclusion must be made with knowledge of alternatives that are available.”⁴⁰ In *Parret*, the Western District concluded the plaintiff did not knowingly pursue



and reasoned that the plaintiff was only entitled to a single recovery for an injury.³⁴ The court held that allowing the plaintiff to recover before the commission and in a subsequent wrongful death action in state court would amount to double recovery.³⁵ While the court acknowledged that *Wells*

a workers’ compensation remedy, three actions based upon each degree of negligence, ... and one action based upon an intentional tort. ... *Wells* determined an injured employee could bring an action in District Court against an employer based upon the employer’s

In 2020, the Oklahoma Supreme Court brought clarity to the many questions left unanswered for decades in the context of work-related injuries resulting from intentional torts or that were deemed substantially certain to occur.

“a workers compensation claim to the exclusion of other remedies she might have.”⁴¹ The court noted, “Although nominally represented by counsel at the hearing, the plaintiff was essentially unrepresented throughout the brief workers’ compensation process. [The employer] prepared all of the paperwork and submitted the claim on her behalf.”⁴² There could be situations, like *Parret*, where a company attempts to resolve workers’ compensation claims on the plaintiff’s behalf. Arguably, under *Parret*, that would not preclude a subsequent action if the plaintiff was not aware of alternative recovery methods.

What if the Decedent Did Not Have a Spouse, Child or Legal Guardian at the Time of Death?

Under Okla. Stat. tit. 85A, §47, only a spouse, child or legal guardian may file a workers’ compensation death benefit claim when a work-related death occurs. In a recent decision, the Oklahoma Supreme Court held that a mother of the decedent had no choice but to file a wrongful death claim in the district court and ruled that Section 47 was an unconstitutional attempt to limit

the right of recovery. In *Whipple v. Phillips and Sons Trucking, LLC*,⁴³ the plaintiff’s son was killed in a work-related incident. The decedent was unmarried without kids, so his mother brought a wrongful death action in state court, alleging under *Wells* and *Parret* “that employer ‘knew or should have known that the injury’ to [decedent] and that ‘the resulting death was substantially certain to occur.’”⁴⁴ Despite Section 47’s limitation for workers’ compensation death benefits to a spouse, child or legal guardian, the district court granted summary judgment for the employer. It held that a plaintiff’s only remedy can be sought in the workers’ compensation system.⁴⁵ On interlocutory appeal, the Supreme Court reversed. The court held that under Okla. Const. art. 23, §7⁴⁶ and Okla. Stat. tit. 12, §1053,⁴⁷ the mother has a constitutional right to bring a wrongful death claim. By limiting workers’ compensation wrongful death claims to the spouse, children or legal guardians, the Legislature nullified the mother’s right. The court concluded, “At this time to avoid the constitutional prohibition against abrogation of the right of action for death, is for

this Mother is to bring her cause of action in the district court.”⁴⁸ The court did not address the intentional tort aspect of the case; however, under the law discussed in *Wells* and *Farley*, because the mother did not recover death benefits before the commission, she should not be precluded from seeking recovery for an intentional tort.

CONCLUSION

In 2020, the Oklahoma Supreme Court brought clarity to the many questions left unanswered for decades in the context of work-related injuries resulting from intentional torts or that were deemed substantially certain to occur. Under the Oklahoma Supreme Court’s rulings, a successful death benefits award to a spouse, child or legal guardian from the commission bars or precludes a subsequent wrongful death action against the employer – even if the action is for an intentional tort. The law is now clearly established as to what constitutes an election of remedies, what type of plaintiff can elect said remedies and the long-term implications of following those elections to a final conclusion.

ABOUT THE AUTHOR



Dustin Vanderhoof is an attorney with Smolen Law PLLC based in Tulsa. He is a litigation advocate for victims of catastrophic torts and civil rights violations. He received his J.D. from the TU College of Law.

ENDNOTES

1. 2005 OK 54, 127 P.3d 572.
2. *Id.* at ¶3.
3. *Id.*; see also, *Parret v. Unicco Service Co.*, No. CIV-01-1432-HE, 2006 WL 752877, at *2 n. 5 (W.D. Okla. March 21, 2006) (“UNICCO prepared all of the paperwork and submitted the claim on her behalf”).
4. *Id.* at *1. In addition to workplace safety, the Supreme Court in *Parret* noted the policy considerations at play: “To facilitate workers’ compensation and its objectives, an “industrial bargain” was imposed. The employee gave up the right to bring a common-law negligence action against the employer and in return received automatic guaranteed medical and wage benefits. The employer gave up the common-law defenses and received reduced exposure to liability. Thus, under section 11 of the Workers’ Compensation Act “[e]very employer ... shall pay

... compensation ... for the disability or death of an employee arising out of and in the course of employment without regard to fault.” *Id.* at ¶20.

5. *Id.* at ¶1.
6. *Id.* at ¶7 (quoting Okla. Stat. tit. 85, §1-211 (2001)).
7. *Id.* at ¶7 (quoting Okla. Stat. tit. 85, §12 (2001)).
8. *Id.* at ¶7 (quoting *Roberts v. Barclay*, 369 P.2d 808, 809 (Okla.1962)).
9. *Id.* at ¶24 (emphasis added). The court added that the employer’s knowledge is subjective and may be established by circumstantial evidence, such as the “employer’s conduct and all surrounding circumstances.”
10. Laws 2010, HB 2650, c. 452, §3.
11. *Id.*
12. See, Laws 2011, SB 878, c. 318, §2.
13. See, Okla. Stat. tit. 85A, §5.
14. 2019 OK 45, 457 P.3d 1020.
15. *Id.* at ¶2.
16. *Id.*
17. *Id.* at ¶3.
18. *Id.*
19. *Id.* at ¶4.
20. *Id.* at ¶¶7-8.
21. *Id.* at ¶11.
22. *Id.* at ¶17.
23. *Id.* at ¶24.
24. 2020 OK 30, 465 P.3d 1213.
25. *Id.* at ¶2.
26. *Id.* at ¶4.
27. *Id.* at ¶5.
28. *Id.*
29. *Id.* at ¶3.
30. *Id.* at ¶9.

31. *Id.* at ¶¶48, 51.
32. 1979 OK 71, 595 P.2d 435.
33. 1993 OK 114, 861 P.2d 295.
34. *Farley*, 2020 OK 30, at ¶50 n. 138 (quoting *Dykes*, 861 P.2d at 302, “Under the teachings of *Pryse Monument Co. v. District Court* an employee who has two remedies for the same injury and has prosecuted one of them to conclusion (securing an award or judgment), is barred from resort to the other remedy. This rule, which in essence erects a *res judicata* bar, is applicable to compensation claimants who may also press a tort remedy.”)
35. *Id.* at ¶¶47-48.
36. *Id.* (internal footnotes omitted).
37. *Id.* at ¶68.
38. See, *Parret*, 2005 OK 54.
39. *Parret*, 2006 WL 752877, at *2 (internal citations and footnotes omitted).
40. *Id.*
41. *Id.* at *3.
42. *Id.* at *2 n. 5.
43. 2020 OK 75, 474 P.3d 339.
44. *Id.* at ¶3.
45. *Id.* at ¶10.
46. “The right of action to recover damages for injuries resulting in death shall never be abrogated”
47. Under Okla. Stat. tit. 12, §1053, “a decedent’s representative may maintain an action against the tortfeasor, and if no personal representative has been appointed, the action may be brought by a surviving spouse or in their absence, next of kin.” *Whipple*, 2020 OK 75, at ¶11.
48. *Id.* at ¶16.



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Interpleaders – How a Plaintiff’s Attorney Can Use Them Effectively

By Ashley Leavitt

INTERPLEADER. DID YOU SHUDDER? Interpleaders are not as scary as they are often perceived. *Black’s Law Dictionary* describes an interpleader action as “a suit to determine a right to property held by a usually disinterested third party who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership.” Simply put, an interpleader is a tool to use when the insurance settlement does not cover all the damages in a case.

While every plaintiff’s attorney would ideally choose to have their clients compensated for all medical expenses, lost wages, pain and suffering and other damages in addition to the attorney fee at or within the policy limits of the tortfeasor’s insurance policy, that is quite often not possible. In a situation where the plaintiff’s damages outweigh the applicable insurance coverage, the plaintiff’s attorneys are left with few choices.

One of those choices would be to attempt to obtain reductions from the medical providers, cut your own fee and distribute the funds yourself, which can be a lot of work as well as back and forth with all parties involved. Another option would be to file an interpleader action and have the court divide up the settlement. While the second option may sound expensive and time intensive, rest assured it often resolves claims more quickly and with less hassle than by begging for reductions from providers, waiving the attorney fee or letting the case sit

around and keep you awake at night. There are seven simple steps to resolving a client’s claim with an interpleader.

1. FILE THE INTERPLEADER

To begin, file a petition for interpleader in the county where the incident occurred¹ or if the suit has already been filed in the matter, move to amend the petition with permission of the adverse party and save by not paying an additional filing fee.²

2. SEND NOTICE OF THE INTERPLEADER TO ALL INTERESTED PARTIES

Notice must then be sent to all lienholders by certified mail. To guard against a potential appeal, notice should also be sent by certified mail to all medical providers with outstanding balances – regardless of whether they have filed a lien.³ A lien can be filed quickly, and a lienholder can have standing to appeal any order in the case within 30 days of the filing of the order.⁴ However,

providing prior notice of the action and hearing to all medical providers before any order is entered will reduce both the chance of appeal and likelihood of the order being overturned.

Additionally and practically speaking, it is a benefit to the plaintiff’s bar to have medical providers who are willing to treat claimants and hold the balance. Each time a plaintiff’s attorney distributes funds without including a medical provider in the disbursement, it becomes a bit less likely that the medical provider will continue to treat patients without payment upfront. Clearly, this will result in less treatment for injured claimants and lower settlements in the future.

3. REQUEST A HEARING DATE/PROVIDE PROOF OF NOTICE TO THE COURT

After all the providers and lienholders have been notified of the interpleader action, file a motion to determine liens to obtain a court date and submit the motion



to the judge with a proposed order setting the date. While it is not a rule or requirement in Oklahoma to file a proof of notice to each provider and lienholder with the court, it does assure the court that due diligence has been taken and includes the notice as part of the record should any party attempt to appeal the final order. After obtaining the order for hearing, again notify all the providers and lienholders of the hearing date and retain proof of each notice. Often by this point, the providers will have retained attorneys who will have filed an entry of appearance, which makes providing notice a lot easier and a lot less expensive. After the hearing is set and the interested parties are notified, begin to draft the order of disbursement.

4. DRAFT A PROPOSED ORDER OF DISBURSEMENT

Having the order of disbursement drafted prior to the hearing will make the hearing a whole lot easier and could potentially avoid attending a hearing altogether.

Warning: we are about to talk about math, and we all know that lawyers went to law school because they don't like math.

Warning aside, this math is pretty simple. From the total settlement, first deduct the expenses and then the attorney fee. The expenses are the costs involved in the case, including the filing fee, the charges for certified mail and any other expenses the firm may have incurred to obtain the settlement offer from the insurance carrier, such as postage or medical records. The attorney lien is pursuant to the contract you have with your client.

Under the laws of Oklahoma, an attorney fee may not exceed 50% of the net proceeds of any compromise.⁵ Further, net is defined as the balance of a settlement after litigation expenses are paid.⁶

After the expenses are deducted from the total settlement, the attorney lien percentage is taken out. The remainder is to be divided equitably among the lienholders,⁷ and all medical liens must be satisfied in full before the plaintiff is entitled to any of the settlement proceeds.⁸ This means that in the most basic case, all outstanding liens are added up and then the remainder of the settlement is divided by the total amount of liens. This will result in a decimal number that converts to a percentage. Then find each provider's *pro rata* share by taking their outstanding balance and

multiplying it by the percentage. Done and done.

However, not all interpleaders are quite this easy. There are a few instances when one or more liens have priority over the rest. Any lien by the Oklahoma Health Care Authority (OHCA/SoonerCare) is superior to all other liens except an attorney's lien.⁹ Similarly, Medicare makes conditional payments when an individual has an insurance claim and is also paid in full before any provider.¹⁰ There are additional health insurance companies that hold superior liens to medical providers such as CHAMPUS/Tricare¹¹ and ERISA policies which are most often found when an individual is on a group plan through their employer.¹² Should a case involve any of these liens, their amount will come out after the expenses and attorney lien, and the remainder will be divided *pro rata* among the remaining lienholders.

5. CIRCULATE THE ORDER AND/OR ATTEND THE HEARING

If all parties have retained an attorney, circulate the proposed order for disbursement to the attorneys who have entered an appearance on behalf of the lienholders. If a lienholder has not obtained an attorney prior to the hearing date, they will forfeit any *pro rata* share of the disbursement. That is, if a lienholder wants to participate in the disbursement, they must hire an attorney.¹³ A lienholder may not represent itself *pro se* as "[a] corporation is not a natural person."¹⁴ It is an artificial entity created by law, and as such it can neither practice law by appearing *in propria persona* nor act in person by an officer who is not an attorney."¹⁵

It is important to remember the other attorneys involved are looking out for the interests of

their clients and will help you determine priority, if there is any, as well as check the math. While it is good practice for the plaintiff's counsel to prepare a proposed order, there are other professionals overseeing their work, and together you will be able to submit an agreed order to the judge that is in line with each of your collective clients' interests.

6. ORDER THE CHECKS AND DISTRIBUTE

There are a few ways to obtain and distribute the settlement funds after an interpleader, but it mostly comes down to the preference of the plaintiff's attorney and/or the tortfeasor's insurance carrier. First, the insurance carrier could deposit the funds to the clerk of the court to distribute upon the filing of the order of disbursement.¹⁶ This option is not often used when the plaintiff's counsel is agreeable to the interpleader. Second, the insurance carrier could wait to be provided with a file-stamped copy of the order of disbursement and can issue checks as ordered, either directly to the parties, or by sending all individual checks to the plaintiff's attorney for

distribution. Third, the insurance company could issue a single check to the plaintiff's attorney for the full amount of the settlement and rely on the plaintiff's attorney to cut individual checks. While this is common, it should be noted the insurance company will likely include all lienholders and payees on the single check. To avoid the need for obtaining each individual payee's limited power of attorney to endorse the check prior to putting it in your firm's IOLTA and distributing, language such as "plaintiff's counsel has the limited power of attorney to endorse the back of the settlement check(s) for any/all persons, entities, and/or listed payees on the proceeds paid by the liability insurance carrier" should be included in the order of disbursement.

7. FILE A DISMISSAL WITH PREJUDICE

After the order has been filed, the checks have been cut and the funds have been distributed, the final step of resolving a client's claim with an interpleader is to file a dismissal with prejudice to close the active case. Unlike a typical civil lawsuit, interpleader



actions can be opened and closed within just a few months.

An interpleader can often resolve a claim more quickly than obtaining reductions from medical providers, as reductions are a courtesy. There is no deadline for a medical provider to respond to a reduction request, and there is rarely an incentive for them to accept a reduction. However, setting a hearing on a motion to determine liens gives the provider a deadline to be included in the disbursement. Further, an interpleader ensures the provider will hire an attorney who understands the law and court process, which ensures the plaintiff's attorney has much less explanation to provide. Finally, an interpleader provides protection if there is ever a question as to the disbursement of the

settlement proceeds in the future. Producing a copy of the court's order and matching payments will alleviate the question of why a certain provider was or was not paid.

For all of these reasons, filing an interpleader with the court can lessen the burden of stretching a settlement for the plaintiff's attorneys, and anything that lessens the burden is worth learning.

ABOUT THE AUTHOR



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ENDNOTES

1. 12 O.S. §2022.
2. 12 O.S. §2015(A).
3. 42 O.S. §§43, 46, 49.
4. 12 O.S. §993.
5. 5 O.S. §7.
6. *State of Okla ex rel Okla Bar Assn. v. Watson*, 1994 OK 32, 897 P.2d 246, 252 (Okla. 1994).
7. *Burchfield v. Bevans*, 242 F.2d 239 (10th Cir. 1957).
8. 42 O.S. §§43, 46, 49; *State ex rel Dept. of Human Svcs v. Allstate*, 1997 OK 91, 744 P.2d 186 (Okla. 1987).
9. 63 O.S. §5051.1(D)(1)(a).
10. 42 U.S.C. §1395y.
11. 32 C.F.R. §220.11.
12. 29 U.S.C. §1101 *et seq.*
13. *Masongill v. McDevitt*, 1989 OK CIV APP 82.
14. *Id.*
15. *Id.* at ¶18.
16. 12 O.S. §2022(C).

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Pitfalls of Prosecuting Premises Liability Claims Against Tribal Casinos

By Hugh M. Robert and Daniel M. Phillips

PROSECUTING PREMISES LIABILITY CLAIMS IN OKLAHOMA can be difficult and, given the state of the case law in this area, can be tricky to evaluate. Matters are further complicated when a governmental entity is involved, including determining which entity to notify and understanding any limits on recovery. While experience with premises liability claims and evaluation of them is generally universal, there are special considerations where claims involve tribal entities. Claims against tribal entities have their own unique set of procedures and pitfalls waiting to snare the unwary attorney. This article provides an overview of the history, the process and some important areas to pay close attention to (and pitfalls to avoid) and should serve as a primer on the subject of premises liability claims against tribal casinos.¹

A BRIEF HISTORY OF TRIBAL GAMING

Tribal gaming activities started with the passage of the Indian Gaming Regulatory Act (IGRA) in October 1988.² IGRA created the National Indian Gaming Commission (NIGC) to oversee gaming on tribal lands³ and divided types of gaming by the federally recognized tribes into three classes: Class I, which includes social games with small, minimal-value prizes or gaming connected to tribal ceremonies or celebrations;⁴ Class II, which includes bingo and associated bingo games as well as non-banked card games authorized or not prohibited by state law;⁵ and Class III, which encompasses all forms of gaming that are not in Class I or Class II.⁶ IGRA specifies that Class III gaming is only allowed in states

that permit such gaming and must be “conducted in accordance with a Tribal-State compact entered into by the Indian tribe and the State ... that is in effect.”⁷ Initially, the tribes began their gaming operations by operating small-scale bingo halls.⁸ Tribes located in Oklahoma focused their efforts on development and expansion of Class II gaming.⁹ The first tribal/state Class III gaming compact signed in Oklahoma was with the Citizen Band Potawatomi Indian Tribe of Oklahoma in 1992 and allowed operation of video lottery terminals at tribal casinos.¹⁰

From 1992 to 2000, the tribes focused their efforts on Class II games. In 2004, Oklahoma gaming compacts were amended to allow the casinos to offer Class III games, including card games and slot machines, which are the

biggest revenue generators for tribes. In 2009, Oklahoma became the national leader in the growth rate of tribal gaming.¹¹

In 2015, tribal gaming in Oklahoma generated \$4.75 billion.¹² Oklahoma tribal gaming operations reported more than 45.9 million visits to tribal casinos in 2015. Of those 45.9 million visits, 18.7 million were from outside the state. These numbers have continued to increase.¹³

Tribal gaming is the 14th largest industry employer in Oklahoma.¹⁴ Approximately 1.8% of all jobs in Oklahoma are associated with gaming and ancillary facilities, or about one in every 47 jobs. In 2015, these employees earned around \$1.368 billion in wages and benefits.¹⁵

Tribal gaming’s exponential growth was not anticipated by the early compacts. Oklahoma is



home to the largest casino in the world, the Winstar World Casino, which is owned and operated by the Chickasaw Nation. While the casinos and their revenue are a welcome addition to Oklahoma's economy, the gaming compacts did not fully address claims for injured patrons, which leads to procedures that vary from tribe to tribe for bringing premises liability claims.

TRIBAL GAMING COMPACT

Although commercial gambling is illegal on state soil, tribal lands are sovereign nations, each with their own laws. With freedom of self-governance, 33 of the 39 tribes in Oklahoma have elected to legalize gambling on their lands.¹⁶ However, pursuant to the IGRA, in order to open these casinos to the general public, each tribe must enter into a gaming compact with the state. Oklahoma adopted a model compact for this purpose.¹⁷ The model compact was largely adopted in compacts negotiated with the tribes.^{18 & 19}

As part of the agreement to allow Oklahomans to patronize their casinos, the tribes granted a limited waiver of their sovereign immunity for personal injury claims for those who get hurt inside the casinos. However, at

Attorneys who pursue these claims against the tribes must pay very close attention to the procedural and substantive requirements for initiating claims against the tribes.

the time these compacts were conceived, neither the tribes nor the state anticipated how large the gaming facilities would become. By 2016, there were almost 200 restaurants and bars, nine golf courses, five spas, seven RV parks with almost 375 sites, almost 50 gas stations/convenience stores, several bowling centers, laser tag and a movie complex. There are approximately 130 Indian gaming operations, 20 of which have associated hotels/resorts.²⁰

With the scale and number of these facilities, it is inevitable that patrons will be injured in slip-and-falls or other premise-related incidents. In those instances, the tribe-specific gaming compacts set forth the procedures that must be followed for such claims against the tribes. Although the tribes enjoy sovereign immunity, the compacts include a limited waiver of that immunity for injured patrons, so long as the procedures prescribed by the gaming compact are followed. Gaming compacts are available to the public.²¹

TORT CLAIM NOTICE AND STATUTES OF LIMITATIONS

The procedures for initiating a tort claim under the gaming compacts are similar to governmental tort claims, but there are critical differences that can cost a client if

ignored. Before a lawsuit can be filed, the injured patron must submit a notice of tort claim (notice) to the respective Indian Nation or their designated entity.²² The notice must identify the incident, witnesses, injuries and cost of treatment. The model compact provided for in the IGRA and adopted by most tribes in Oklahoma includes the requirement that *notices must be submitted to the tribe within one year of the incident or recovery is barred*.²³ However, if the notice is not submitted within 90 days, potential recovery is subject to being reduced by 10%, so it is important to provide the notice within 90 days if possible. Many tribes have adopted their own form for the notices and, in those instances, it is important to use those forms or risk rejection of the notice, which can cost valuable time to resubmit on the proper tribe-specific form.

Once the notice is submitted, the tribe has a certain number of days (90 days in the model compact)²⁴ to approve or deny the claim which varies in the different compacts. If the tribe does not respond within the period of time to approve or deny the claim, it is deemed denied.²⁵ Be aware, the plaintiff has a limited number of days from the date a claim is deemed denied in which to file a lawsuit (180 days under

the model compact).²⁶ Thus, it is important to review the specific compact of the tribe as the procedures, notices and deadlines can be different among the tribes. In most cases, the amount of time for the approval or denial of a claim can be extended, but this usually requires a written agreement signed by the tribe itself.

It is important to note that the limited waiver of sovereign immunity does not include dram shop cases.²⁷ While the tribes enjoy immunity to dram shop liability, it is important to determine whether it is actually the tribe operating the bar or restaurant. In certain instances, a nontribal entity that is not immune from dram shop liability could be operating a bar or restaurant within a tribal casino.

TRIBAL COURTS HAVE EXCLUSIVE JURISDICTION

Jurisdiction for claims under the compacts had contentious beginnings. In *Griffith v. Choctaw*, the Oklahoma Supreme Court held that Oklahoma courts were “courts of competent jurisdiction” pursuant to the compacts, and as such, tort claims could be brought in Oklahoma courts.²⁸ However, in *Santana v. Muscogee (Creek) Nation, ex rel, River Spirit Casino*, the 10th Circuit disagreed and, in overturning *Griffith v. Choctaw*, held that “because there is no express grant of jurisdiction to hear compact-based tort suits against the Creek Nation in state court, the phrase ‘court of competent jurisdiction’ does not include Oklahoma’s state court.”²⁹ In *Sheffer v. Buffalo Run Casino, PTE, Inc.*, the Oklahoma Supreme Court agreed with the 10th Circuit’s ruling in *Santana* to also hold that Oklahoma courts are not “courts of competent jurisdiction” under the compact.³⁰ In the event the tribe denies the claim, the courts of the tribe or its designated courts

have exclusive jurisdiction. Claims that are denied or deemed denied by the tribes must be brought against the tribe in the tribe's own court system or a court system designated by the tribe, following its procedures and rules.

The requirement to use the tribal court can reduce the options for plaintiffs to bring suit because attorneys must be admitted to the individual tribal court and become familiar with that tribe's rules of procedure and evidence. Even still, "tribal tort law is a product of common law, made up of traditions passed down by tribal elders."³¹ What this means is that a nonmember, "even after they have hired an attorney, will be walking into a tribal court with none of the jurisprudential certainty that they would have in state or federal court."³²

Most patrons of tribal gaming centers don't realize that by entering tribal land, they are impliedly consenting to the jurisdiction of tribal law. Thus, because of the "opaqueness of tribal tort law, it is all but impossible for a nonmember to impliedly give knowing consent to such law."³³

The U.S. Supreme Court's decision in *McGirt v. Oklahoma*³⁴ has caused uncertainty that has shaken the criminal law landscape in Oklahoma, but it is unclear if there will be future ripple effects in other areas of law. In *McGirt*, the U.S. Supreme Court held that the boundaries of the Creek Nation were never disestablished. As such, a much larger portion of northeast Oklahoma was determined to still be within the reservations.³⁵ While *McGirt* did not explicitly include tort claims, an expansion of tribal lands under this decision could have jurisdictional ramifications on future premises liability claims against tribes. A nontribal plaintiff against a tribal defendant on tribal lands has generally been the exclusive jurisdiction of the tribe in civil cases;

however, pre-*McGirt* this issue was not prevalent due to the limited view of what lands were subject to tribal jurisdiction. It will be interesting to see whether future cases expand *McGirt* into the civil/tort realm.

CONCLUSION

Premises liability cases against Oklahoma's tribes can present significant risks to an attorney who has not fully educated themselves about prosecuting such claims against the tribes. Attorneys who pursue these claims against the tribes must pay very close attention to the procedural and substantive requirements for initiating claims against the tribes. While many of the tribes have set up their own legal systems and procedures, the status of the tribes as sovereigns means there is a lack of standardization between them that make premises liability claims against the tribes challenging.

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ENDNOTES

1. It should also be noted this article is intended to provide an outline of premises liability cases, not workers' compensation or intentional torts, which have different rules and procedures.
2. "Indian Gaming Regulatory Act," 25 U.S.C. §2701 *et seq.*
3. *Id.* at §§2701 – 2708.
4. *Id.* at §2703(6).
5. *Id.* at §2703(7)(A)- §2703(7)(C). "Banked" card games are games played against the house.
6. *Id.* at §2703(8).
7. *Id.* at §2710(d)(1).
8. Oklahoma Indian Gaming Association, oiga.org/about/#history (last accessed July 11, 2021).
9. *Id.*
10. "Tribal-State Gaming Compact between the Citizen Band Potawatomi Indian Tribe of Oklahoma and the State of Oklahoma," www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/oig/pdf/idc-038417.pdf (last accessed July 11, 2021).
11. Oklahoma Indian Gaming Association, oiga.org/about/#history (last accessed July 11, 2021).
12. *State Economic Impacts from Oklahoma Tribal Gaming*, oiga.org/wp-content/uploads/2018/01/OIGA-Impact-Report-2016.pdf.
13. *Id.* at 22.
14. *Id.* at 19.
15. *Id.*
16. Oklahoma Indian Gaming Association, oiga.org/faqs.
17. 3A O.S. §280, *et seq.*
18. *Id.*
19. The language and renewal of the compacts have been the subject of much dispute between the tribes and the governor of Oklahoma, and this article will not comment on arguments about the renewal provisions or ongoing litigation involving the same. See "Four Oklahoma tribes sue Gov. Stitt, federal agency over gaming agreements" *Tulsa World* (Aug. 2020), available at <https://tinyurl.com/tribessuegovernor>.
20. *Statewide Economic Impacts from Oklahoma Tribal Government Gaming*, oiga.org/wp-content/uploads/2018/01/OIGA-Impact-Report-2016.pdf.
21. See www.bia.gov/as-ia/oig/gaming-compacts.
22. 3A O.S. §281 Part 6(A).
23. *Id.* at Part 6(A)(4).
24. *Id.* at Part 6(A)(8).
25. *Id.*
26. *Id.* at Part 6(A)(9)(c).
27. *Sheffer v. Buffalo Run Casino, PTE, Inc.*, 2013 OK 77, 315 P.3d 359 (holding "because Congress has not expressly abrogated tribal immunity from private, state court dram-shop claims and because the Peoria Tribe and its entities did not expressly waive their sovereign immunity by applying for and receiving a liquor license from the State of Oklahoma, the tribe is immune from dram-shop liability in state court.")
28. *Griffith v. Choctaw*, 2009 OK 51, 230 P.3d 488.
29. *Santana v. Muscogee (Creek) Nation, ex rel. River Spirit Casino*, 508 F.App'x 821 (10th Cir. 2013), cert. denied, 133 S.Ct. 2038 (2013).
30. *Sheffer v. Buffalo Run Casino, PTE, Inc.*, 2013 OK 77, 315 P.3d 359.
31. *Dollar General Corporation v. Mississippi Band of Choctaw Indians*, Brief Amicus Curiae of the States of Oklahoma, Wyoming, Utah, Michigan, Arizona and Alabama in Support of Petitioners, www.scotusblog.com/wp-content/uploads/2015/09/amicus.oklahoma.pdf.
32. *Id.*
33. *Id.*
34. *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).
35. *Id.*

The History and Evolution of Life Care Planning

By Sherry A. Latham



WHAT IS A LIFE CARE PLAN? By definition, “The life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.”¹

Traditionally, life care plans have been used in a variety of settings using case management principles. Since the early days of life care planning, the role and arena in which the life care planner and life care plan has evolved to additional areas of law, such as family law, criminal law and private trusts in estate planning for long-term care of those with injuries or chronic illnesses.

According to Weed and Berens, the care plan has been used in setting reserves for insurance companies, assisting workers’ compensation companies with assessing future care costs associated with work-related disabilities, the cost of future care for health insurance companies, assisting Trusts with prioritizing and managing funds and providing the client and family with an outline of future care. have been used primarily as a litigation tool to outline medical damages.²

The first time the concept of life care planning was formalized, it appeared in a legal publication, *Damages in Tort Actions* by Deutsch and Raffa.³ This publication described a life care plan and its appropriateness for tort litigation cases, particularly as helpful in case management of catastrophic injuries. The first generation of authors of these expert reports generally came from either vocational rehabilitation or nursing backgrounds. Over the years, it has become apparent the most comprehensive setting in which a life care plan is used is that of litigation due to the necessity of qualifying an expert in relation to *Daubert*, *Kumho Tire* and other rulings regarding expert witnesses.

CREDENTIALS AND PROFESSIONAL ORGANIZATIONS

Since life care planning started as a specialty and the specialty-wide agreement upon a definition of life care planning, subsequent training programs were developed to meet the criteria required to become

a Certified Life Care Planner (CLCP), a credential offered by the International Commission on Health Care Certification (ICHCC) that is often referred to as the gold standard. These training programs established the minimum requirements of education, experience and background of specialties to qualify entry not only into the training programs, but also to sit for the CLCP examination. Eventually, the practice of life care planning became an interdisciplinary specialty of experts beyond that of vocational rehabilitation and nursing fields. While the minimum standards to qualify to sit for the certification exam have remained the same, the field of life care planning has continued to emerge to become an evidence-based practice to meet the criteria needed to withstand scrutiny within legal jurisdictions.⁴

There are professionals who practice as experts in life care planning without certification. Yet, these professionals are held to the same standards of practice and expectations of conformity to the consensus and majority

statements^{5 6} and the role and functions study outcomes developed through evidence-based research.^{7 8 9} The lack of certification by a life care planner negates the protective value to the public a certification signifies or the expectation that the expert has met a minimum standard of education, experience, training and competency in the field of life care planning and catastrophic case management to perform the role of a life care planner.

Since the initial CLCP credential, the specialty of life care planning has grown with two additional certifications for life care planners: the Certified Nurse Life Care Planner (CNLCP), which is the same qualifications as the CLCP but available only to nurses, and the Physician Life Care Planner (PLCP), which is available only to board-certified physiatrists who have already completed the CLCP certification. It is not uncommon to have some experts who are dually credentialed, as they have achieved the requirements of more than one of the certifying bodies. Even still, the totality of certified life care planners by one or more of the certifying bodies equates to approximately 2,000 professionals internationally.

With growth, the importance and ultimately a sense of requirement came forth regarding involvement in professional organizations specific to life care planning by mention in the standards, consensus and majority statements as well as identified in the role and function studies of life care planners by the field of life care planning. The International Academy of Life Care Planners (IALCP), now under the formal umbrella of the International Association of Rehabilitation Professionals (IARP), provides opportunities for life care planners to be involved in the field and emergence of life care planning. For example, Standards of Practice for life care planning is

now in its development stage for the fourth edition. Both IACLCP and IARP provide continuing education opportunities and venues for the life care planner to stay abreast of new developments and continue to meet the set standards established by the field of life care planning. Two additional professional organizations are available to life care planners coming from specific disciplines, the American Association of Nurse Life Care Planners (AANLCP) as well as the Academy of Physician Life Care Planner (APLCP).

All organizations provide ongoing continuing education and annual conferences. The IALCP also has a professional designation, the Fellow of International Academy of Life Care Planners. Its purpose is to recognize expertise, experience and contribution to the field of life care planning.¹⁰ The program recognizes those life care planners who have achieved a high level of skill and use their skills and knowledge to promote the advancement of life care planning.

RETAINING LIFE CARE PLANNERS

The education, training and experience have metamorphosized into making life care planning a unique specialty and the expert a valued member of the damages team in multiple venues and roles. Life care planners were traditionally retained as one of the last few needed experts and often given a short discovery timeline to prepare their reports. Within this last decade, attorneys nationwide have become more knowledgeable of not only the talent but the foresight life care planners can bring in prelitigation for their firm in the following areas:

- Educating the attorneys and injured party of the mechanisms of the injuries and anticipated future needs.

- Reviewing and identifying missing records.
- Assisting in preparing demand packages by preparing a life care plan that provides real documentation of costs as to the needs of the claimant rather than an estimate of the dollar value or in excess of value (marginal costs) routinely utilized. This individualized life care plan for the injured party establishes an evidence-based view of the future of not only the needs but also the costs associated with those needs due to the injuries sustained within their geographical area. This pre-suit report ultimately saves those involved in the matter time and money, resolving the case perhaps prior to engaging the litigation system.
- Assisting with identifying the appropriate experts by specialty according to the injured party's injuries and/or referrals for ongoing care (*i.e.*, neuropsychological assessment for a traumatic or acquired brain injury). A seasoned life care planner, typically one with a national practice, has a database established over the years for specialty experts, which reduces the costs normally associated with expert location services.
- Assisting and input into settlement conferences.
- Presenting the life care plan to the injured party and family for their input and fielding questions to ensure they understand future needs and locating those within their geographical area, as identified in the life care plan.
- Reviewing the opposing life care planner's report against standards, methodology, consensus and majority statements, and the role and functions of the life care planning expert.

- Developing appropriate deposition or trial line of questions for opposing experts.
- Preparing attorneys for deposing the opposing life care planner.
- Identifying potential areas of challenge for exclusions.
- Identifying inclusion of trial exhibits.
- Collaborating with Day in the Life videography to ensure the videos are consistent with the life care plan projected needs.
- Assisting with special needs trust disbursement and oversight.
- Identifying appropriate candidates in the geographical area as sources of services to meet the needs of ongoing implementation of the life care plan, who will provide advocacy and assistance to the injured party post-litigation as a case manager.

FROM THE DEFENSE

The life care planner on the defense side of a case can work either as a consultant or as a designated expert retained for testimony. The roles on the defense differ only if the life care planner is asked to critique or provide peer review of the plaintiff expert's life care plan based only on the injuries sustained in the incident that is the subject of the case and in accordance with the standards and methodologies established in the field. Specifically, Gunn notes, "A defendant's life care planning consultant can be of great assistance in helping defense counsel to identify any weaknesses in the plaintiff's proposed expert's qualifications to testify regarding the need for any given treatment element in the plan."¹¹

A common defense tactical error is waiting to retain a life care planner until after the plaintiff life care plan has been received. There



are certain types of catastrophic injuries the defense attorney should anticipate the plaintiff will retain a life care plan for (*i.e.*, traumatic brain injury, spinal cord injury, amputation, birth injury case). For cases dealing with these catastrophic injuries, the defense should retain a life care planning expert early in the litigation process, rather than waiting until they have received the plaintiff life care plan. Retention of a life care planner should come earlier in the litigation process. Then, a determination should be made closer to discovery deadlines as to whether the life care planning expert should provide only consultation or become a testifying expert.

Gunn adds, in order to be properly prepared to rebut the plaintiff's plan and determine whether to present a defense plan, it is vital that much of the groundwork be laid in the early portions of case discovery.¹² A defense consultant can provide early assistance by suggesting the various records that should be

requested and identifying persons to be deposed in order to make the determinations necessary to evaluate the injured party's life care needs. Retaining a life care planner after the plaintiff life care plan is received inflates costs to the defense and increases the stress level of the defense expert, negating the positive benefits of having the expertise available as the case develops instead of at the final hour of the litigation process.

BEYOND PERSONAL INJURY: OTHER VENUES FOR THE LIFE CARE PLANNER

Beyond the use of life care planners in personal injury, there have been other legal or service arenas where their expertise and reports are beneficial. These include:

- Family law
 - Issues related to alimony support for a spouse with a catastrophic injury or chronic health care needs.
 - Child support, often through life expectancy for a child with special needs.

- Criminal law
 - An individual under arrest has a catastrophic injury or chronic health care need that needs to be tended to while incarcerated.
- Private trusts for families with long-term medical needs to establish funding needed.
- Plan of care for chronic illnesses such as multiple sclerosis or severe autism.

THE FUTURE OF LIFE CARE PLANNING

As life care planning research continues to develop through the Foundation for Life Care Planning and Rehabilitation Research or other sources, thus developing additional evidence-based practice resources, this will evolve the practice of life care planning in legal and medical settings. Consequently, ongoing education to both the legal and life care planning fields of the ongoing development of roles and venues in which life care planners can provide consultation and expertise should result in the integration of life care planners into more disciplines of both law and medicine. One would anticipate the specialty of life care planning to be more commonplace in the future.

ABOUT THE AUTHOR



Sherry A. Latham is an RN, a Certified Life Care Planner and a Fellow of the International Academy of Life Care Planning. She is active in professional organizations, leadership and published in peer-reviewed journals. She co-authored the Capital Law School Life Care Planning Program and is the lead instructor. She was honored with the 2020 Outstanding Educator Award from the International Academy of Life Care Planners.

ENDNOTES

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Selected Scenes from the Upcoming Netflix Series: Good Faith

The Uninsured/Underinsured Motorist Episode

By Jacob L. Rowe and Simone Fulmer Gaus

OKLAHOMA BAD FAITH LAW IS COMPLEX. This is especially true of claims involving uninsured/underinsured motorist (UM) coverage. This article was originally intended as an unsmiling analysis of the intersection of these two, complicated areas of law; however, given that the authors, and our readers, have just endured one of the most traumatic years in recent history, we now believe the subject matter deserves a slightly different approach.¹

As such, we invite you to join us in a moment of levity as we explore some common issues we deal with in many cases we have handled involving an insurance company's violation of the duty of good faith in its handling of UM claims. We hope you enjoy it.

THE UNINSURED/ UNDERINSURED MOTORIST EPISODE

VOICEOVER: In the civil justice system, the people are often represented by two separate yet equally important groups: the lawyers who handle claims victims make against tortfeasors and the lawyers who represent victims against their own insurance companies. These are their stories.²

*INT. A Swanky, Local Bar –
Happy Hour*

Good Faith Lawyer sits in a corner booth nursing a club soda with lime, iPhone in hand. In walks Referring Lawyer wearing a beautiful pair of alligator cowboy boots. He sees Good Faith Lawyer and smiles. She rises to shake his hand. He gives her a hug and leisurely slides into the booth.

REFERRING LAWYER: I hope I didn't keep you waiting too long! I was on the phone with my client. She's got a helluva bad faith³ case, and I think I could get her a ton of money!⁴

GOOD FAITH LAWYER: No worries. I just got here. You know, I don't really care for the term "bad faith." I think it sends the wrong message. The law says an insurance company is obligated to handle claims submitted by its policyholders in *good faith* and *deal fairly* with them, thus the duty of good faith and fair dealing. When

people hear the phrase "bad faith," they think of some sort of a villain in a smoke-filled backroom twirling his handlebar mustache.⁵

REFERRING LAWYER: What do you mean?

GOOD FAITH LAWYER: Well, the duty of good faith and fair dealing comes in a lot of different forms, but at its core, it just requires an insurance company to conduct a reasonable investigation of the claim made by its insured,⁶ fairly evaluate the facts gathered⁷ and pay all benefits it promised the insured it would pay. And it has to do all those things promptly.⁸ So, tell me about this client!

REFERRING LAWYER: She got rear-ended and was hurt pretty bad. When she finished her medical treatment, I made a demand on her UM carrier and told them I needed a response within 30 days, but I heard nothing until 47 days later. They blew the deadline!

GOOD FAITH LAWYER: That's not good ... but it's not necessarily a violation of the duty of good faith and fair dealing.

REFERRING LAWYER: What do you mean? Under Title 36, they only have 30 days to respond. They *broke the law!* That's gotta be bad faith, right?

GOOD FAITH LAWYER: Not exactly. You're talking about Okla. Stat. Tit. 36, §1250.4(C). That's part of the Unfair Claims Settlement Practices Act⁹ that requires an insurer to respond to pertinent communications from a policyholder within 30 days. The Oklahoma Supreme Court has been pretty clear that the UCSPA "does not establish standards of care or standards of conduct for measuring whether an insurer has violated the duty of good faith and fair dealing."¹⁰

REFERRING LAWYER: You mean an insurance company can just ignore people and break the law like that?

GOOD FAITH LAWYER: Did they break the law, though? An insurance company only violates the UCSPA if it violates the statute flagrantly or as part of standard business practice.¹¹ And even then, the UCSPA was designed to give the



Oklahoma Insurance Department additional legislative support in regulating insurance companies. It does not create a private cause of action for policyholders.¹²

But that doesn't mean it can't play a role in your case. The Oklahoma Insurance Department tells insurance companies that compliance with the UCSPA is the minimum standard of performance for all insurers.¹³ Also, insurance companies have to know the law.¹⁴

REFERRING LAWYER: So, what do I do?

GOOD FAITH LAWYER: One of the foundational components of the duty of good faith is reasonable conduct.¹⁵ If there wasn't a good reason for the violation of the statute, you might be able to argue it was unreasonable. But you won't be able to slam your fist on the lectern and tell the jury the insurance company was in "bad faith" and "broke the law."

Thunder rolls in the distance as the lawyers continue their discussion. The sky darkens. Raindrops begin to fall on the ceiling-height, glass windows.

Two Months Later. INT. Law Office – Late Afternoon

The desk is messy. Files are stacked on both sides of the desk. An iPhone

rests on a well-read copy of David Ball's "Damages 3." It rings. The display reads "Good Faith Lawyer."

REFERRING LAWYER: Hey, there! I didn't think I'd hear from you after you told me my big bad faith case was a no-go.

GOOD FAITH LAWYER: That's what I was calling about. I wanted to check in on you and your client.

REFERRING LAWYER: Since we talked, I spoke to the UM adjuster. She told me she needed additional medical records before she could complete her evaluation because my client had another car wreck several years ago.

GOOD FAITH LAWYER: How did you handle that?

REFERRING LAWYER: I wanted to tell her to go pound sand! But I gathered the records they requested and sent them in a few weeks ago.

GOOD FAITH LAWYER: That was the right thing to do, you know. Every automobile insurance policy I see places a duty on the insured and their attorney, if they have one, to cooperate in the insurance company's investigation of the claim. If you or your client refuse to cooperate in reasonable information requests, it jeopardizes their entitlement to their insurance coverage benefits.¹⁶ Have you heard anything from the adjuster?

REFERRING LAWYER: Not yet, but she's on my list. I'll probably call her when I get off the phone with you.

There's a knock on the office door accompanied by a garbled voice.

REFERRING LAWYER: I'll let you know what happens. Gotta go.

Ten Months Later. INT. A Modern Office – Morning

Good Faith Lawyer sits at a conference room table typing on a MacBook Pro while reading from a thick, three-ring binder. Her iPhone buzzes. It's Referring Lawyer.

GOOD FAITH LAWYER: Hey there! Long time no see. How are you?

REFERRING LAWYER: I've been better...

GOOD FAITH LAWYER: Say more about that.

REFERRING LAWYER: Well, I filed suit on that bad faith case we talked about a while back, and I just finished reading the insurance company's motion for summary judgment. They're arguing there was a legitimate dispute¹⁷ on the value of my client's claim.

GOOD FAITH LAWYER: That's pretty common. What exactly are they saying is the legitimate dispute?

REFERRING LAWYER: Their argument is this is just a dispute over the value of the claim. After

One of the foundational components of the duty of good faith is reasonable conduct.¹⁵ If there wasn't a good reason for the violation of the statute, you might be able to argue it was unreasonable.

I gave them the prior medical records they asked for, they offered my client a few thousand dollars. I say it is worth her entire UM policy limit – they say it’s only worth a few thousand dollars. They are also saying that because the \$25,000 my client received from the tortfeasor settlement was more than her medical bills, there can’t be a violation of the duty of good faith and fair dealing!

GOOD FAITH LAWYER: There is definitely some authority for that argument. *Quine v. GEICO*, 2011 OK 88, 264 P.3d 1245 dealt with a similar situation. In *Quine*, the insured was in the same spot your client is in – the tortfeasor’s insurance payment covered the UM insured’s special damages. Although the Supreme Court was answering a certified question from the Western District about whether a UM insurer’s failure to tender partial payment of a UM claim violated the duty of good faith and fair dealing, its ruling seemed pretty clear.¹⁸ It’s easy for an insurance company to get summary judgment in a case involving only general damages where the insured’s special damages have been paid.

REFERRING LAWYER: So, I’m dead in the water, huh?

GOOD FAITH LAWYER: Not necessarily. An insurance company arguing legitimate dispute isn’t the end of the world. *Quine* was pretty limited in its holding.¹⁹ Plus, a legitimate dispute between the insurance company and its insured doesn’t automatically warrant summary judgment unless the insurance company actually relied on it for making its claims decision.²⁰ For example, an insurance company may not win on summary judgment if it didn’t perform a proper investigation of the claim.²¹ You can also survive summary judgment based on a legitimate dispute defense if there is evidence the

insurer “has constructed a sham defense to the claim or has intentionally disregarded undisputed facts” of the claim.²²

There is actually still a lot you can work with. The defendant’s insurance company may claim there is a legitimate dispute as to the value of your client’s general damages, but the main focus here should be *how* the insurance company arrived at its evaluation and *why* it is evaluating the claim so much differently than you are. You need to take another look at the insurance company’s claim file and make sure they conducted a detailed review of the materials. You need to make sure they didn’t overlook any critical facts²³ or misconstrue them against your client. If you can isolate that type of conduct, you need to figure out why it happened. Were the adjusters trained properly? Did they know and follow the law applicable to the claim?²⁴

The key is to properly frame your case and arguments. If you are dealing purely with a dispute about general damages, you’re probably done. But if there is something else there that led to the undervaluation of general damages, you’ve got a fighting chance.

REFERRING LAWYER: Wow. I guess I better get to work. There’s a lot of claim file here to review!

GOOD FAITH LAWYER: Good luck!

Fade out.

ABOUT THE AUTHORS



Simone Fulmer Gaus’s practice focuses on traumatic brain injury litigation and holding insurance companies

accountable for violating the duty of good faith and fair dealing. She is a founding partner of Fulmer Sill, a firm designed to create a supportive

environment for talented lawyers to seek justice for their clients.



Jacob L. Rowe is a trial attorney with Fulmer Sill PLLC. His advocacy is based on a belief that clients, jurors and other decision makers have the potential to become heroes, and great advocacy comes from crafting compelling stories that empower them to fulfill that destiny.

ENDNOTES

1. This article was written in Dec. 2020. A year the authors believe is best described by a recent advertisement from the online dating service match.com, titled *Match Made in Hell*, in which Satan and a personified version of the year 2020 fall in love. See www.youtube.com/watch?v=YPq23RWpgPM.

2. The substantive language of this introduction is very clearly attributed to the long-running television series *Law & Order*, created by Dick Wolf.

3. In *Christian v. Am. Home Assurance Co.*, 1977 OK 141, ¶16, 577 P.2d 899, 901, the Oklahoma Supreme Court recognized “a distinct tort based upon an implied duty of the insurer to act in good faith and deal fairly with its insured.” It held that such an action is grounded in the “special relationship” between an insurer and its insured. *Id.* At ¶10, 904. In describing this relationship, the court noted the insurance industry is heavily regulated and “quasi-public” in nature and that insureds have “no bargaining power” or “means of protecting himself [or herself] from the kinds of abuses” that may violate the duty of good faith and fair dealing. *Id.* The duty of good faith and fair dealing applies to insurance claims made under Oklahoma automobile policies, including those for uninsured/underinsured motorist (UM) coverage benefits. See generally *Burch v. Allstate Ins. Co.*, 1998 OK 129, 977 P.2d 1057.

4. A successful plaintiff proving an insurance company violated the duty of good faith and fair dealing is entitled to damages for “financial losses,” “embarrassment and loss of reputation” and “mental pain and suffering,” as well as any other detriment proximately caused by the insurer’s conduct. Oklahoma Uniform Jury Instruction No. 22.2. Moreover, the mental suffering of a plaintiff need not be “severe” or “outrageous” to justify a damages award. See *Timmons v. Royal Globe Life Ins. Co.*, 1982 OK 97, ¶32, 653 P.2d 907.

5. *Timmons v. Royal Globe Ins. Co.*, 1982 OK 97, ¶25, 653 P.2d 907, 914. “The gravamen of a *Christian*-type tort is failure to deal fairly and in good faith. Failure to abide by the implied duty imposes liability. The trial court did not err in refusing [a proposed jury instruction requiring plaintiff to prove] ‘an actual existing evil intent to mislead or deceive.’”

6. A UM insurer “must conduct an investigation reasonably appropriate under the circumstances.” *Buzzard v. Farmers Ins. Co.*, 1991 OK 127, ¶14, 824 P.2d 1105, 1109.

7. *Newport v. USAA*, 2000 OK 59, ¶15, 11 P.3d 190, 196. “An insurer may not treat its own insured in the manner in which an insurer may treat third-party claimants to whom no duty of good faith and fair dealing is owed.”

8. *Buzzard v. Farmers Ins. Co.*, 1991 OK 127, ¶30, 824 P.2d 1105, 1112.

9. We will refer to the Unfair Claims Settlement Practices Act as the “UCSPA.”

10. *Aduddell Lincoln Plaza Hotel v. Certain Underwriters at Lloyd's of London*, 2015 OK CIV APP 34, ¶24, 348 P.3d 223.

11. 36 O.S. 1250.3.

12. *Aduddell*, ¶13, citing *Walker v. Chateau Lime Co.*, 1993 OK 35, ¶7, 849 P.2d 1085, 1087.

13. Okla. Admin. Code. §365:15-3-2.1.

14. *Timmons v. Royal Globe Ins. Co.*, 1982 OK 97, ¶20, 653 P.2d 907, 913-14.

15. See *Badillo v. MidCentury Ins. Co.*, 2005 OK 48, 121 P.3d 1080, citing *McCorkle v. Great Atlantic Ins. Co.*, 1981 OK 128, 637 P.2d 583, 587. “The essence of an action for breach of the duty of good faith and fair dealing ‘is the insurer’s unreasonable, bad-faith conduct. And if there is conflicting evidence from which different inferences may be drawn regarding the reasonableness of the insurer’s conduct, then what is reasonable is always a question to be determined by the trier of fact by a consideration of the circumstances in each case.’” See also Oklahoma Uniform Jury Instruction No. 22.2.

16. See *First Bank of Turley v. Fid. and Deposit In. Co. of Md.*, 1996 OK 105, ¶14, 928 P.2d 298, 304. “An insured in turn has an obligation to cooperate with the insurer, which is both contractual and implied in law,” (internal citations omitted). See also *Dixson Produce, LLC v.*

Nat’l Fire Ins. Co. of Hartford, 2004 OK CIV APP 79, ¶19, 99 P.3d 725, 729, insureds “belated claim and failure to provide proof of loss as required and requested also formed the basis of a legitimate dispute between insured business and insurance company over expense of coverage, cause of loss, amount of loss, and breach of policy conditions. It is well settled that a bad faith cause of action will not lie where there is a legitimate dispute over such matters.”

17. See *Vining v. Enter. Fin. Grp., Inc.*, 148 F.3d 1206, 1213 (10th Cir. 1998) “An insurer does not breach the duty of good faith to pay a claim by litigating a dispute with its insured if there is a legitimate dispute as to coverage or amount of the claim, and the insurer’s position is reasonable and legitimate,” (internal quotations and citations omitted).

18. *Quine v. GEICO*, 2011 OK 88, 264, ¶19, P.3d 1245, 1250-51. “The only portion of [the UM insured’s] claim remaining after payment from the tortfeasor were those indeterminate sums attributable to general damages ...”

19. *Quine v. GEICO*, 2011 OK 88, 264, ¶20, P.3d 1245, 1251. “[W]e conclude that an insurer’s refusal to unconditionally tender a partial payment of UIM benefits does not amount to a breach of the obligation to act in good faith and deal fairly when: (1) the insured’s economic/special damages have been fully recovered through payment from the tortfeasor’s liability insurance; (2) after receiving notice that the tortfeasor’s liability coverage has

been exhausted due to multiple claims, the UIM insurer promptly investigates and places a value on the claim; (3) there is a legitimate dispute regarding the amount of noneconomic/general damages suffered by the insured; and (4) the benefits due and payable have not been firmly established by either an agreement of the parties or entry of a judgment substantiating the insured’s damages.”

20. *Vining v. Enter. Fin. Grp., Inc.*, 148 F.3d 1206, 1215. “[M]erely because there is a reasonable basis that an insurance company could invoke to deny a claim does not necessarily immunize the insurer from a bad faith claim if, in fact, it did not actually rely on that supposed reasonable basis and instead took action in bad faith.”

21. *Capstick v. Allstate Ins. Co.*, 998 F.2d 810, 815 (10th Cir. 1993).

22. *Oulds v. Principal Mut. Life Ins. Co.*, 6 F.3d 1431, 1442 (10th Cir. 1993).

23. Failure to investigate critical facts related to a loss can be violative of the duty of good faith and fair dealing. See *Hall v. Globe Life and Accident Ins. Co.*, 1998 OK CIV APP 161, 968 P.2d 1263.

24. Failure to properly train claims handling employees on applicable law can be violative of the duty of good faith and fair dealing. Likewise, evidence of an insurer’s “deliberate willful pattern of abusive conduct” in handling first-party claims can be used to support a plaintiff’s position on summary judgment. See *Vining v. Enter. Fin. Grp.*, 148 F.3d 1206, 1214 (10th Cir. 1998).

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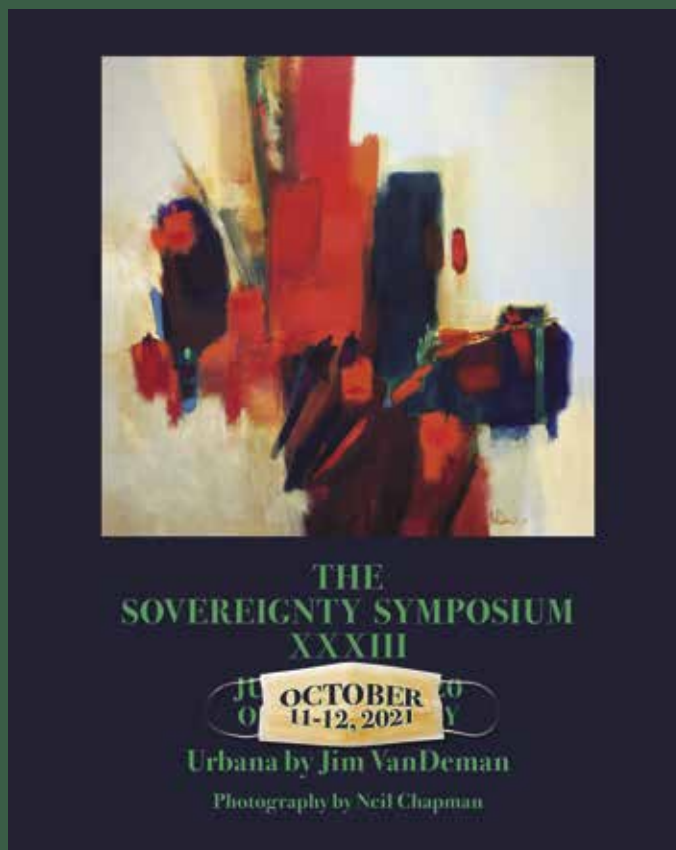
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10:30 – 10:45 Morning Coffee / Tea Break

12:00 – 1:15 Lunch on your own

8:30 – 12:00 PANEL A: CRIMINAL LAW | GRAND BALLROOMS A-F

(THIS PANEL CONTINUES FROM 3:00 – 6:00)

CO-MODERATORS:

DANA KUEHN, (*Choctaw*), Presiding Judge, Oklahoma Court of
Criminal Appeals

ARVO MIKKANEN, (*Kiowa/Comanche*), Assistant United States
Attorney and Tribal Liaison, Western District of Oklahoma

DAVID HILL, Principal Chief of the Muscogee Nation

KEVIN STITT, Governor of the State of Oklahoma

BILL ANOATUBBY, Governor of the Chickasaw Nation

GARY BATTON, Chief of the Choctaw Nation

CHUCK HOSKINS JR., Principal Chief of the Cherokee Nation

LEWIS J. JOHNSON, Assistant Chief and Chief Elect of the
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ORVIL LOGE, District Attorney for the Fifteenth District,
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8:30 – 12:00 PANEL B: SIGHTS, SOUNDS AND SYMBOLS | CENTENNIAL ROOMS 1-3

(THIS PANEL CONTINUES FROM 3:00 – 6:00)

CO-MODERATORS:

WINSTON SCAMBLER, Student of Native American Art
KENNETH JOHNSON, (*Muscogee/Seminole*), Contemporary Jewelry Designer and Metalsmith

BILL DAVIS, (*Muscogee*), Singer

GREG BIGLER, (*Euchee*), District Judge, Muscogee Nation

KELLY HANEY, (*Seminole*), Artist, Former Oklahoma State Senator, Former Chief of the Seminole Nation

JAY SHANKER, Crowe and Dunlevy

VANESSA JENNINGS, (*Kiowa/Gila River Pima*), Artist

JERI RED CORN, (*Caddo/Potawatomi*), Artist

8:30 – 12:00 PANEL C: RESTORATION, TRUTH AND RECONCILIATION | CRYSTAL ROOM

MODERATOR: NOMA GURICH, Justice, Oklahoma Supreme Court

MARTHA BARKER, (*Quapaw/Osage*)

JEAN ANN RAMSEY, (*Quapaw/Osage*)

MARY KATHRYN NAGLE, (*Cherokee*), Pipestem and Nagle

GORDON YELLOWMAN, (*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

ROBERT E. HAYES JR., Bishop, United Methodist Church, Retired

LINDSAY ROBERTSON, Faculty Director, Center for the Study of American Indian Law and Policy, OU College of Law

11:45 TRIBAL LEADERS' AND DIGNITARIES' LUNCHEON | VENETIAN ROOM

THIS EVENT IS BY INVITATION ONLY

MASTER OF CEREMONIES: RICHARD DARBY, Chief Justice, Oklahoma Supreme Court

INVOCATION: WILLIAM WANTLAND, (*Seminole, Chickasaw and Choctaw*), Bishop of the Episcopal Church, Retired

GREETING: MIKE MORDY, President, Oklahoma Bar Association

Monday Afternoon

4.0 CLE credits / 0 ethics included

2:45 – 3:00 Tea / Cookie Break for All Panels

1:00 – 2:45 OPENING CEREMONY AND KEYNOTE ADDRESS | GRAND BALLROOMS A-F

MASTER OF CEREMONIES: STEVEN TAYLOR, Justice, Oklahoma Supreme Court, Retired

CAMP CALL: GORDON YELLOWMAN, (*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

PRESENTATION OF FLAGS

HONOR GUARD: KIOWA BLACK LEGGINGS SOCIETY

SINGERS: SOUTHERN NATION

INVOCATION: KRIS LADUSAU, Reverend, Dharma Center of Oklahoma

INTRODUCTION OF KEYNOTE SPEAKERS

SPEAKER: HARVEY PRATT, (*Cheyenne/Arapaho*), Peace Chief, Artist, Designer of the Smithsonian's National Native American Veterans Memorial

SPEAKER: BOB L. BLACKBURN, Executive Director, Oklahoma History Center, Retired, Author

SPEAKER: TOM COLE, United States Congressman for the Fourth District of Oklahoma

WELCOME: RICHARD DARBY, Chief Justice, Oklahoma Supreme Court

PRESENTATION OF AWARDS: YVONNE KAUGER, Justice, Oklahoma Supreme Court

MEMORIAL AND HONOR SONGS: SOUTHERN NATION

CLOSING PRAYER: ROBERT E. HAYES JR., Bishop, United Methodist Church, Retired

3:00 – 6:00 PANEL A: CRIMINAL LAW | GRAND BALLROOMS A-F

CO-MODERATORS:

DANA KUEHN, (*Choctaw*), Presiding Judge, Oklahoma Court of Criminal Appeals

ARVO MIKKANEN, (*Kiowa/Comanche*), Assistant United States Attorney and Tribal Liaison, Western District of Oklahoma

CASEY ROSS, (*Cherokee*), Director, American Indian Law & Sovereignty Center, Clinical Professor of Law, University General Counsel, Oklahoma City University

MITHUN MANSINGHANI, Oklahoma Solicitor General

STEPHEN GREETHAM, Senior Counsel to the Chickasaw Nation

SARA HILL, Attorney General of the Cherokee Nation

JONODEV CHAUDHURI, (*Muscogee*), Quarles & Brady, Ambassador, Muscogee Nation

BOND PAYNE, Chief of Staff to Governor Kevin Stitt

JARI ASKINS, Administrative Director of the Courts

CHRISTOPHER B. CHANEY, Senior Counsel for Law Enforcement and Information Sharing, Office of Tribal Justice, United States Department of Justice

3:00 – 6:00 PANEL B: SIGHTS, SOUNDS AND SYMBOLS | CENTENNIAL ROOMS 1-3

(A CONTINUATION OF THE MORNING PANEL)

CO-MODERATORS:

WINSTON SCAMBLER, Student of Native American Art
KENNETH JOHNSON, (*Muscogee/Seminole*), Contemporary Jewelry Designer and Metalsmith

MARK PARKER, Dean, Schools of Music & Theatre, Oklahoma City University

JEROD IMPICHCHAACHAAHA' TATE, (*Chickasaw*), Composer and Pianist

JOSHUA HINSON, (*Chickasaw*), Director of the Chickasaw Language Revitalization Program

JAMES PEPPER HENRY, (*Kaw/Muscogee*), Director and Chief Operating Officer, American Indian Cultural Center Foundation

HARVEY PRATT, (*Cheyenne/Arapaho*), Peace Chief, Artist, Designer of the Smithsonian's National Native American Veterans Memorial

3:00 – 6:00 PANEL C: SOVEREIGNTY IN THE 21ST CENTURY: NEXT GENERATION ECONOMIC OPPORTUNITIES | CRYSTAL ROOM

CO-MODERATORS:

M. JOHN KANE IV, Justice, Oklahoma Supreme Court
KIRKE KICKINGBIRD, (*Kiowa*), Hobbs, Straus, Dean and Walker

WILLIAM R. NORMAN JR., (*Muscogee*), Hobbs, Straus, Dean and Walker

CHARLES MORRIS, (*Otoe Missouria*), REDWIRE

MATTHEW DUCHESNE, FCC Office of Native American Affairs

10:00 – 7:00 SPECIAL ART EXHIBITION | MEETING AREA

WORKS OF LES BERRYHILL, BRENT GREENWOOD, KELLY HANEY, NATHAN HART, VANESSA JENNINGS, KENNETH JOHNSON, MIKE LARSEN, TIMOTHY TATE NEVAQUAYA, HARVEY PRATT, JERI REDCORN, PATRICK RILEY, JAY SCAMBLER, D.G. SMALLING, ERIC TIPPECONNIC, JIM VANDEMAN, GORDON YELLOWMAN AND TERRY ZINN.

THE ARTISTS WILL BE HANDLING ANY SALES.

6:00 RECEPTION AND FLUTE CIRCLE: LED BY TIMOTHY TATE NEVAQUAYA | MEETING AREA

Tuesday Morning | October 12, 2021

4.0 CLE credits / 2 ethics included

7:30 – 4:30 Registration (Honors Lounge)

8:00 – 8:30 Complimentary Continental Breakfast

10:30 – 10:45 Morning Coffee / Tea Break

12:00 – 1:15 Lunch on your own

8:30 – 12:00 PANEL A: ENTERTWINED ECONOMIC FUTURES | CRYSTAL ROOM

CO-MODERATORS:

RICHARD DARBY, Chief Justice, Oklahoma Supreme Court
JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

JOHN "ROCKY" BARRETT, Tribal Chairman, Citizen Potawatomi Nation

LISA BILLY, Legislator, Chickasaw Nation

REGGIE WASSANA, Governor, Cheyenne and Arapaho Tribes of Oklahoma

MELOYDE BLANCETT, Oklahoma House of Representatives, District 78

DEBORAH DOTSON, President, Delaware Nation

TIM GATZ, Oklahoma Secretary of Transportation

GEOFFREY STANDING BEAR, Principal Chief, Osage Nation

BILL G. LANCE JR., Secretary of Commerce, Chickasaw Nation

DANA MURPHY, Commissioner, Oklahoma Corporation Commission

8:30 – 12:00 PANEL B: JUVENILE LAW AND CHILDREN'S ISSUES | CENTENNIAL ROOMS 1-3

CO-MODERATORS:

DOUGLAS COMBS, Justice, Oklahoma Supreme Court

MIKE WARREN, Associate District Judge, Harmon County, Oklahoma

KATHRYN E. FORT, Director of Indian Law Clinic, Academic Specialist, Michigan State University

ELIZABETH BROWN, (*Cherokee*), Associate District Judge, Adair County, Oklahoma

CHRISSI NIMMO, (*Cherokee*), Deputy General Counsel, Cherokee Nation

PHIL LUJAN, (*Kiowa/Taos Pueblo*), Judge of the Seminole and Citizen Potawatomi Nations

MICHAEL FLANAGAN, Associate District Judge, Cotton County

8:30 – 12:00 PANEL C: HEALTH AND WELLBEING | GRAND BALLROOMS D-F

CO-MODERATORS:

DUSTIN P. ROWE, Justice, Oklahoma Supreme Court

CHRIS ANOATUBBY, Lieutenant Governor, Chickasaw Nation

KENT SMITH, Associate Dean of American Indians in Medicine and Science, Professor of Anatomy, Oklahoma State University Center for Health Sciences

PAUL SPICER, Professor of Anthropology, University of Oklahoma

JANIE HIPP, General Counsel Nominee, United States Department of Agriculture

JACQUE SECONDINE HENSLEY, Director, Office of American Indians in Medicine and Science, Oklahoma State University Center for Health Sciences

BLAKE JACKSON, Attorney/Advisor, United States Department of Agriculture

CARLY GRIFFITH HOTVEDT, Director of Tribal Enterprise, Indigenous Food and Agriculture Initiative, University of Arkansas

LORETTA BARRETT ODEN, Chef and Consultant

DOUG WHITE, Executive Director, Oklahoma Emergency Responders Assistance Program

CHRIS TALL BEAR, GHWIC Program Director, Southern Plains Tribal Health Board

10:00 – 12:00 PANEL D: ETHICS AND A DISCUSSION OF THE CONCERNS OF STATE, FEDERAL AND TRIBAL JUDGES | GRAND BALLROOMS A-C

JOHN REIF, Justice, Oklahoma Supreme Court, Retired

LAUREN KING, Foster Garvey, Seattle

Tuesday Afternoon

4.5 CLE credits / 0 ethics included

12:00 – 1:30 Lunch on your own

3:30 – 3:45 Tea / Cookie Break for All Panels

1:30 – 5:00 PANEL A: JUVENILE LAW | CENTENNIAL ROOMS 1-3

CO-MODERATORS:

DOUGLAS COMBS, Justice, Oklahoma Supreme Court

MIKE WARREN, Associate District Judge, Harmon County

BEN BROWN, General Counsel, Oklahoma Office of Juvenile Affairs

ELIZABETH BROWN, (*Cherokee*), Associate District Judge, Adair County, Oklahoma

DEBRA GEE, (*Navajo*), Chief Counsel, Office of Tribal Justice Administration, Chickasaw Nation

PATTI D. BUHL, Director of Juvenile Justice, Office of the Attorney General, Cherokee Nation

CORY C. ORTEGA, Assistant Prosecuting Attorney, Choctaw Nation Legal Department, Special Assistant United States Attorney (SAUSA) for the Eastern District of Oklahoma

1:30 – 5:30 PANEL B: GAMING | GRAND BALLROOMS D-F

CO-MODERATORS:

W. KEITH RAPP, Judge, Court of Civil Appeals, Division IV

MATTHEW MORGAN, Chickasaw Nation

NANCY GREEN, Green Law Firm PC, Ada

JONODEV CHAUDHURI, (*Muscogee*), Quarles and Brady LLP, Muscogee (Creek) Ambassador

ELIZABETH HOMER, (*Osage*), Homer Law

WILLIAM NORMAN, Hobbs, Straus, Dean and Walker

DEAN LUTHEY, GabelGotwals

D. MICHAEL MCBRIDE III, Crowe & Dunlevy

1:30 – 5:30 PANEL C: EDUCATION | GRAND BALLROOMS A-C

CO-MODERATORS:

DEBORAH B. BARNES, Judge, Court of Civil Appeals, Division II

JOHN HARGRAVE, Chief Executive Officer, East Central University Foundation

JOY HOFMEISTER, Oklahoma Superintendent of Public Instruction

JAN BARRICK, Chief Executive Officer, Alpha Plus

FREIDA DESKIN, Founder and CEO, Astec Charter Schools

PATRICK RILEY, Artist and Educator

TREY HAYS, Teacher of Mathematics and Art, Tishomingo Elementary School

REGGIE WHITTEN, Whitten Burrage

JEFF HARGRAVE, Whitten Burrage

ERIC TIPPECONNIC, (*Comanche*), Artist and Professor, California State University, San Marcos

JOSHUA HINSON, (*Chickasaw*), Director of the Chickasaw Language Revitalization Program

GREGORY D. SMITH, Chief Judge, United States Court of Indian Appeals, Miami Agency, Justice, Pawnee Nation Supreme Court

LEORA E. COLEMAN, Educator

1:30 – 5:30 PANEL D: INTERTWINED ECONOMIC FUTURES | CRYSTAL ROOM

CO-MODERATORS:

RICHARD DARBY, Chief Justice, Oklahoma Supreme Court

JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

LESLIE OSBORN, Oklahoma State Labor Commissioner

MICHAEL D. DAVIS, President and CEO, Oklahoma Finance Authorities

NATHAN HART, (*Cheyenne*), Executive Director, Department of Business at Cheyenne and Arapaho Tribes

LATASHIA REDHOUSE, (*Dine*), AIF Director, Intertribal Agriculture Council

TOMIE PETERSON, (*Cheyenne River Sioux Tribe*), AIF Assistant Director, Intertribal Agriculture Council

VALERIE DEVOL, Devol and Associates

WAYNE GARNONS-WILLIAMS, Principal Director at Indigenous Sovereign Trade Consultancy Ltd.

6:00 – 7:00 RECEPTION | FIRST AMERICANS MUSEUM

This agenda is subject to revision.

The Sovereignty Symposium XXXIII

October 11 – 12, 2021
Skirvin Hilton Hotel
Oklahoma City, Oklahoma

Name: _____ Occupation: _____

Address: _____

City: _____ State _____ Zip Code _____

Billing Address (if different from above) _____

City: _____ State _____ Zip Code _____

Nametag should read: _____

Email address: _____

Telephone: Office _____ Cell _____ Fax _____

Tribal affiliation if applicable: _____

Bar Association Member: Bar # _____ State _____

16.5 hours of CLE credit for lawyers will be awarded, including 2.0 hours of ethics. **NOTE:** Please be aware that each state has its own rules and regulations, including the definition of “CLE;” therefore, certain portions of the program may not receive credit in some states.

# of Persons		Registration Fee	Amount Enclosed
_____	Both Days	\$295 (\$325 if postmarked after Sept. 27, 2021)	_____
_____	Oct. 12, 2021 only	\$200 (\$225 if postmarked after Sept. 27, 2021)	_____
		Total Amount	_____

We ask that you register online at www.thesovereigntysymposium.com. This site also provides hotel registration information and a detailed agenda. For hotel registration please contact the Skirvin-Hilton Hotel at 1-405-272-3040. If you wish to register by paper, please mail this form to:

THE SOVEREIGNTY SYMPOSIUM, INC. The Oklahoma Judicial Center, 2100 North Lincoln Boulevard
Room 1, Oklahoma City, Oklahoma 73105-4914

Presented By THE OKLAHOMA SUPREME COURT and THE SOVEREIGNTY SYMPOSIUM

2022 OBA Board of Governors Vacancies

Nominating Petition Deadline: 5 p.m. Friday, Sept. 10, 2021

OFFICERS

President-Elect

Current: James R. Hicks, Tulsa
(One-year term: 2022)
Mr. Hicks automatically becomes
OBA president Jan. 1, 2022
Nominee: **Brian T. Hermanson,**
Ponca City

Vice President

Current: Charles E. Geister III,
Oklahoma City
(One-year term: 2022)
Nominee: **Miles T. Pringle,**
Nichols Hills

BOARD OF GOVERNORS

Supreme Court Judicial District Three

Current: David T. McKenzie,
Oklahoma City
Oklahoma County
(Three-year term: 2022-2024)
Nominee: **Vacant**

Supreme Court Judicial District Four

Current: Tim E. DeClerck, Enid
Alfalfa, Beaver, Beckham, Blaine,
Cimarron, Custer, Dewey, Ellis,
Garfield, Harper, Kingfisher,
Major, Roger Mills, Texas, Washita,
Woods, Woodward counties
(Three-year term: 2022-2024)
Nominee: **Vacant**

Supreme Court Judicial District Five

Current: Andrew E. Hutter, Norman
Carter, Cleveland, Garvin, Grady,
Jefferson, Love, McClain, Murray,
Stephens counties
(Three-year term: 2022-2024)
Nominee: **Vacant**

Member At-Large

Current: Miles T. Pringle,
Oklahoma City
Statewide
(Three-year term: 2022-2024)
Nominee: **Vacant**

SUMMARY OF NOMINATIONS RULES

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

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

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

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

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

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

Elections for contested positions will be held at the House of Delegates meeting Nov. 12, during the Nov. 10-12 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2021.

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

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS

President-Elect

Brian T. Hermanson
Ponca City

Nominating Petitions have been filed nominating Brian T. Hermanson, Ponca City for President Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2022. Fifty of the names thereon are set forth below:

Steven Taylor, Charles Chapel, John Gaberino, Jim Hicks, Chuck Chesnut, Kimberly Hays, Joe Crosthwait, Melissa DeLacerda, David Petty, Jim Stuart, Stephen Beam, Cathy Christensen, William Grimm, Peggy Stockwell, Jerry Tubb, Jack Dawson, Mart Tisdal, Mike Turpen, Ken Williams, Alissa Hutter, Brandi Nowakowski, Ron Main, Guy Clark, Ken Delashaw, LeAnne McGill, John Oldfield, Dwight Smith, Rex Travis, Ed Wunch, Philip Hixon, Andy Hutter, Miles Pringle, Schaad Titus, Angela Ailles Bahm, Gary Derrick,

Bradley Gungoll, Mack Martin, Mike McBride III, Richard McClain, Drew Neville, Laura Pringle, John Weedn, W.C. Sellers Jr., Jimmy Oliver, Mille Otey, Dean Couch, Chris Collins, Lynn Osborn, David Cummings and John Gelders.

A total of 462 signatures appear on the petitions.

Nominating Resolutions have been received from the following counties:

Kay, Kiowa, Love, McCurtain, Noble, Tulsa and Washington counties

Vice President

Miles T. Pringle
Nichols Hills

Nominating Petitions have been filed nominating Miles T. Pringle, Nichols Hills for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2022. Fifty of the names thereon are set forth below:

Lynn Pringle, Laura Pringle, Jennifer Fischer Walford, Lane Neal, Charles D. Geister III, Jon Epstein, Mel McVay, Byrona Maule, Cody Cooper, Doug Dale, Rick Martin, Tom Wolfe, Mary Holloway Richard, Fred Kempf, Moira Watson, Larry G Ball, David Pardue, David Donchin, Gerald E. Durbin, Andy Gunn, E. Edd Pritchett Jr., Hilary Allen, Katherine Loy, Tim Martin, Ryan Deligans, Josh Young, Lauren Lenahan, Lauren S. Voth, Candace Lisle, Rodney Cook, Justin Bates, Hilary Clifton, Phoebe Mitchell, Fred Leibrock, Mark Hornbeek, Terry L. Hawkins, Joshua Edwards, John Gile, Stephen Pitcock, Katie Wagner, Jonathan Rogers, Daniel Carsey, Ty E. Schoenhals, C. Russell Woody, Michael P. Whaley, Elizabeth A. Prince, Jessica Hatcher, Katie Colclazier, Mark McPhail and Kurt Rupert

A total of 67 signatures appear on the petitions.

I Just Do Not Know

By John Morris Williams

THIS IS THE LAST BAR journal article I will write that will involve my editor extraordinaire. I just do not know how life at the OBA will go on without Carol Manning. For 26 years, Carol has been the “always on deadline” magician who finagled articles out of bar presidents, OBA staff and countless volunteer authors. An unimaginable feat for a mere mortal. I just do not know if it will ever be the same. In fact, I know better.

I first met Carol around 1984 when she was at the Oklahoma City Regional Food Bank, and I was the chair of the Oklahoma County Bar Association Young Lawyers Division Community Outreach Committee. For those born before then, that is how the Oklahoma County Bar Association began its long association with the regional food bank. On initial visit to the food bank to check out their legitimacy, Carol was the communications director and not only opened their financial records but facilitated a tour. Thus began a nearly four-decade friendship and working relationship.

Although the calendar says otherwise, Carol is pretty much timeless. She still has the positive “get it done” attitude that lured me into being a lifelong contributor to the regional food bank. Since May 2003, she has reminded me kindly, “I need your article.” She is perfect to work with lawyers. Her deadlines are artificial.



Carol Manning

We figured that out. Carol learned quickly that lawyers are often last-minute people, so she imposed deadlines that allowed an extension. Acting like a district judge granting a final extension to submit a brief, she lured, cajoled and gently squeezed us all a bit to get those articles in. In her past life, I know she was a cat herder.

Now, I must admit that Carol and her AP Style and comma rules and all those other near jailable literary offenses just were over my head. Then, as is true now, I just send it to the Communications Department, and they translate what meager effort I make into something

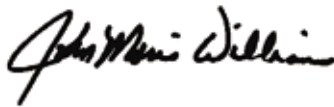
printable. Thanks, Carol, for your magic and never sending back my copy marked up with a red pen. That is quintessential Carol. She can take ordinary and make a thing of beauty out of it. She truly is artistic in several media.

Carol has, in addition to getting out the bar journal, staffed the Awards Committee and Law Day Committee. Both are incredibly important missions. Her commitment to Law Day is truly remarkable. She spent countless hours getting schools to participate in the art and writing contests each year and produced the *Ask a Lawyer* television show. As an example of her genius, I once assigned her the task of doing a video for the Habitat for Humanity House we built one year. It was a masterpiece. In about 15 seconds, I shared with her my vision for the video. She never came back with any questions or needed any more input. She nailed it beautifully. Typical Carol.

Carol also takes the minutes for the Board of Governors meetings. For more than 26 years, she has attended most of the board meetings and produced the minutes for approval. I would not be surprised if she does not sleep talk asking, “Who made the second?” Of course, this meant when the board traveled, she had to be there as well. She has always been dependable and a source of joy and encouragement to all she encounters. Oh, and she can sing too.

Space here does not allow me to capture all the joyful, “great shoes,” creative, “Carol, what do you think of these?” moments I have shared with Carol or the countless dedicated hours she has given to the OBA and its members. May her retirement be filled with joy, adventure and only deadlines to get packed for many great trips near and far. I just do not know how I will get my articles done on time and in the correct form. I do know this: Carol has been a dedicated and faithful servant to the OBA and

the legal profession for more than 26 years, and she deserves our praise and our appreciation. We all will miss her. THANK YOU, CAROL MANNING, FOR ALL YOU HAVE DONE!



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

She can take ordinary and make a thing of beauty out of it.

THE OBA IS HIRING.

OKLAHOMA BAR ASSOCIATION IS SEEKING AN EXECUTIVE LEGAL ASSISTANT TO THE EXECUTIVE DIRECTOR

The Oklahoma Bar Association, an agency of the Oklahoma Supreme Court, seeks a talented executive legal assistant to the executive director to fill the position upon the retirement of the person currently holding the position. This position provides administrative support to the executive director, officers and Board of Governors. Duties include preparing agendas and pleadings filed with the Oklahoma Supreme Court, updating internal and external appointments to various boards, agencies, and committees, assisting in updating membership data, providing support for elections and maintaining delegate records for the governing body of the association. The ideal candidate for this position is punctual, detailed oriented, thrives in a busy environment, maintains confidentiality, has a high level of computer skills and can quickly learn new systems. Competitive salary dependent upon skills and qualifications. Generous leave and benefit package, including fully paid health, dental and disability insurance and retirement. The OBA is an equal opportunity employer.

Those making an inquiry or submitting information will remain confidential. Send cover letter and resumé by Aug. 27, 2021, to johnw@okbar.org.

Client Selection: How to Red Flag High-Risk Clients (Including Relatives)

By Jim Calloway

ONE THING YOU DO NOT learn in law school is what clients you should not represent. Veteran lawyers have hopefully learned what potential clients they should avoid, but it is still not a perfect process. Almost every lawyer has a story of that client they wish they had never represented. I've had several discussions with lawyers dealing with a grievance, and they frequently repeat, "I knew when I took the case that I shouldn't do it."

While it is often a subjective decision on who you will represent and who you shouldn't, there are some clear warning signs. Let's discuss the warning signs of potential problem clients. Unfortunately, no such treatment can be exhaustive, and there are exceptions to every rule. But when a client exhibits several of these warning signs, it is appropriate to ask yourself whether you are the right lawyer to represent this client.

THE SERIAL CLIENT

This client comes to you after having first been represented by one or more lawyers. The client may even give you very clear warning signs by describing the other lawyers as incompetent or "crooks." It is not difficult to appreciate that when the two prior

lawyers this client has used on the matter are both deemed crooks, in the future, the client will be sitting in front of another lawyer describing you as a crook.

The simple solution to the serial client is to send that client to that next lawyer now and remove yourself from the "crook" chain. This is certainly not to suggest that every time you are the second lawyer on a case (or perhaps even the third), the client is a problem client. A few deft questions will expose whether the prior counsel gave less-than-adequate legal representation, potential conflicts of interest or other matters that might necessitate obtaining new counsel. One easy test is to gauge the person's reaction when you say you may need to contact the previous lawyer to discuss something. A strong and angry reaction forbidding you from contacting the prior lawyer with no explanation is a strong signal to pass on this engagement.

THE CLIENT WHO SAYS, 'MONEY IS NO OBJECT, IT'S THE PRINCIPLE THAT'S AT STAKE.'

This is almost a cliché in legal circles. Many times, there are important and significant

principles at stake in legal disputes, and there is sometimes "bet the company" litigation where a loss may be the end of the business. However, generally, the client who says money is no object will change their opinion at approximately the time they receive the first bill.

Even when the client is willing to battle for a principle and understands the cost-benefit ratio in this battle may not be positive, it is still appropriate to consider whether this means you are taking on a matter incapable of settlement or out-of-court resolution. In these days, where judges strongly encourage early settlement and often will send litigants through mediation, arbitration or other methods of alternative dispute resolution, consider whether this attitude will significantly impair your ability to bring this matter to a resolution.

LAST-MINUTE LARRY

When consulted on a legal matter on the eve of a critical deadline a client has known about for some time, you have received a warning signal. Many of us lead busy lives. Often, a 30-day deadline on a summons or other notice of legal proceeding signals to the client that the lawyer must



be seen within that 30-day period, and they may put things off until the last minute. They may not appreciate that a document must be drafted by the lawyer and filed at a courthouse within that period. However, it is also true that a client with a meritless claim or who has been rejected by other lawyers because of troublesome facts in the disputed matter will wait until the last minute and hope they can rope you into representation because you will focus on the immediate deadline rather than the underlying merits.

When a client contacts you on the day of or the day before a deadline in a litigation matter, it may be wise to contact plaintiff's counsel to see whether you are the first lawyer who has contacted that lawyer about this matter.

'YOU WANTED ME TO BRING SOMETHING TO THE APPOINTMENT?'

Many legal matters turn on contracts, documents and other types of evidence. When the client should have in their possession an important document that is significant to the matter and does not bring it to the appointment to discuss this matter with the lawyer, this is a very strong warning sign. In fact, it may be that the client is comfortable with giving you their interpretation of the document hoping to get you to represent them in this matter, when ultimately, the document you will finally receive differs greatly from what you were told.

YOU ARE 'CO-COUNSEL' WITH THE CLIENT'S MOTHER

Many people have family members, close personal friends, ministers and other individuals

they have relied on for advice for a long time. There is certainly nothing wrong with that, nor is there anything wrong with this person being supportive and encouraging by accompanying the client to the initial interview with their lawyer.

However, if the advisor who accompanies the client insists on sitting in the initial interview and the client will not allow you to talk to them separately, several legal issues present themselves. Among these is whether you are impairing attorney/client privilege by allowing a third party to listen to the discussion (the answer here is almost always yes). It may be a workable compromise for you to meet briefly with everyone before confidential facts are discussed.

THE CLIENT WHO IS HAVING THEIR FEES PAID BY A THIRD PARTY

It is often appropriate to have a client's fees paid by a third party; however, good practice dictates that one would never accept fees from a third party without having the third party sign an agreement to the effect they are giving the fees to the client to be given to you as a retainer, they understand they will not be entitled to confidential, privileged information and they understand they may not ask for a refund of the money so advanced. See my October 2014 Law Practices Tips column, "Client: 'Can My Parents Pay for My Attorney Fees?'," Lawyer: 'Yes, but...'" at www.okbar.org/lpt_articles/client-can-my-parents-pay-for-my-attorney-fees-lawyer-yes-but, which includes some language that can be used to draft such an agreement.

NO PAY NELLIE

The client who is reluctant to sign a retainer agreement and who also has a good excuse as to why the retainer cannot be paid immediately is an obvious problem. Getting an adequate retainer is, of course, a basic tenet of good law practice management. The client who cannot pay a retainer is certainly a business situation many lawyers encounter. The client with apparent financial assets who still refuses to pay a retainer fee is a client who should be shown the door. It is critical that you never allow yourself to be placed in a position where you are more committed to a client's matter than the client is.

THE ETERNAL OPTIMIST

A difficult client is a client who has unrealistic expectations about the relief they may be seeking. In an earlier time, lawyers would often take matters with the client espousing an unreasonable view

of what the ultimate result in the matter would be. It was thought the gentle persuasion of the lawyer over time, combined with the client getting a realistic view of the cost of contesting the matter, would make the client more reasonable. Whether that was true or even ethical back then matters not. The simple fact is this is not true today. A client who has incredibly unrealistic expectations about a matter is very likely to result in a client who refuses reasonable attempts to compromise, who is unhappy with the attorney throughout the proceeding and ultimately who will file a bar complaint against their lawyer when the matter is concluded.

It is appropriate, however, to outline to the client in clear and unmistakable terms your view of the facts and the range of outcomes. If the client listens to you about your view and moderates theirs, they may be a very teachable client.

THE GREEDY CLIENT

This is a subspecies of the client with unrealistic expectations, but here, it is all about the money. Certainly, an individual who has been wronged or disabled by the acts of another has a right to want fair compensation, but some clients may be too greedy for their

own good. We can all think back to the national publicity given to the lawyer who sued the cleaners for multiple millions of dollars based on losing a single pair of pants. Ultimately, the greedy client will be recognized as such by a jury, and this may result in them receiving less than they might have received if they had presented a more sympathetic case. And, of course, if you obtain a successful result for them, this client will turn to arguing with you about the amount of your fees.

YOU HAVE A BAD FEELING ABOUT A CLIENT YOU JUST CANNOT QUANTIFY

This is a much more challenging situation for lawyers but is probably one of the most important categories to recognize. We are trained to rely on facts and not our gut feelings; however, if a client appears to you to be less than credible or if there is something about their story you just do not believe without referring to any external facts, what is the likelihood a judge, jury or another finder of facts will have the same reaction when the client's credibility is at issue? If you are not comfortable with a potential client, it may be best for you and that client if they retain a different lawyer.



WHAT ABOUT REPRESENTING RELATIVES?

It is very common for lawyers (and some advisors to lawyers) to categorically state never represent your relatives. For many of these, they are just repeating advice they have been given over the years. For others, they may have a particular horror story based on representing a relative. However, it is not my position that you should never represent relatives. Certainly, when you represent a relative, there is the potential for many negatives. Let's discuss these potential problems briefly so you can deal with them, hopefully in advance. A relative as a client may:

- Expect to receive legal services for free.
- Fail to respect your professional judgment because they knew you "way back when."
- Have a negative view of your advice based on things you know nothing about.
- Inaccurately relate stories later about the representation to other family members that you are barred from correcting.

However, I do not categorically say you should never represent a family member. But extra caution is warranted. Consider this hypothetical: Suppose you believed you were perhaps the best DUI defense lawyer in your area. You had both attended and taught seminars on advanced DUI defense techniques. Other lawyers sometimes contact you for advice about their DUI cases. Suppose your nephew is arrested for first offense DUI, and your brother brings the nephew in to discuss the case with you. Do you really believe it is in your nephew's best interest for you to automatically send him to another attorney because of the relationship? This is why it may be too

extreme to decline every single case just because there is a family member involved.

One value a lawyer brings to a matter is objectivity. If there is any reason the relationship would cloud your objectivity, it is not only a good plan but perhaps even required under legal ethics rules to let another lawyer handle the matter.

Here are some other hard and fast "black letter" rules from me associated with representing relatives:

- Never represent a relative in a contested family law matter. Family law is simply too close and too personal for you to be objective. In addition, the collateral consequences of family law matters impact other family members besides the two of you. If a child is absent from the family Christmas gathering, this could be a black cloud that hangs over the holiday impacting everyone, including your immediate family and your client's family. And let's face it, complaining about the bad break one got in their divorce is often a topic of conversation when family members get together. It is better for you to not be a part of that discussion.
- Never represent a family member without a written, signed fee agreement. Some would say you should never represent a family member for free. I leave that to your discretion. I would strongly suggest, however, that it is appropriate to have a relative read and sign an attorney fee agreement even if you then charge a modest, flat fee for the entire matter. There are items within your standard attorney/client agreement that

need to be communicated to a potential client, and forcing your relative to read and sign an agreement may help them appreciate this is now a professional relationship.

CONCLUSION

Hopefully, by following these tips, you will not have to deal with too many clients you wish you had never met. It should be noted, however, that people with disagreeable personalities have more legal disputes than some of the rest of us. So, do not be surprised if occasionally, despite your best efforts, you find yourself representing a problem client.

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 or find more tips at www.okbar.org/map. It's a free member benefit.

‘Oh No, You Can’t Say That’*

Responding to Online Criticism

By Richard Stevens

LAWYERS ARE OFTEN THE target of criticism. Lawyers face criticism from clients, opposing parties, other lawyers and even (supposed) disinterested third parties. Faced with issues of confidentiality and concerned with a (hopefully) unwarranted negative review, how should a lawyer respond? Indeed, how may a lawyer respond? ABA Formal Opinion 496 explores the ethical pitfalls of responding to online criticism.

CONFIDENTIALITY

The main concern for a lawyer in responding to online criticism is revealing confidential information. OPRC 1.6 provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Paragraph (b) further states:

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client

was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

Online criticism is not “a proceeding concerning the lawyer’s representation of the client.” Similarly, online criticism is not a “criminal charge or civil claim against the lawyer based upon conduct in which the client was involved.” Therefore, as ABA 496 puts it, “The remaining question is whether online criticism rises to the level of a controversy between a lawyer and client and, if so, whether responding online to the criticism is reasonably necessary to defend against it.”

CONTROVERSY?

ABA 496 concludes that a negative online review is not a “controversy between the lawyer and the client” for the purposes of OPRC 1.6(b)(5). Quoting New York State Bar Association Ethics Opinion 1032 (2014), the ABA Standing Committee on Ethics and Professional Responsibility stated, “Unflattering but less formal comments on the skills of lawyers, whether in hallway chatter, a newspaper account, or a website, are an inevitable incident of the practice of a public profession, and may even contribute to the body of knowledge available about lawyers for prospective



Lawyers should also consider ignoring negative posts or reviews.

clients seeking legal advice.” The committee further concluded that a public response is not reasonably necessary or contemplated by ORPC 1.6(b). The committee noted, while there are some exceptions, the majority of state ethics opinions dealing with this subject have found that critical online postings do not rise to a level of controversy that allows a lawyer to disclose confidential information in a response.

WHAT CAN YOU SAY?

The opinion concludes by offering several possible responses to online criticism or negative reviews. They include a request by the lawyer that the website or search engine host remove the information. Such request may not disclose information relating to any client’s representation or information that could reasonably lead to the discovery of confidential information by others. Lawyers should also consider ignoring negative posts or reviews. Responding may draw more attention and invite further responses from the critic. Lawyers may post

an invitation to contact the lawyer privately to resolve the matter. If the poster accepts the invitation, the dispute may be resolved. If not, then the lawyer has offered to do so in a manner that will accompany the negative post in online posterity. A lawyer may also respond that professional considerations preclude a response. The lawyer may respond directly to a client or former client but must not disclose information relating to that client’s representation online.

The opinion contains much more information. I encourage anyone who finds themselves the object of online criticism to read ABA Formal Opinion 496.

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

**“Sweet Revenge” by John Prine*

Meeting Summaries

The Oklahoma Bar Association Board of Governors met on April 16.

REPORT OF THE PRESIDENT

President Mordy reported he attended meetings concerning the annual Solo & Small Firm Conference, filmed member benefit promotional videos, presented the Law Day contest grand prize winner with her plaque and award and wrote his president's message for the bar journal.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hicks reported he attended the OBA Day at the Capitol program, 2022 planning meeting with Executive Director Williams and Administrative Assistant Debbie Brink, Oklahoma Attorneys Mutual Insurance Co. board meeting and Oklahoma Bar Foundation grant awards meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he toured the new Oklahoma City convention center and visited a site to view a video-conference system in operation. He also attended meetings of the staff directors, Solo & Small Firm Conference Planning Committee and Legislative Monitoring Committee in addition to the virtual Day at the Capitol program. He also had meetings with President-Elect Hicks regarding 2022 planning, videoconferencing vendors, Collaborative Lawyers

group, President Mordy and with hotel management to discuss the 2021 Annual Meeting.

BOARD MEMBER REPORTS

Governor Davis reported he presented ethics rules for state employees to the Oklahoma Association of College and University business officers and attended the Law Schools Committee's virtual site visit to the TU College of Law. **Governor DeClerck** reported he attended the OBA Day at the Capitol program. **Governor Garrett** reported she is working with Oklahoma City attorney Felina Rivera on an OBA medical cannabis web series called "Between Two Weeds." **Governor Hutter** reported he attended a Cleveland County Bar Association monthly meeting. **Governor Pringle** reported he chaired the OBA Day at the Capitol program, wrote a legislative update article for the bar journal, wrote an article for the *Briefcase* and attended the Oklahoma County Bar Association *Briefcase* meeting. **Governor Smith**, unable to attend the meeting, reported she wrote an article for the *Oklahoma Bar Journal* encouraging the submission of nominations for OBA awards.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Moaning reported the division did not have a meeting last month, and YLD board members were encouraged to

participate in the OBA Day at the Capitol program. She said the YLD will do a joint drive-through wills event with Oklahoma Indian Legal Services, which is an expansion of the YLD's former Wills for Heroes events. She said the division is preparing for Tuesday's swearing-in ceremony and will have the Junction Coffee food truck onsite to provide coffee and cookies. She wrote an article for the bar journal and attended Day at the Capitol, an ABA Disaster Legal Services Program meeting and collaborative meeting between OILS and YLD.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Commission will meet next Friday via Zoom and in person for a reprimand. This will be the first PRC meeting of its new year. She said requests for speakers for in-person CLE programs are starting to come in. A written report of PRC actions and OBA disciplinary matters for March was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Rochelle said the **Access to Justice Committee** has created a one-page flier for court clerks, which will be submitted to the Access to Justice Commission and to the Board of Governors for review at its next meeting. Governor Vanderburg said the **Awards Committee** will hold its next meeting in August. Governor

Davis said the **Law Schools Committee** just finished its visit to the TU College of Law, which was done virtually. This completes visits to all three law schools, and the committee is preparing a report to the Board of Governors. He shared that applications to law schools have doubled. Governor Hutter said the **Bench and Bar Committee** will hold its next meeting next week and will discuss social media for judges. Governor DeClerck said **Disaster Response & Relief Committee** Chair Molly Aspan is meeting weekly with FEMA, Legal Aid Services of Oklahoma, Oklahoma Indian Legal Services and Legal Services Corp. to coordinate providing legal services related to the winter ice storm. Working with Executive Director Williams, the hotline was activated March 31, with calls being answered on Wednesday mornings from 9 a.m.

to noon. The hotline has had a few calls, so there hasn't been a need for legal assistance from private attorneys because calls were not legal needs, or the caller was not eligible for the free legal services. Governor Hilfiger said the **Law Day** contest is done, and the committee is prepping for events in the fall. After the winners were posted to the website and recognized in the bar journal, the committee discovered two entries in the seventh grade writing category contained plagiarism, and the second place and honorable mention awards were rescinded.

Past President Shields said **Lawyers Helping Lawyers Assistance Program** monthly discussion groups have been continuing. President Mordy said his recent article in the *Oklahoma Bar Journal* was about the LHL program, and he received a heartfelt response. As a result, he

reached out to committee chair Jeannie Snider, long-time committee member Peggy Stockwell and A Chance to Change liaison Robyn Goggs about reviewing the program's marketing. They will meet next week with the OBA communications team. Governor White said the **Legal Internship Committee** received an inquiry from an out-of-state attorney offering to help but didn't know how to respond. Executive Director Williams volunteered to handle the inquiry. Governor Pringle said the **Legislative Monitoring Committee** will be gearing up for its Legislative Debrief in August. Governor Garrett said the **Women in Law Committee** has several events in the works, including an in-person conference on Oct. 1, and she shared details about programs that will be part of the conference. Networking events were held in Tulsa at The Roosevelt and in Oklahoma City at the Sunset Patio Bar, both with outdoor patio locations for both members and law school outreach. A blood drive is also planned June 14 from 1:30 - 4:30 p.m. on the west side of the Oklahoma Bar Center.

BOARD OF EDITORS

President Mordy said he has not yet recruited a volunteer to fill the vacancy of the Supreme Court District 9 position on the Board of Editors.

Governor Moaning said the YLD will do a joint drive-through wills event with Oklahoma Indian Legal Services, which is an expansion of the YLD's former Wills for Heroes events.

STRATEGIC PLANNING COMMITTEE AND FINANCIAL PLANNING SUBCOMMITTEE APPOINTMENTS

President Mordy announced he has appointed Bryon Will, Yukon; Kaleb Hennigh, Enid; Robert Sartin, Tulsa; Ken Williams, Tulsa; and Brandi Nowakowski, Shawnee, to the Strategic Planning Committee, and President-Elect Hicks has also appointed these members to the Financial Planning Subcommittee with terms expiring 12/31/2023.

DAY AT THE CAPITOL AND LEGISLATIVE SESSION REPORT

As Legislative Monitoring Committee Chair, Governor Pringle said the virtual Day at the Capitol program was a good event, and his legislative reports are being published in the bar journal and on the OBA website.

SOLO & SMALL FIRM CONFERENCE

Executive Director Williams said a meeting of the conference planning committee was held Monday, and he had been directed to negotiate a contract with a stop loss clause. Staff members did make a site visit. He described the environment with social distancing requirements, which was not good because it was very restrictive. He said even though there is a possibility restrictions may be eased or removed in several months, we have to deal with the rules as they exist now. With the conditions described by the hotel, the conference couldn't be held as it has been done in the past that encouraged collegiality. He didn't think it would be a positive experience. The committee decided the conditions as proposed and the contractual arrangements were not beneficial to the OBA and

as a result voted not to hold the conference this year. Educational Programs Director Johnson and Management Assistance Program Director Calloway were asked for their comments. It was noted the OBA is locked into holding the conference at the Choctaw Casino Resort in Durant next year on June 23-25, 2022. In place of the 2021 conference, it was suggested a summer series of five or six CLE programs of interest to solo and small firm practitioners be offered. Another idea is to offer a daylong CLE program with a social event at the end in Oklahoma City at the end of July.

FUTURE BOARD MEETINGS

President Mordy said Executive Director Williams has made the decision to open the bar center June 1 to meetings and staff returning to the building. The May board meeting will continue to be virtual. Executive Director Williams said an OBA directors in-person meeting was recently held in the board room with a maximum capacity of about eight people with social distancing. Emerson Hall, which has been used for board meetings in the past, is also an option. Discussion followed about considerations. No decision was reached about the June meeting.

ORIENTATION

Ethics Counsel Richard Stevens and MCLE Administrator Beverly Lewis reviewed the duties of their departments to brief new board members.

The Oklahoma Bar Association Board of Governors met on Friday, May 21.

REPORT OF THE PRESIDENT

President Mordy reported he attended the swearing-in of new OBA admittees, Solo & Small Firm Conference Planning Committee meetings, meetings for July 30, 2021, OBA event at the Jones Assembly in Oklahoma City, meeting concerning Annual Meeting and recording sessions for the "Member Minute" regarding OBA benefits. He also attended the Seminole County Law Day event and added that it was held on the front lawn of the county courthouse with a good crowd and was fabulous.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hicks reported he attended the OAMIC board meeting, Tulsa County Bar Foundation golf tournament, OBA Diversity Committee meeting, Tulsa County Bar Association open house and Oklahoma Bar Foundation meeting. He contacted prospective members of the 2021 Budget Committee.

REPORT OF PAST PRESIDENT

Past President Shields reported she attended the Investment Committee meeting and heard a report about President Mordy's wonderful speech at the Seminole County Law Day event.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the swearing-in of new admittees, Investment Committee meeting, Solo & Small Firm Planning Committee meetings, National Association of Bar Executives virtual Chief Staff Retreat, YLD board meeting and meetings with a vendor on proposed video

upgrades. He also attended the Seminole County Law Day events at which he presented CLE and met with an investment advisor.

BOARD MEMBER REPORTS

Governor DeClerck reported he has been appointed to the Garfield County Resolutions Committee. **Governor Edwards** reported he attended the Seminole County Law Day CLE and luncheon and a Clients' Security Fund meeting. **Governor Garrett** reported that as Audit Committee Chairperson she discussed the annual audit with Administration Director Combs and recorded a second CLE for the OBA CLE Department's cannabis series. **Governor Hutter** reported he attended a Bench and Bar Committee meeting, Cleveland County Bar Association monthly CLE and the Oklahoma Courthouse Lawyers Education Series in Oklahoma County. It was an informational series about sentencing put on by Judge Palumbo. **Governor Pringle** reported he attended a *Briefcase* Committee meeting for the Oklahoma County Bar Association and chaired

a meeting of the Legislative Monitoring Committee. **Governor Vanderburg** reported the Kay County Bar Association contacted all three law schools and received three qualifying applications for the scholarships for which \$29,000 will be awarded cumulatively. Two of the scholarship recipients are seniors from OCU, and the third is a first-year law student attending OU. He attended the Oklahoma Association of Municipal Attorneys spring seminar remote meetings and CLE training, which was excellent and the Oklahoma Municipal Judges Association annual CLE seminar, which was an all-day session. He mentioned that of particular interest was a presentation to the municipal judges, essentially asking that they consider making use of the District Court Mediation Program as a feature in certain municipal court disputes. While this may not be a major issue as the municipal courts are exclusively criminal misdemeanors, there may be some possibilities in nuisance abatement cases and certain disputes arising in neighborhood complaints.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Moaning reported she attended the swearing-in of the new OBA admittees and prepared a welcome message for the new lawyers. Governor Moaning indicated that since the Solo & Small Firm Conference in June has been cancelled, the YLD June meeting will be used to update the Young Adult Guide.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported an inmate at the Federal Correctional Institution in El Reno has filed an action in the Oklahoma Supreme Court against the OBA and State of Oklahoma. It is an application to assume original jurisdiction and a writ of prohibition seeking various remedies against criminal defense attorneys and the OBA. The Office of the General Counsel responded to same on behalf of the OBA. The case number is 119,532. A written report of PRC actions and OBA disciplinary matters for April was submitted to the board for its review.

Governor Vanderburg mentioned that of particular interest was a presentation to the municipal judges, essentially asking that they consider making use of the District Court Mediation Program as a feature in certain municipal court disputes.

Past President Shields said the Investment Committee met, and the OBA is doing good with investments.

BOARD LIAISON REPORTS

Governor Hutter said the **Bench and Bar Committee** is working on their social media campaign rules and regulations. They are going to submit them to the court for approval before proceeding. Governor Edwards indicated the **Clients' Security Fund Committee** met, and there were a number of claims submitted and approved, with multiple claims filed against the same attorneys. Governor DeClerck indicated the **Disaster Response & Relief Committee** Chairperson Molly Aspan has changed firms and is now practicing with Practice LLP. He noted that the FEMA declaration will end at the end of May. The disaster responders have all done a good job of routing the callers through 211 (statewide number for social services), and OILS and Legal Aid Services have done a good job. President-Elect Hicks indicated the **Diversity Committee** is planning CLE sexual harassment at the workplace seminars. The diversity awards deadline is August 2, and the committee is planning to have its awards dinner in conjunction with the Annual Meeting. Executive Director Williams confirmed they are serious about having the dinner on Thursday during the Annual Meeting. Past President Shields said the **Investment**

Committee met, and the OBA is doing good with investments. Chairperson Joe Crosthwait led the meeting where they went over investments. Morgan Stanley currently handles the CSF account. There was discussion regarding sending out some RFPs, and Administration Director Combs has already sent those out. They are looking at custodial fees, fees associated with mutual funds and alternate options with reduced costs. Governor Hilfiger said the **Law Day Committee** sent out a survey on June 4, 2021, to teachers who participated in the event. There were 36 responses received and a suggestion that in order to get other teachers involved next year, effort should be concentrated on notifying the principals of the schools instead of the teachers. This year, 30% of the teachers found out about the Law Day Contest through their principals. They are working on the September Law Day and television show for OETA with a possible McGirt segment. President Mordy mentioned that the student who was the grand champion winner was from Ardmore. Governor Pringle advised that *Sine Die* is next week, and the next **Legislative Monitoring Committee** meeting will be to plan the Legislative Debrief, tentatively scheduled in

August. Governor Garrett said the **Women in Law Committee** met, and they have their line up for the conference set. The conference will be in October. They are currently thinking about a CLE on missing and murdered indigenous people, judicial leadership, civility in the courtroom and much more. The committee has also scheduled a blood drive on June 14 from 1:30 - 4 p.m. in the OBA parking lot.

CLE PROGRAMMING SIMILAR TO CANCELLED SOLO CONFERENCE

Executive Director Williams said Educational Programs Director Johnson is planning a CLE Summer Series with six CLE programs, one each Tuesday with the first CLE on June 22, the final CLE on Tuesday, July 27 and a Social Mixer to conclude the program on July 30. All attendees will be invited to attend the social planned for July 30 at the Jones Assembly in Oklahoma City from 5 - 8 p.m. and will be provided with two drink tickets. The caveat to this statement is that one must register for the mixer and at least one of the CLE programs must be purchased for that to be available.

BOARD OF EDITORS

President Mordy said he has not yet recruited a volunteer to fill the vacancy of the Supreme Court District 9 position on the Board of Editors.

COMMUNICATIONS DIRECTOR RETIREMENT

In the absence of Communications Director Carol Manning, Executive Director Williams announced that Director Manning has set her retirement date for August 2. Her last board meeting will be July 30.

APPLICATION TO SUSPEND FOR FAILURE TO PAY 2021 DUES

Executive Director Williams explained the process of suspension advising that notice to show cause is mailed followed by very diligent efforts to contact each person on the list before the application is filed with the court. The board voted to approve the list.

APPLICATION TO SUSPEND FOR FAILURE TO COMPLY WITH 2020 MCLE REQUIREMENTS

The board voted to approve the list of members who have not complied with 2020 MCLE requirements.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NONPAYMENT OF 2020 DUES

The board voted to approve the list of members who did not reinstate after suspension for nonpayment of 2020 dues.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NONCOMPLIANCE WITH 2019 MCLE REQUIREMENTS

The board voted to approve the list of members who did not reinstate after suspension for noncompliance with 2019 MCLE requirements.

ACCESS TO JUSTICE COMMITTEE REQUESTS ENDORSEMENT/APPROVAL OF THE COURT CLERKS 'HOW CAN WE HELP' BROCHURE AND PERMISSION TO AFFIX OBA LOGO TO THE DOCUMENT

Although President Mordy asked for discussion, there was no discussion. The board voted to approve the list.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENTS

The board approved President Mordy's reappointment of Jeff Trevillion, Oklahoma City; Melissa DeLacerda, Stillwater; Lane R. Neal, Oklahoma City; and Roy D. Tucker, Muskogee, to the PRT with terms expiring 6/30/2024.

BUDGET COMMITTEE APPOINTMENTS

The board approved President-Elect Hicks' appointments to the Budget Committee:

Members of House of Delegates – Philip Hixon, Tulsa; Ed Blau, Oklahoma City; T. Chase McBride, Pryor; Alissa Hutter, Norman; and John Weedn, Miami

Board of Governors – Tim DeClerck, Enid; Amber Peckio Garrett, Tulsa; and Michael J. Davis, Durant

Attorney Members – April Moaning, Oklahoma City; Dylan Erwin, Oklahoma City; Brian Hermanson, Ponca City; Miles Pringle, Nichols Hills; and Jimmy Oliver, Stillwater.

ORIENTATION

IT Director Robbin Watson reviewed the duties of her department to brief new board members and briefed them on several projects she is working on – migration to Office 365, getting the file server onto file share and improving the audio/video in the meeting rooms, specifically Room 131 and the hearing room.

NEXT MEETING

The Board of Governors met in June and July, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, August 27, at the Oklahoma Bar Center.



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OBF Celebrates 75th Anniversary with Court Grants to all 77 Counties

By Candice Pace

THE OKLAHOMA BAR

Foundation is excited to announce that after its 2021 grants and awards process, all 77 Oklahoma counties will have received at least one OBF Court Grant. This year's grants will go to 16 county courts, including the last remaining nine counties that had not previously applied for a grant. "It's been our goal to improve the administration of justice in each county court since the establishment of our program in 2007. This year, in honor of our 75th anniversary, the board is very excited to make this a reality," says OBF Grants & Awards Chair Andrew Shank.

This year's court grants, totaling \$132,882.26, will provide modern technological equipment and updates to improve the administration of justice in Oklahoma county courts.

The OBF funds law-related non-profits, court improvements and law school scholarships. For more news and information, visit www.okbarfoundation.org.

2021 COURT GRANT RECIPIENTS:

District Court	Grant Amount	Technology Grant
Court of Criminal & Civil Appeals	\$5,000	Analysis, design and development for case management software
Haskell County	\$8,424	Courtroom evidence display
LeFlore County	\$23,630	Courtroom audio improvement project
Love County	\$20,879	Courtroom audio system
Muskogee County	\$17,517.48	Two Skype CARTs
Pittsburgh County	\$8,758.74	Video conferencing equipment
Tulsa County	\$21,673.04	One SMART Board and accessories

2021 75TH ANNIVERSARY COURT GRANTS (\$3,000 EACH):

District Court	
Bryan County	Latimer County
Carter County	Logan County
Choctaw County	Texas County
Grant County	Woods County
Kingfisher County	

Ms. Pace is OBF director of development & communications.



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OKLAHOMA BAR FOUNDATION

75 Faces of Impact include:

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Staff and Volunteers from OBF Grantee Partners
OBF Scholarship and Award Recipients
OBF Donors and Advocates
OBF Past Presidents
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www.okbarfoundation.org

OKLAHOMA BAR FOUNDATION
PRESENTS



Diamonds & Disco 75

10-1-2021

Farmers Market Oklahoma City

Our Diamonds & Disco Event will be a fun way to celebrate the OBF's 75th Anniversary while at the same time raising awareness for OBF Grantees and the importance of legal services funding. At this event, you will hear from individuals who have been positively impacted by OBF Grants. The night will include delicious food, cocktails, photobooth and a live band.

100% of the donations and proceeds from sponsorships and ticket sales will help fund OBF Grantees providing legal services and education across Oklahoma.

Contact Candice Pace for sponsorship information at
candicej@okbar.org or 405-416-7081

Tickets go on sale August 15

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Robert McCampbell, Ted Sherwood, Larry Ottaway,
Mack Martin, John Wiggins, David Donchin

Judges for the day: The Honorable Timothy D. DeGiusti
The Honorable Gregory Kent Frizzell
The Honorable Rebecca Nightingale,

FOR REGISTRATION DETAILS GO TO WWW.OKBAR.ORG/CLE

New Opportunities to Serve and Lead

By April Moaning

IF YOU ARE LIKE ME, YOU have spent countless hours scrolling memes and social media posts about the “outside opening back up.” The phrase is meant to provide comic relief, but it really is quite strange to think just a year ago, we were quarantined in our homes and unable to spend time with our loved ones. In addition to the separation from my friends and family, one restriction I found difficult was my inability to attend networking events and serve the community.

I was recently able to interact with fellow colleagues as the OBA YLD met in person after more than a year of virtual meetings. During the meeting, we dedicated much of our time to brainstorming community service projects. We determined our first course of action will be to schedule meetings with school superintendents in order to identify high school events YLD members can attend. Ultimately, our goal is to help educate students regarding important legal topics. We also pledged to volunteer this month at a drive-through wills event hosted by Oklahoma Indian Legal Services. To say we are excited about jumping in feet first would be an understatement!

Although OBA YLD has commenced in-person meetings, the American Bar Association (ABA) has implemented a hybrid model

for the 2021 Annual Meeting. The conference, which is scheduled for Aug. 4-10, includes a combination of virtual and in-person events. ABA YLD events such as the general assembly, “Day Party Open Mic,” and 5K will all be conducted virtually. I am excited about attending a conference with so many interactive virtual events!

JOIN OUR TEAM

Many of my colleagues have expressed that although they enjoy the intellectual challenges associated with the practice of law, they feel most fulfilled when utilizing their time and skills to empower those who are voiceless. Members of the YLD have committed to lead with a servant’s heart. This includes advocating for a wide array of individuals in our community and participating in events such as those described above.

Every lawyer who was first admitted to the practice of law in any jurisdiction within the past 10 years is automatically a member of the YLD. This means you have an open invitation to each and every YLD meeting, community service project and social event. Should you desire to serve as a representative for your district and lead by example, I encourage you to apply for the YLD Board of Directors.

NOMINATING PROCEDURE

Article 5 of the division bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The petition must be signed by at least 10 members of the OBA YLD and must be submitted by the deadline set by the Nominating Committee chairperson. A separate petition must be filed for each opening, except a petition for a directorship shall be valid for one-year and two-year terms and at-large positions. A person must be eligible for division membership for the entire term for which elected.

ELIGIBILITY

All OBA members in good standing who were admitted to the practice of law 10 years ago or less are members of the OBA YLD. Membership is automatic – if you were first admitted to the practice of law in 2011 or later, you are a member of the OBA YLD!

ELECTION PROCEDURE

Article 5 of the division bylaws governs the election procedure. In September, a list of all eligible candidates will be published in the *Oklahoma Bar Journal*. Ballots will be emailed Oct. 1 to all YLD members at the email address in the official OBA roster. All members

2022 YLD BOARD VACANCIES*

OFFICERS

Officer positions serve a one-year term.

Chairperson-Elect: Any member of the division having previously served for at least one year on the OBA YLD Board of Directors. The chairperson-elect automatically becomes the chairperson of the division for 2023.

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

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

BOARD OF DIRECTORS

Board of Directors members serve a two-year term.

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

District 2: Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, McCurtain, McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah counties

District 3: Oklahoma

District 4: Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Harper, Kingfisher, Major, Roger Mills, Texas, Washita, Woods and Woodward counties

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

District 6: Tulsa County

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

District 8: Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties

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

At-Large: All counties

At-Large (Rural): Any county other than Tulsa County and Oklahoma County

*Confirming vacant positions was still underway at the time this article went to press. Some vacancies are being filled by appointment. For the most current information, go to www.okbar.org/yld/elections.

of the division may vote for officers and at-large directorships. Only those members with OBA roster addresses within a subject judicial district may vote for that district's director. The members of the Nominating Committee shall only vote in the event of a tie. Please see OBA YLD Bylaws for additional information at www.okbar.org/yld/bylaws.

DEADLINE

Nominating petitions, accompanied by a photograph and bio (in electronic form) for publication in the OBJ, must be received by Nominating Committee Chairperson Jordan L. Haygood at jordan.haygood@ssmhealth.com no later than 5 p.m. Friday, Aug. 13.

Results of the election will be announced at the YLD meeting at the OBA Annual Meeting Nov. 10-12 at the Sheridan Hotel in Oklahoma City.

TIPS FROM THE NOMINATING COMMITTEE CHAIRPERSON

■ A sample nominating petition can be found at www.okbar.org/YLD/elections. This will help give you an idea of the format and information required by OBA YLD Bylaws (one is also available from the Nominating Committee). Email aprilmoaninglaw@gmail.com

or derwin@holladaychilton.com to request a nominating petition.

- Obtain signatures (electronic signatures are permitted) on your nominating petition from at least 10 lawyers who were first admitted to practice law in the state of Oklahoma within the past 10 years. Signatures on the nominating petitions do not have to be from young lawyers in your own district (the restriction on districts only applies to voting).
- Take your petition to local county bar meetings or the courthouse and introduce yourself to other young lawyers while asking them to sign – it's a good way to start networking.
- You can have more than one petition for the same position and add the total number of original signatures.
- Don't wait until the last minute – I will not accept petitions that are scanned and emailed after the deadline.
- Membership eligibility extends to Dec. 31 of any year that you are eligible.
- Membership eligibility starts from the date of your first admission to the practice of law, even if outside of the state of Oklahoma.
- All candidates' photographs and brief biographical data are required to be published in the OBJ. All biographical data must be submitted by email, with no exceptions.

Petitions submitted without a photograph and/or brief bio are subject to being disqualified at the discretion of the Nominating Committee.

Ms. Moaning practices in Oklahoma City and serves as the YLD chairperson. She may be contacted at aprilmoaninglaw@gmail.com. Keep up with the YLD at www.facebook.com/obayld.

CONSUMER BROCHURES

The OBA has consumer brochures to help nonlawyers navigate legal issues. Many lawyers and firms find them helpful in explaining basic legal issues. Topics include landlord and tenant rights, employer and employee rights, small claims court, divorce, information for jurors and more! Only \$4 for a bundle of 25. To order, visit www.okbar.org/freelegalinfo.





**FRIDAY,
OCTOBER 1, 2021
9 A.M. - 3:50 P.M.**

Embassy Suites by Hilton
3233 Northwest Expressway
Oklahoma City, OK 73112

MCLE 6/2



**Mona Salyer Lambird
Spotlight Awards Luncheon
Keynote Speaker:**

Kelli M. Masters,
*Founder, CEO, & Chief Player Agent,
KMM Sports*

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2021 WOMEN IN LAW CONFERENCE

CLE PROGRAM AND AWARDS LUNCHEON

Bevan Stockdell and Shannon Panach, Women in Law Committee Co-Chairs
Melissa East, Vice-Chair

PROGRAM AGENDA:

9:00 a.m.

Judicial Leadership: A Panel of Female State Court Judges

Moderator: The Honorable Barbara Swinton, Chief Judge, Oklahoma Court of Civil Appeals
The Honorable Noma Gurich, Chief Justice 2019-2020, Supreme Court of Oklahoma
The Honorable Dana Kuehn, Presiding Judge, Oklahoma Court of Criminal Appeals
The Honorable Jane Wiseman, Chief Judge 2020, Oklahoma Court of Civil Appeals
The Honorable Sheila Stinson, District Court Judge, Oklahoma County

10:00 a.m.

Missing and Murdered Indigenous Women/People

Brenda S. Golden, Golden Legal Services, Okmulgee

10:50 a.m.

You're Allowed to be More than a Lawyer: Navigating Life and a Career

Paula Williams, GableGotwals, Oklahoma City

11:45 p.m.

Mona Salyer Lambird Spotlight Awards Luncheon

Keynote Address: *Pushover to Pioneer*

Kelli M. Masters, Founder, CEO, & Chief Player Agent, KMM Sports

1:10 p.m.

Civility in the Courtroom (Ethics)

Chief Judge Janice Loyd, U.S. Bankruptcy Court, Western District of Oklahoma

Magistrate Judge Suzanne Mitchell, U.S. District Court, Western District of Oklahoma

2:10 p.m.

Agent for Change: The Power of Diversity in Leadership

Kelli M. Masters, Founder, CEO, & Chief Player Agent, KMM Sport

3:00 p.m.

The Right to Bare Arms: What Your Style Says About You (Ethics)

Katherine Mazaheri and Mary Rahimi, Mazaheri Law Firm, Oklahoma City

3:50 p.m. Adjourn

4:00 - 5:30

Closing Reception

SAVE THE DATE

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PRESENTED BY THE OKLAHOMA BAR ASSOCIATION



OCT. 19, 2021

OKLAHOMA BAR CENTER
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FOR MORE INFORMATION, VISIT WWW.OKBAR.ORG/OYLP

• NOTICE OF PETITION FOR REINSTATEMENT •

**NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT
OF JOEL EDWARD SCOTT, III, SCBD # 6962
TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION**

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., ch. 1, app. 1-A, that a hearing will be held to determine if Joel Edward Scott, III should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **TUESDAY, AUGUST 24, 2021**. Any person wishing to appear should contact Loraine Dillinder Farabow, First Assistant General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

FOR YOUR INFORMATION

JNC ELECTION RESULTS ANNOUNCED



Joel C. Hall



David K. Petty

Attorneys Joel C. Hall of Oklahoma City and David K. Petty of Guymon have been elected by OBA members to six-year terms on the state Judicial Nominating Commission.

Mr. Hall will represent District 5, which includes most of Oklahoma County.

He is a partner at the Oklahoma City law firm of Hall & Ludlam PLLC, where he practices primarily in the

areas of business and consumer litigation, bankruptcy and insolvency and debtor/creditor relations. He received his J.D. from the OU College of Law with honors in 1989 and has served on the Chapter 7 Panel of Trustees for the U.S. Bankruptcy Court for the Western District of Oklahoma since 1998.

Mr. Petty will represent District 6, comprised of Alfalfa, Beaver, Beckham, Blaine, Canadian, Cimarron, Custer, Dewey, Ellis, Garfield, Grant, Harper, Kay, Kingfisher, Lincoln, Logan, Major, Noble, Payne, Roger Mills, Texas, Woods and Woodward counties.

He is a graduate of the OU College of Law and served as the 1987 OBA president. He is a member of the American College of Trial Lawyers, American College of Trust and Estate Counsel and American Board of Trial Advocates. Previously, he served on the Board of Bar Examiners, OBF Board of Trustees, Professional Responsibility Commission and chaired the MCLE Committee.

The Judicial Nominating Commission is charged with selecting candidates for judicial appointments made by the governor.

WOMEN IN LAW COMMITTEE HOSTS ANNUAL BLOOD DRIVE

The OBA Women in Law Committee held their second annual blood drive June 14. From 1:30 to 4:30 p.m., the committee invited OBA members to visit the Bloodmobile, the Oklahoma Blood Institute's mobile donation center, which was set up in the bar center parking lot. Nine members donated blood, including a first-time donor and a double red cell donation. These donations saved up to 27 lives.

April Kelso, chair of the WIL service subcommittee, explained, "This is the second time we have partnered with the OBI to host a blood drive, and we look forward to partnering with them again in the future! There continues to be a blood shortage in our state, and we are proud to do our part to help."



IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, Sept. 6, in observance of Labor Day. Be sure to docket the OBA Annual Meeting to be held in Oklahoma City Nov. 10-12.



LHL DISCUSSION GROUP UPCOMING MEETINGS

"Making Time for Family" will be the topic of the Aug. 5 meeting of the Lawyers Helping Lawyers monthly discussion group. For the Sept. 2 meeting, there will be a meditation presentation by Collin Walke. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. There is no cost to attend, and snacks will be provided. RSVPs to tomcum-mingslawfirm@gmail.com are encouraged to ensure there is food for all. The group will also meet virtually at the same time using BlueJeans. Email debraj@okbar.org for login information.

ON THE MOVE

Laura Eakens has been named partner and **Amber Brock** has joined the Oklahoma City firm of Jennings Teague. Ms. Eakens practices primarily in the areas of transportation law, products liability, employment law, insurance defense and general civil litigation. She received her J.D. from the TU College of Law in 2009 and has been with the firm since 2012. Ms. Brock focuses her practice on defending insurance companies and their insureds and the defense of general civil litigation matters.

Eric Money and **Emily Pittman** have joined the Oklahoma City office of Hall Estill as shareholders. **Lauren Marciano** and **Eric Underwood** have joined the firm's Tulsa office as associates. Mr. Money practices primarily in the areas of energy, oil and gas law and commercial litigation. He is a former OBA Energy and Natural Resources Law Section chair. Ms. Pittman focuses her practice on Oklahoma Corporation Commission matters. She is a member and past president of the Mineral Lawyers Society and previously spent nine years as an in-house attorney at Chesapeake Energy. Ms. Marciano practices in the area of civil litigation, including bad faith disputes, torts and transportation law. Mr. Underwood practices in the area of corporate services, focusing on business formation.

Jonathan B. Austin has been appointed the new senior vice president for institutional administration at the Southern Baptist Theological Seminary. A 2003 graduate of the

OU College of Law, Mr. Austin practiced in the areas of business transactional work, commercial real estate and nonprofit law for nearly 15 years at a specialty firm in Oklahoma City as a partner.

Lauren King has been appointed by President Biden to the U.S. District Court for the Western District of Washington. If confirmed, she will be only the third Native American federal judge in the country and the first Native American federal judge in Washington. Ms. King is a citizen of the Muscogee Nation and practices at the Seattle law firm of Foster Garvey.

Austin J. Young was named partner of the Oklahoma City law firm of Johnson Hanan Vosler Hawthorne & Snider. Mr. Young practices primarily in the areas of medical malpractice defense, constitutional civil rights defense and civil litigation. He has represented clients in state and federal district courts across Oklahoma, the U.S. Court of Appeals for the 10th Circuit and the U.S. Supreme Court.

Ryan M. Oldfield and **Lauren N. Lenahan** have joined the Oklahoma City law firm of Durbin Larimore and Bialick. Mr. Oldfield practices in all areas of insurance defense, including motor vehicle and trucking collisions, products liability, industrial accidents, breach of contract and bad faith. He received his J.D. from the OCU School of Law in 2000. Ms. Lenahan primarily practices in the areas of environmental law, insurance law, products liability and personal injury. She received her J.D. from the OCU School of Law, *magna cum laude*, in 2018.

Steve Sherman has joined the Oklahoma City office of Phillips Murrah as of counsel. Mr. Sherman practices in the areas of business and real estate transactions, including business and real estate acquisitions, dispositions, leases and land use.

Wynoka M. McClellan and **Kristopher K. McVay** have been named partners at the Tulsa law firm previously known as Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco PC. As of June 1, the firm is now Atkinson, Brittingham, Gladd, Fiasco, Edmonds & Annis PC and will continue to center its litigation practice on defending insurance companies, corporations and those in the professional services. Ms. McClellan joined the firm in 2016 and practices in the area of civil litigation with an emphasis on research and writing. Mr. McVay, who joined the firm in 2017, has been admitted to all three federal districts in Oklahoma and the Osage Nation, Muscogee (Creek) Nation and Cherokee Nation courts.

Melvin Burch has joined Jones PR, making the agency the first to have Native American counsel. Mr. Burch, a citizen of the Chickasaw Nation, will provide insight on conducting business with Native American nations and businesses. Previously, he served as the U.S. Department of the Interior's Regional Fiduciary Trust Administrator at the Office of Special Trustee for American Indians for nine western states. He is a member of the National Congress of American Indians, the Association on American

Indian Affairs, the National Native American Bar Association and the OBA Indian Law Section.

Cheryl Jackson and Michon Hughes have joined the Tulsa law firm of Sherwood, McCormick & Robert. Ms. Jackson will practice in the areas of lien enforcement, transportation compliance, employment and HR matters, negotiating and drafting business contracts and complex litigation matters. She received her J.D. from the TU College of Law in 2009. Ms. Hughes will practice primarily in the areas of civil litigation, elder and family law and white-collar criminal defense. She graduated from the TU College of Law with honors.

Stephen L. McClellan has joined the Tulsa office of Smith Barkett Law Group PLLC. Mr. McClellan will focus on representing catastrophic injury victims and individual/commercial clients in first-party insurance claims statewide. He received his J.D. from the OU College of Law in 1994 and has over 25 years of experience defending commercial trucking, civil injury, casualty, construction defect and product liability claims.

Katheleen Guzman has been appointed dean of the OU College of Law. She has served as interim dean for the College of Law since 2019, associate director of the Law Center, associate dean of academics and associate dean for research and scholarship. Ms. Guzman, who earned her J.D. from the University of Arkansas School of Law, received the 2014 Medal for Excellence Award from the Oklahoma

Foundation for Excellence for Research University Teaching, the 2008 Merrick Foundation Teaching Award and an OBA Mona Salyer Lambird Spotlight Award.

Elizabeth Isaac, Julie Langdon, Ann Robl and Evan Talley have been named shareholders and directors of Dunlap Coddling. Ms. Isaac leads the firm's design group and practices in the areas of patent preparation and prosecution, due diligence, trademarks, copyrights and entertainment law. Ms. Langdon protects and enforces her clients' intellectual property through litigation and non-litigation strategies and helps clients obtain and maintain patent and trademark protection. Ms. Robl practices in the areas of patent preparation and prosecution, patent post-grant proceedings, patentability analyses, prior art searching, opinion preparation, licensing, intellectual property agreement preparation and analysis, trademark protection and intellectual property strategy and portfolio management. Mr. Talley enforces and defends his clients' interests in disputes concerning intellectual property rights.

Suzanne Paulson has been appointed CEO of the Oklahoma Municipal Assurance Group and will be the first female to serve in that role since the group's creation in 1977. Ms. Paulson has been part of the OMAG team for eight years, beginning as associate general counsel and spending the last four years as general counsel.

Cheryl P. Hunter, Gideon A. Lincecum and James W. Dobbs

have formed the Oklahoma City firm of Hunter & Company Law PLLC, located at 915 N. Robinson Ave. The firm provides a range of corporate and commercial legal services to corporations, shareholders, directors and officers, business ventures and entrepreneurship, small businesses and individuals. They may be reached at 405-400-9609.

Jefferson Howeth has been named senior corporate counsel for AmTrust Title Insurance Co. He has over 15 years of experience representing title insurance agents and underwriters. Mr. Howeth was previously a legal team member at Centex Corp. and general counsel for Centex Title & Insurance.

Walt Haskins is retiring from the Tulsa law firm of Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco PC after 41 years. Mr. Haskins has opened a private law practice limited to the representation of plaintiffs in personal injury litigation and insurance disputes. He may be reached at 311 E. 11th St., Tulsa, 74120; 918-932-8207; WDHaskins@protonmail.com.

Dan Pond and Stephanie Corbett have joined Swain Law Group. Mr. Pond practices in the areas of criminal defense and select civil litigation, with an emphasis on criminal jury trials. He joins the firm's Norman office after 10 years as a prosecutor in the Oklahoma County District Attorney's Office. Ms. Corbett, who joined the firm's Oklahoma City office, practices in the areas of general civil litigation and personal injury. She joins the firm after 17 years in insurance defense.

Judge Thad Balkman has been appointed to serve as a member of the National Conference of Commissioners on Uniform State Laws. Judge Balkman will serve the remainder of an unexpired term that ends June 30, 2023, and then continue for a four-year term that begins July 1, 2023, and ends June 30, 2027.

Kristopher E. Koepsel was re-elected president and CEO of Riggs, Abney, Neal, Turpen, Orbison & Lewis for 2021. Mr. Koepsel is based in the firm's Tulsa office and practices primarily in the areas of business and commercial law, civil litigation, civil rights, employment and labor law, government and politics, insurance and bad faith, medical and professional negligence, personal injury, product liability, real estate and transportation law matters. Also elected to the firm's Board of Directors were **George M. Emerson** as vice president and assistant secretary, **Lisa Riggs** as secretary and assistant treasurer and **Thomas M. Askew** as treasurer and assistant secretary.

Anthony Hendricks will serve as chair of Crowe & Dunlevy's new practice group that will address cybersecurity and data privacy needs. The group was

formed with the specific goals of helping clients prevent breaches, prepare for incidents and comply with evolving governmental requirements.

William G. Paul received an honorary degree from OU during the May 14 graduation ceremony honoring doctoral candidates. Mr. Paul earned both his bachelor's degree and J.D. from OU. He currently serves as of counsel at the Oklahoma City law firm of Crowe & Dunlevy, where he first began working in 1957. He also served as president of the American Bar Association from 1999 to 2000. During that term, he initiated programs to increase diversity in the legal system.

Judge Ronald Kincannon and **David Petty** were honored as 2020 and 2021 Panhandle State Association Alumni & Friends Hall of Fame inductees during a May 22 ceremony. Judge Kincannon received his bachelor's degree from Panhandle State in 1970 and has served as Cimarron County judge for 24 years. Mr. Petty received his J.D. with honors from the OU College of Law in 1964. He currently practices law in the panhandle and serves on the Foundation Board at Panhandle State. He served as OBA president in 1987.

Lloyd T. Hardin Jr. was named a recipient of the Spring 2021 Japanese Imperial Decorations. Mr. Hardin has served as honorary consul general of Japan in Oklahoma City since his appointment in 2006. He previously received the Order of the Rising Sun, Gold Rays with Neck Ribbon, in recognition of his contributions toward promoting mutual understanding and strengthening friendly relations between Japan and the U.S. during his 15 years of service.

Matthew Ballard, Oklahoma district attorney for District 12, was honored by the Department of Defense with the Employer Support of the Guard and Reserve Patriot Award. The award was created to publicly recognize individuals who provide outstanding patriotic support and cooperation to their employees who have answered their nation's call to serve.

Louis Bullock received the Rogers State University Constitution Award. Mr. Bullock has worked as a civil rights lawyer for over 45 years and was involved in cases that brought change to a variety of institutions, including Oklahoma prisons, Tulsa's jail, the Tulsa Police Department and the Oklahoma Department of Human Services. The award has been

HOW TO PLACE AN ANNOUNCEMENT:

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

you. Sections, committees and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., *Super Lawyers*, *Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing and printed as space permits.

Submit news items to:

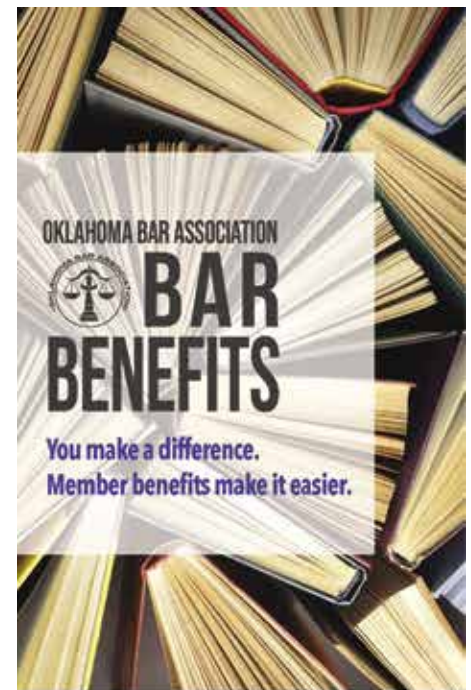
Lauren Rimmer
Communications Dept.
Oklahoma Bar Association
405-416-7018
barbriefs@okbar.org

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

given to Oklahomans who demonstrate a strong commitment to the principles of the U.S. Constitution since 1987. The only other attorney who has received the award was Ada Louis Sipuel Fisher in 1994.

Betsy G. Jackson has been elected to the Board of Directors of Hall Estill. **Stephen W. Ray** has been elected to the firm's Executive Committee. Ms. Jackson practices in the areas of corporate and commercial law, including securities, business transactions, commercial finance, real estate and mergers and acquisitions. Mr. Ray, who previously served on the Executive Committee from 2012 to 2015, practices in the areas of corporate and commercial law, including securities, business transactions, commercial finance, healthcare, tax and estate planning and mergers and acquisitions.

Kelli J. Stump was named second vice president of the American Immigration Lawyers Association for the 2021 to 2022 term. Ms. Stump practices primarily in the areas of family-based immigration, complex deportation with an emphasis on "crimmigration" matters leading to inadmissibility and deportability and federal litigation in the immigration context.



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Heba Irvin Aston III of Tulsa died June 19. He was born in 1939 in McAlester. Upon graduation from Will Rogers High School, Mr. Aston was awarded the first tennis scholarship to TU. He received his J.D. from the TU College of Law in 1965, following in his grandfather's footsteps, who practiced law in McAlester for over 40 years. During his nearly 55-year legal career, Mr. Aston argued thousands of cases before Oklahoma courts and assisted hundreds of clients with their estate planning needs.

David John Bailey of Choctaw died June 8. He was born July 24, 1949, in Oklahoma City. Mr. Bailey graduated from Midwest City High School in 1967 and attended Central State College to become a teacher. However, he ultimately received his J.D. from the OCU School of Law in 1976 and practiced law for over 35 years.

Ronald J. Carlson Sr. of Collierville, Tennessee, died April 20. He was born May 21, 1936, in Jamestown, New York. Mr. Carlson received his bachelor's degree in chemical engineering from Rensselaer Polytechnic Institute in 1958 and his J.D. from the Georgetown University Law Center in 1964. He was a patent attorney for Conoco in Ponca City before retiring.

James T. Dupré of Oklahoma City died May 9. He was born Dec. 30, 1949, in Duncan. **After attending the Oklahoma Military Academy, Mr. Dupré served in the U.S. Army during the Vietnam War.** He received his J.D. from the OCU School of Law in 1981 and worked as an attorney for the Oklahoma Commissioners of the Land Office for over 20 years.

John Thomas Eberle of Oklahoma City died April 30. He was born June 22, 1942. Mr. Eberle graduated from Bishop McGuinness High School, attended Georgetown University and received his J.D. from the OU College of Law in 1967. **After passing the bar, he joined the U.S. Navy and served in Vietnam on the USS Paul Revere. In 1969, he became a member of JAG and was stationed in Philadelphia.** Upon returning to Oklahoma, he worked as an assistant district attorney before entering private practice as a probate attorney. He served as parish council chairman of the Cathedral of Our Lady of Perpetual Help and was involved in the Heritage Hills neighborhood association. Memorial contributions may be made to Bishop McGuinness High School or Catholic Charities.

Edwin F. Garrison of North Chesterfield, Virginia, died June 25. He was born Oct. 30, 1939, at his grandmother's house in Bridgeport. He attended Texas Tech University and worked in the local oil fields to pay for school. Mr. Garrison received his J.D. from the TU College of Law in 1967 and began his legal career as a defense trial lawyer at the firm of Looney, Nichols, Johnson and Hayes. He was a member of the Oklahoma Association of Defense Counsel and the American Board of Trial Advocates. Memorial contributions may be made to the Oklahoma Medical Research Foundation or Western Oaks Christian Church.

Gerald W. Hunter of Palm Springs, California, died Dec. 14, 2018. He was born April 22, 1932, in Council Hill. Mr. Hunter attended OSU on a football scholarship and received his J.D. from the TU College of Law in 1963. **Upon graduation, he**

joined the U.S. Navy as an officer and was stationed in San Francisco, Japan and Hawaii. He then moved to Sallisaw, where he practiced law and served as the Sequoyah County district attorney. He moved to California after retiring in 2012.

John R. McKee of Oklahoma City died Feb. 7. He was born April 12, 1936. While earning his bachelor's degree at OU, he was a member of the Sigma Nu fraternity, serving as president for two years, and was active in IFC, ROTC and the Scabbard and Blade Military Honor Society. **Upon graduation, he received his officer's commission and served as a first lieutenant, artillery branch in Lawton.** Mr. McKee received his J.D. from the OU College of Law in 1961 and practiced primarily in the areas of oil and gas and commercial litigation, in addition to serving as mediator and arbitrator for the American Arbitration Association. Memorial contributions may be made to the Nichols Hills United Methodist Church or the Santa Fe Botanical Garden.

M•Kevin Walker of Midwest City died June 10. He was born Dec. 8, 1962, in Littlefield, Texas. After graduating from South Oklahoma Junior College, Mr. Walker worked as a paramedic with the Midwest City Ambulance Service for 13 years. He returned to school at Southern Nazarene University and received his J.D. from the Oklahoma Christian University Law School. He was a member of the Christian Legal Society, Oklahoma Lawyers for Children Inc. and served as a Mid-Del School District board member for over nine years. He enjoyed being an advocate for the teachers and coaches in the school district.

2021 ISSUES

SEPTEMBER

Bar Convention

OCTOBER

DUI

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

NOVEMBER

Tax Law

Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2021

DECEMBER

Elder Law

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

2022 ISSUES

JANUARY

Meet Your Bar Association

FEBRUARY

Labor & Employment

Editor: Roy Tucker
RTucker@muskogeeonline.org
Deadline: Oct. 1, 2021

MARCH

Impact of
McGirt v. Oklahoma

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

APRIL

Law Day

MAY

Energy

Editor: Tony Morales
antoniomoraes1984@gmail.com
Deadline: Jan. 1, 2022

AUGUST

Gaming

Editor: Scott Jones
sjones@piercecouch.com
Deadline: May 1, 2022

SEPTEMBER

Bar Convention

OCTOBER

Education

Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2022

NOVEMBER

Municipal Law

Editor: Roy Tucker
RTucker@muskogeeonline.org
Deadline: Aug. 1, 2022

DECEMBER

Ethics & Professional
Responsibility

Editor: Cassandra Coats
cassandracoats@leecoats.com
Deadline: Aug. 1, 2022

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

MANDATORY CONTINUING LEGAL EDUCATION CHANGES

OK MCLE RULE 7, REGULATION 3.6

Effective **Jan. 1, 2021**, of the 12 required instructional hours of CLE each year, at least two hours must be for programming on Legal Ethics and Professionalism, legal malpractice prevention and/or mental health and substance use disorders. For more information, visit www.okmcle.org/mcle-rules.



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405-229-1476 or 405-204-0404

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.

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.

COUNSEL TO COMMISSION – The Oklahoma Tax Commission is seeking highly qualified and experienced candidates to be considered for the Counsel to Commission position. The ideal candidate should possess at least five years of experience in the practice of tax law or related field, including litigation experience. Experience in practicing in federal and state district courts, as well as significant prior supervisory experience, is strongly preferred. Counsel will assume functions of planning, organizing, monitoring legal activities, and interpreting laws and regulations for the Commission. Counsel will also provide legal advice and assistance to the Commissioners, including compliance with the Administrative Procedures Act and the Open Meetings Act, as well as interact and work with the Agency General Counsel and Administrative Law Judges. This position will be housed in Oklahoma City and has an annual salary of \$85,000 - \$115,000, based upon education and experience. For more details and to apply, visit jobs.ok.gov or email a resume to Applicants@tax.ok.gov.

POSITIONS AVAILABLE

ASSOCIATE ATTORNEY FOR LITIGATION PRACTICE in a growing NW OKC law firm. Our practice areas include Family Law, Employment Law, Immigration, and other areas of Civil Litigation. Candidates must be in good standing with the OBA, have excellent research and writing skills, and be proficient with technology in the legal setting. Our ideal candidate would be a licensed attorney in good standing with 3-5 years in a complimentary practice area, motivated, hardworking, comfortable in a court room, working knowledge of civil procedure, litigation and deposition experience, and good interpersonal skills. We are looking for a team player, committed to their work and willing to go that extra mile if needed. Ideal candidate will have a heart for social justice and the ability to serve client with compassion while maintaining an active and diverse caseload. We are looking for candidates that exhibit a stable job history, commitment and responsiveness to client needs, are organized when tasked with multiple cases, and able to communicate progress of case effectively and efficiently. A plus if candidate has ability to speak a foreign language, has license to practice in Federal court, multi-state bar licenses. We are an equal opportunity employer and follow Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, disability or genetic information. Send resumes, writing samples, and references to marquita@mazaherilaw.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.

THE OKLAHOMA TAX COMMISSION seeks to hire an attorney to serve as a part-time law clerk to conduct legal research for its administrative law judges. The position is limited to approximately 20 hours per week at an hourly rate of \$29.69. For more details and to apply, visit jobs.ok.gov.

POSITIONS AVAILABLE

THE OKLAHOMA GUARDIAN AD LITEM INSTITUTE, a nonprofit organization, is looking to fill a staff attorney position funded by a VOCA grant. Applicants must be licensed to practice law in Oklahoma and have 16 hours of domestic violence training. Preference will be given to candidates with guardian ad litem experience, child welfare experience, or nonprofit agency experience. Submit cover letter, resume and professional references to Hiring Department, Oklahoma Guardian Ad Litem Institute, 1701 Signal Ridge Drive, Suite 110, Edmond, Oklahoma 73013, facsimile 405-888-5449, or sharon@okgalinstitute.org. EOE.

DISTRICT 17 DISTRICT ATTORNEY'S OFFICE is looking for an Assistant District Attorney for our Choctaw County Office. Requires a J.D. from an accredited law school. Must be admitted to the Oklahoma State Bar and be in good standing. Submit resume with supporting documentation to the following: District Attorney Mark Matloff, 108 N Central, Suite 1, Idabel, OK 74745. Office: 580-286-7611. Fax: 580-286-7613. Email: tammy.toten@dac.state.ok.us.

OKLAHOMA CITY LAW FIRM SPECIALIZING IN ENERGY LAW is seeking an associate attorney for assistance in legal research, drafting and proofing documents, and other varying litigation needs. We are a growing company with a team-oriented environment. Experience is not required but we would prefer a flexible candidate with a strong interest in the legal side of the oil and gas industry. A cover letter, resume, and writing sample can be submitted by email to elizabeth.deshazer@oeaplhc.com.

STEIDLEY & NEAL, PLLC, is searching for an associate attorney with excellent research and writing skills with 5-7 years' experience for its Tulsa office. Competitive salary and other benefits commensurate with level of experience. Looking for a motivated candidate interested in providing research and writing support for civil litigation, with an emphasis in insurance defense. Applications will be kept in strict confidence. Send resume and writing sample to Steidley & Neal, located in CityPlex Towers, 53rd Floor, 2448 E. 81st St., Tulsa, OK, 74137, attention Dwain Witt, Legal Administrator.

POSITIONS AVAILABLE

OKLAHOMA BUREAU OF NARCOTICS seeks an attorney in the Office of General Counsel. This is a new position. The Office of General Counsel advises the OBN Director, OBN Commission, and over 100 agents statewide on a wide variety of legal issues. This attorney may be required to assist district attorneys with OBN criminal prosecutions, present evidence in administrative hearings, conduct legal research and writing, and even provide training opportunities. This position is for a self-starter with problem-solving skills who can work with a small team of forward-thinking attorneys. Excellent starting salary will depend on experience. To apply, send a cover letter expressing your interest, along with your resume, to ksimmons@obn.ok.gov.

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Life Lessons from the Practice of Law

By Phil G. Busey Sr.

AS WITH YOU, THE LAW has been my career but also my foundation in life and business.

As a kid growing up in Oklahoma City, I knew I wanted to be a lawyer. Fortunately, one of the first women lawyers from New York moved down the block. She encouraged me. She gave me books, shared baseball memorabilia and *Oklahoma Bar Journals*. As a kid, I can't say I read them as diligently as comic books; however, it was ironic because years later, I became an attorney and member of the OBA.

Committing ourselves to the study and practice of law, it is difficult to separate self from what the law provides us. Our careers and lives are shaped by the law. It becomes who we are. The oath we take is a sacred, guiding obligation and inspiration for conduct in life, career and actions – to uphold the Constitution and committing to high standards of truth and integrity in all we do.

My practice was focused on banking, commercial and corporate law. I didn't realize it absolutely prepared me for my career in business. What I learned practicing was invaluable in growing a global aerospace and defense firm. Critical thinking, applying logic and understanding the law became my business foundation. I am grateful for so many lawyers I learned from.



Having undergraduate degrees in history and political science, my areas of practice were the bridge to business. Starting as an assistant general counsel at the largest bank in Oklahoma, I was fortunate the general counsel took a special interest in training me.

We all have similar learning experiences. Lessons: Friday afternoon at 4 p.m. being asked to prepare my first commercial loan agreement. There was no template, I asked, but the agreement was needed Monday morning. Books in hand, I worked all weekend putting it together. After proudly going over it with my boss, with a red pen in hand, the actual agreement was done! He said, "You will never forget how to put one of these together."

When answering an executive or client's question, "No," is not an option. Provide at least three

alternatives. Memos should be less than one page. Only attach legal research if asked. Be able to write a contract with pencil and paper only and be willing to sign a legal opinion. Never ask someone else to do something you would not do. Importantly, relationships matter. Treat colleagues, clients and people with respect. Know more about your clients than they do. Practice with integrity and professional decorum at all times. Lessons in law are life lessons as well.

Being an attorney is a high calling. The valuable lesson is upholding the duty we have – from the courts to business – to honor our oath and those we serve.

Mr. Busey is the founder and CEO of the Busey Group of Companies and DRG in Oklahoma City.

FRIDAY,
SEPTEMBER 10, 2021
9 A.M. - 3:45 P.M.

Oklahoma Bar Center
1901 N. Lincoln, Blvd, OKC



FEATURED PRESENTER:

Herb Rubenstein, JD, MPA, DSS
Attorney and Author

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MORNING PROGRAM: 9 - 11 A.M.

A CRITICAL THINKING APPROACH TO LEGAL ETHICS

MCLE 2/2

- Understand the Key Gaps in Model and State Ethics' Codes
- Develop Your Own High Level Set of Ethical Standards
- Encourage Other Lawyers to be More Ethical
- Review Recent Oklahoma Cases and Opinions Regarding Ethics
- Become Aware of Covid's Negative Impact on Legal Ethics in the US
- Learn the "State of the Art" in Lawyer Disciplinary Systems

AFTERNOON PROGRAM #1: 11:30 A.M. - 1:30 P.M.

HOW TO BE A CHANGE AGENT IN THE LEGAL PROFESSION

MCLE 2/0

- Develop A Coherent Strategy To Achieve Change
- Identify The Key Area Where You Want to Improve The Legal Profession
- Identify the Barriers That Exist to Change in this Area
- Identify Key Stakeholders in this Area
- Write & Speak Publicly to Build A Team & Followers to Achieve Change
- Set Interim Goals and Measure Progress
- Deal With the Personal Challenges of Being a Change Agent

AFTERNOON PROGRAM #2: 1:45 - 3:45 P.M.

PROFESSIONALISM, LEADERSHIP AND ADVISING CLIENTS REGARDING ESG

MCLE 2/2

- Identify How Lack of Professionalism Cost An Attorney Legal Fees' Award
- How to Demand Professionalism from Other Lawyers
- Learn a Key Leadership Theory to Help You Become a Better Leader
- Learn the Five Key Leadership Skills Attorneys Need
- Become Aware of the Boom in ESG Related Legal Services
- Improve and Expand Your Practice in the ESG Area for All Lawyers

Courts & MORE



“

“Love this email format!
It's an excellent change!”
- Kimberly Hays,
2018 OBA President

”

The Oklahoma Bar Association's new, electronic court issue, Courts & More, highlights Oklahoma appellate court information and news for the legal profession. It is published online and delivered to members by email every Wednesday.



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