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THE OKLAHOMA BAR Journal

Volume 92 — No. 9 — November 2021

Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return

For the year Jan. 1–Dec. 31, 2018, or other tax year beginning

Your first name and initial

Last name

If a joint return, spouse's first name and initial

Last name

Home address (number and street). If you have a P.O. box, see instructions.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below.

Tax Law

United States Treasury
5-51 000
04 09 19

S 654,321

Check No.
4321 98765
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Editor: Melissa DeLacerda

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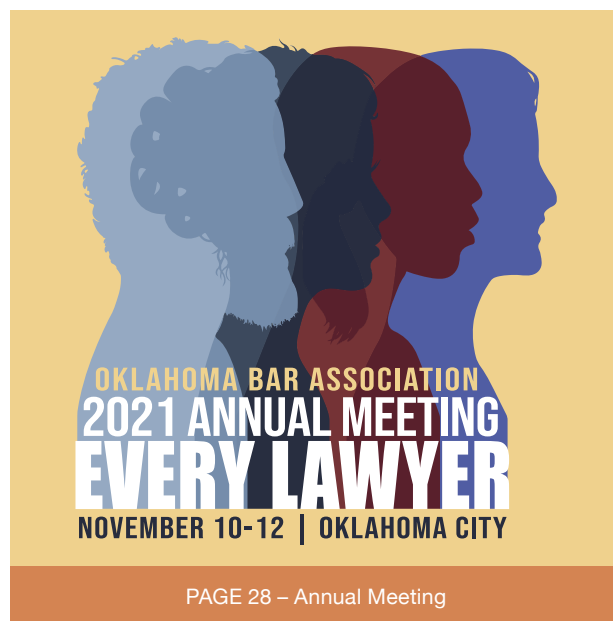
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A Time for Reflection and Thanks

By Mike Mordy

WE WILL SOON EXPERIENCE THANKSGIVING – my favorite holiday, second only to Christmas. It is a time when almost all families in America come together and give thanks. This is a special celebration for many of us this year, to be able to come together after a hiatus from gatherings, forced upon us by the pandemic. Hopefully you will be able to reunite with family and friends and enjoy the Thanksgiving holiday, with too much food, revelry and football while enjoying each other's company and conversation.

We all know the events from which Thanksgiving arose were not convivial. The events of Thanksgiving arose after harsh conditions endured by 102 passengers who sailed for 66 days on the Mayflower, a four-mast ship, approximately 100 feet long and 20 feet wide, which sailed from Plymouth, England, to Cape Cod. From there they sailed one month later, crossing the Massachusetts Bay to where they established the village of Plymouth, Massachusetts. These events, which led to the first Thanksgiving and the actual Thanksgiving feasts, are representative of our society and began to shape the British common law into our American jurisprudence. They sailed in stormy September weather in 1620. It was soon winter after they landed, and most of the colonists stayed on the ship and suffered through freezing conditions, dis-

ease and scurvy, to name a few maladies. They moved to land in the spring and are believed to have originally been befriended by the Indigenous people, who taught them how to cultivate crops, hunt and fish. The first corn harvest occurred in November 1621, which helped to give rise to the first celebratory feast of Thanksgiving, held between the Pilgrims and members of tribes of Indigenous people.

This whole course of events that started our country was based upon the desire of this group of people to worship God in a way other than as prescribed by the British crown. The Separatists initially left England for the Netherlands. Then they decided that to raise their children as English

Christians, they would embark to the new world. The group had a contract with the Virginia Company to settle on land in northern Virginia; however, the Mayflower landed in Massachusetts, which was not subject to any laws and therefore no government to which they would be subjected. A contractual dispute arose as to whether the contract entered into with the Virginia Company to settle in Virginia was void because the Mayflower landed in Massachusetts. The Mayflower Compact was ultimately written and signed by a majority agreement of new settlers as a temporary set of laws for ruling themselves and preventing "every man, woman and child for himself."

This chain of events that we believe led to the first Thanksgiving should excite us as attorneys. I am not a very deep historian, and questions have arisen as to whether a feast at Plymouth actually occurred, and if it did, when and where it happened. However, I am going to stay with the original version. Regardless, we all know our nation's start came from this group's desire to enjoy the most important freedoms – freedom of religion and freedom of speech. As attorneys, we should be even more excited about this historical chain of events because a contractual dispute arose upon the landing in Massachusetts and whether or not the contract with the Virginia Company was void.

I note these events because as a surface historian and an attorney I am reminded that I need to be more thankful for the blessings in my life and to recognize this as the beginning of the rule of law. There is currently a great deal of political dissension and criticism of our legal system. We as attorneys should be mindful of the course of events through which our country was initiated by this small group who sought freedom of religion and freedom of speech. We should strive to protect these basic freedoms. Furthermore, we need to be thankful for the country in which we live and be assured that we help those in need to enjoy the freedoms to which they are entitled.



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

President Mordy practices
in Ardmore.
mmordy@mordylaw.com
580-223-4384

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JOURNAL STAFF

JOHN MORRIS WILLIAMS
Editor-in-Chief
johnw@okbar.org

LORI RASMUSSEN
Editor
lorir@okbar.org

LAUREN RIMMER
Advertising Manager
advertising@okbar.org

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Oklahoma Administrative Rules on State Taxes

By Sheppard F. Miers

RULES ARE RULES!! OKAY, BUT DO THEY ALL HAVE THE SAME EFFECT?

The Oklahoma Tax Commission is authorized by the Uniform Tax Procedure Code, Title 68, Chapter 1, Article 2, Oklahoma Statutes, to promulgate and enforce reasonable rules with respect to Oklahoma state taxes.¹

The Tax Commission is also authorized by the Uniform Tax Procedure Code to prescribe, promulgate and enforce necessary rules for the purpose of making and filing reports required under Oklahoma state tax law and such rules as may be necessary to ascertain and compute the tax payable by any taxpayer subject to taxation under state tax law.²

TAX COMMISSION RULES AND ADMINISTRATIVE PROCEDURES ACT BACKGROUND

The Administrative Procedures Act (APA), Title 75, Oklahoma Statutes, Sections 250 and 250.1 and Article I, Sections 250.2 through 308.3, intersects with the Tax Commission rulemaking authority provided under the Uniform Tax Procedure Code. The Tax Commission must comply with rulemaking requirements in Article I of the APA with respect to rules the Tax Commission is authorized to promulgate under the Uniform Tax Procedure Code.³ The Tax Commission generally is not required to comply with the provisions of Article II of the APA, which provides notice and hearing rules for administrative agency individual proceedings.⁴ The notice and hearing requirements for Tax Commission individual proceedings on state taxes

are provided in the Uniform Tax Procedure Code, not the APA.⁵ The result is two sets of statutes governing Tax Commission administrative authority and action.

The APA has evolved since its enactment in 1963 as definitive statutory law that provides uniformity and certainty regarding state administrative agency regulatory authority.⁶ Part of the evolution was the Tax Commission becoming subject to rulemaking requirements in Article I of the APA in 1987, in addition to Tax Commission rulemaking authority provided for in the Uniform Tax Procedure Code.⁷

By way of overview and background as to Tax Commission rulemaking, Article I of the APA relates to state agency filing and publication requirements for agency rules and generally provides that all administrative agencies shall comply with the rulemaking requirements in it, subject to exceptions applicable to certain agencies

and exception of local government authorities.⁸ The APA further states the Oklahoma Legislature has the power under the Oklahoma Constitution to make laws, establish agencies and designate agency functions, budgets and purposes. Further, the executive branch of the state government is responsible for implementing the laws enacted by the Legislature, and the Legislature may delegate rulemaking authority to executive branch agencies to facilitate administration of legislative policy, which is intended to eliminate the necessity of establishing every administrative aspect of general public policy by legislation.⁹ The Tax Commission has been so established, given agency functions and delegated rulemaking authority by the Legislature and has promulgated Tax Commission rules pursuant to the APA.¹⁰

Under the APA, the Legislature retains control of rulemaking by the Tax Commission and other state

administrative agencies. It retains rights to retract rulemaking authority, legislate policy despite promulgation of agency rules, designate methods of rulemaking and approve and disapprove agency rules.¹¹ As a result, the Tax Commission's authority to adopt and promulgate rules interpreting and administering Oklahoma tax law under the Uniform Tax Procedure Code is not absolute and is subject to significant APA rulemaking requirements, as well as authority and oversight retained by the Legislature and the governor. Rules adopted by the Tax Commission are put in place and codified by the Legislature and the governor as well as the Tax Commission.

The APA provisions appear to be intended to assure transparency as to the source, existence and terms of Tax Commission rules. The rulemaking requirements provided under the APA are, in a sense, a test required to be met before any Tax Commission statement of tax policy or procedure constitutes a final adopted rule promulgated and recognized as effective pursuant to the APA. Meeting APA rulemaking requirements is necessary to give a Tax Commission rule effect as to interpretation or implementation of state tax law. The APA rulemaking requirements give the public and taxpayers knowledge of the content of a rule proposed, adopted and promulgated by the Tax Commission before it takes effect. When a Tax Commission rule is adopted and promulgated in accordance with the APA, it is also approved by the Legislature and governor.¹² For taxpayers and the professionals advising them, the interpretation and application of Tax Commission rules can necessitate considering not only the form and terms of rules but also the rulemaking requirements under the APA that must be met for the

rules to be codified and given the effect provided for in the APA.

The APA rulemaking requirements and procedures for the codification and publication of Tax Commission and other state agency rules include the establishment and authority of an Office of Administrative Rules within the office of the Secretary of State. The Office of Administrative Rules has primary responsibility for publishing *The Oklahoma Register* and the Oklahoma Administrative Code and otherwise implementing the provisions of Article I of the APA.¹³ The Tax Commission now has hundreds of pages of rules it has promulgated in accordance with rulemaking requirements in the APA, which along with rules of other state agencies, are codified and published in the Oklahoma Administrative Code.¹⁴ Tax Commission rules that are proposed, published in proposed form for comment, adopted and promulgated pursuant to the APA, including amendments thereof, are published in *The Oklahoma Register*.¹⁵ The Tax Commission rules promulgated and codified in the Oklahoma Administrative Code, and which are published in *The Oklahoma Register*, are also made available on the Oklahoma Tax Commission website or at its offices.¹⁶

TAX COMMISSION RULES AND APA RULEMAKING REQUIREMENTS

An initial focal point of APA rulemaking requirements for a Tax Commission rule to be codified in the Oklahoma Administrative Code is in definitions stated in the APA.

The APA defines "rule" as:

- 1) Any Tax Commission statement or group of related statements of
 - a) general applicability and future effect that

1. implements, interprets or prescribes law or policy, or
 2. describes the procedure or practice requirements of the tax commission and
- 2) includes the amendment or revocation of an effective rule.¹⁷

The APA definition of "rule" provides it does *not* include:

- 1) The Tax Commission's issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license,
- 2) The approval, disapproval or prescription of rates (with the term "rates" not including fees or charges fixed by the Tax Commission for services provided by it, including but not limited to fees charged for licensing, permitting, inspections or publications),
- 3) Statements and memoranda concerning only the internal management of the Tax Commission and not affecting private rights or procedures available to the public,
- 4) Declaratory rulings issued pursuant to the APA,
- 5) Orders by the Tax Commission or
- 6) Press releases or "agency news releases" provided such releases are not for the purpose of interpreting, implementing or prescribing law or Tax Commission policy.¹⁸

As used in the APA, the term "rulemaking" means the process employed by the Tax Commission for the formulation of a rule.¹⁹ The APA rulemaking requirements impact any Tax Commission "rule," as so defined. The interplay of the APA definition of "rule," the

detailed APA rulemaking requirements that must be met for a rule to become a final adopted rule and promulgated and codified in the Oklahoma Administrative Code has a significant effect. Tax Commission policy and procedure statements or interpretations about state law made pursuant to the Uniform Tax Procedure Code are statutorily given full interpretative effect by the APA by meeting the APA rulemaking requirements.

Application of the APA rulemaking requirements generally appears to start with a “statement” of the Tax Commission.²⁰ The term “statement” is not defined by the APA, but it is likely to often be obvious if made by the Tax Commission publishing a written proposal to adopt and promulgate of a rule pursuant to the APA in *The Oklahoma Register*, intending that it is to become a part of Tax Commission codified rules in the Oklahoma Administrative Code. In such a case, the written document or documents prepared, filed and published should indicate a Tax Commission “statement” of policy or on a procedure that is intended to become a Tax Commission rule.

For a Tax Commission “statement” or “rule” that is made or published about tax policy or procedure without meeting APA rulemaking requirements, the

status and interpretative effect are less certain. The effect can depend upon the Tax Commission’s application of it and where and how it is considered and acted upon, including in individual proceedings involving taxpayer protests, Tax Commission orders and appeals in court decided under the Uniform Tax Procedure Code.²¹

For example, if the Legislature enacted a new Oklahoma income tax exemption, a written statement of the Tax Commission published on its website describing the intent and effect of the law and how it was to be interpreted and administered by the Tax Commission would be a “statement” and could even be considered a “rule” as defined in the APA. However, its publication in that way alone would not appear to meet APA rulemaking requirements so as to give it the effect it would have under the APA if it was proposed, adopted and promulgated as a Tax Commission rule and codified in the Oklahoma Administrative Code in accordance with APA rulemaking requirements.²²

The APA has been interpreted as indicating the Legislature defined “rule” broadly to prevent an agency from circumventing the procedural rulemaking requirements of the APA by using labels such as “bulletins” or “guides” for

interpretations of the law that are used by the agency in a way that in effect amounts to the application of an agency rule.²³ Thus, a Tax Commission “statement” being a “rule” as defined in the APA is not conclusive as to its ultimate effect under the APA. Instead, the APA is written and structured so that for a Tax Commission rule to be given the effect indicated by the APA, that is to be *prima facie* evidence of the proper interpretation of the matter to which it refers, the specific statutory rulemaking requirements in the APA must be met.²⁴

APA Rulemaking Requirements for Tax Commission Adopted Rule

The APA rulemaking requirements the Tax Commission must meet for a rule to be considered as *adopted* so it can then go on to be approved pursuant to the APA and codified in the Oklahoma Administrative Code, require the Tax Commission 1) publish a Tax Commission notice of intended rulemaking action in *The Oklahoma Register* in accordance with specific standards and provide the notice to the governor and appropriate cabinet secretary, 2) provide a 30-day comment period for all interested persons to submit comments on the proposed rule that the Tax Commission must consider fully, 3) hold a hearing either at the Tax Commission’s option or if a hearing is requested in writing by a specified number of persons or entities, at which hearing persons may present oral argument, data and views on the proposed rule and 4) issue an impact statement about the proposed rule, subject to specified requirements with certain exceptions. Upon meeting those rulemaking requirements, the Tax Commission may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the stated requirements.²⁵

The APA rulemaking requirements give the public and taxpayers knowledge of the content of a rule proposed, adopted and promulgated by the Tax Commission before it takes effect.

APA Rulemaking Requirements for Tax Commission Promulgated Rule

A Tax Commission adopted rule does not become final and is not considered as *promulgated* (meaning a final adopted rule that has been filed and published in accordance with the APA) until further rulemaking requirements are met involving actions by the Legislature, governor and Tax Commission.²⁶

The further APA rulemaking requirements for a rule adopted by the Tax Commission to be *promulgated* and finally codified in the Oklahoma Administrative Code are 1) the Tax Commission, after adoption of a rule, must file copies of the rule with the governor, the speaker of the House of Representatives, the president *pro tempore* of the Senate and chairs of the Joint Committee on Administrative Rules, together

Tax Commission determines in an impact statement prepared about the rule that the rule will have an economic impact on any political subdivisions of the state or require their cooperation in implementing or enforcing the rule, 3) the Tax Commission must submit to the Office of Administrative Rules for publication in *The Oklahoma Register* a statement that the adopted rule has been submitted to the governor and the Legislature, 4) the Legislature must review the adopted rule within a prescribed time period, and the rule must be approved by the Legislature by joint resolution or omnibus joint resolution and 5) the adopted rule must be submitted to the governor, and the governor must approve the adopted rule for it to be promulgated and effective. A rule is generally consid-

effective date provided in the permanent rule document.²⁸

The APA provides for the adoption of a Tax Commission “emergency rule” that can be temporarily adopted and administered. The rulemaking requirements for an emergency rule enable adoption by a more simplified and expeditious process. Tax Commission adoption of an emergency rule is authorized if the Tax Commission finds a rule is necessary and submits substantial evidence that promulgation of the rule is necessary as an emergency measure for stated reasons, and it is approved by the governor. An emergency rule must meet specified requirements as to its format, and an impact statement is to be included with it when submitted for approval. An emergency rule is to be approved by the governor within 45 days of its receipt. If an emergency rule is approved by the governor and becomes effective, it can continue in effect until becoming void on the Sept. 15 following the next session of the Legislature unless it is otherwise superseded by the permanent rule in that session or disapproved by the Legislature. The APA contains other procedural and administrative provisions that pertain to the adoption of an emergency rule.²⁹

APA Rulemaking Requirements Finish Line Effect

Although the broadly defined meaning of “rule” under the APA may fit the cliché “rules are rules,” the detailed APA rulemaking requirements described appear to distinctly set apart a Tax Commission final adopted rule that is promulgated, codified and published in the Oklahoma Administrative Code from other Tax Commission “statements” of tax policy or procedure even if they come within the broad APA definition of “rule.”



with a Tax Commission “rule report” containing background and descriptive information about the rule, 2) a copy of the rule and rule report must be filed with the Oklahoma Advisory Committee on Intergovernmental Relations for its review and communication about the rule to the governor and leadership of the Legislature if the

ered “finally adopted” when it is approved by the Legislature and governor.²⁷ A finally adopted rule must be submitted in the form of a “permanent rule document” to the Office of Administrative Rules for publication in *The Oklahoma Register*. Upon publication of the rule in *The Oklahoma Register*, it is considered *promulgated*, with the

The APA provides that no Tax Commission rule is valid or effective against any person for any purpose unless it has been promulgated as required by the APA.³⁰ The provisions of this sweeping provision appear to make a major distinction between Tax Commission rules promulgated and codified in the Oklahoma Administrative Code by meeting the APA rulemaking requirements and any other statements of policy or procedure, even ones that can come within the definition of a “rule” under the APA that are not promulgated and codified in the Oklahoma Administrative Code pursuant to the APA.

The APA provides a Tax Commission rule that is valid or effective against any person or party or may be invoked by the Tax Commission if it has been promulgated as required in the APA.³¹ A Tax Commission rule that has not been promulgated as required by the APA is not valid or effective against any person or party and may not be invoked by the Tax Commission for any purpose.³² The APA provides the Tax Commission shall not by internal policy, memorandum or other forms of action not otherwise authorized by the Administrative Procedures Act amend, interpret, implement or repeal a statute or rule or expand upon or limit a statute or rule; any Tax Commission memorandum, internal policy or other forms of action violative of this provision of the APA is null, void and unenforceable.³³ Finally, the APA provides that Tax Commission rules promulgated in accordance with APA requirements shall be *prima facie* evidence of the proper interpretation of the matter to which they refer.³⁴

The impact of a Tax Commission rule, as broadly defined in the APA, meeting or not meeting the rulemaking requirements of the APA, was demonstrated in the case of *Highland Dairy Foods v. Oklahoma*

Tax Commission,³⁵ involving Oklahoma sales tax and the taxpayer’s entitlement to a manufacturing exemption. The court held the Tax Commission’s action changing the statutory requirements for the exemption by an *internal policy* without a rulemaking violated the provisions of the APA that prohibit an agency from expanding upon or limiting statute by internal policy, memorandum or other forms of action not otherwise authorized by the APA. The court held the Tax Commission had erred in ruling that under its interpretation and policy, a manufacturer had to have a separate manufacturer exemption permit for each manufacturing facility location in the state when the statute only required a manufacturer to obtain a single manufacturer exemption permit.

In another case, the Tax Commission itself held in an administrative decision that terms and provisions of the instructions to the state income tax return written and published by the Tax Commission did not constitute a “rule” of the Tax Commission adopted in accordance with the rulemaking requirements of the APA. The decision held an agency rule that has not been promulgated as required by the APA is not valid or effective against any person and may not be invoked by an agency (Tax Commission) for any purpose, per 75 O. S. 1991, §308.2(A).³⁶

The Tax Commission tax return instructions on claims for refund of individual income tax for reasons other than over withholding or overpayment of estimated tax (*e.g.*, a claim for refund for a mistake of law or fact) are presumably intended to be based on a complicated interrelationship of statutes in the Uniform Tax Procedure Code and Oklahoma Income Tax Act, which is not a picture of clarity. The instructions may be a “statement” of the Tax Commission

of general applicability and future effect that implements, interprets or prescribes law or policy or describes the procedure or practice requirements of the Tax Commission that might need to be adopted, promulgated and codified as Tax Commission rule to possibly clarify application and effect of the underlying statutes after meeting APA rulemaking requirements.³⁷

The Tax Commission has published various written statements and guidance on the application of Oklahoma tax law, such as documents and publications titled and in the form of “frequently asked questions,” a “guide” and similar titles.³⁸ To the extent such statements have not been adopted and promulgated as a Tax Commission rule in accordance with APA rulemaking requirements, they would appear to not have the effects described above that Tax Commission rules have if promulgated and codified in the Oklahoma Administrative Code pursuant to the APA.³⁹

TAX COMMISSION ORDERS ARE NOT RULES UNDER THE APA

As indicated in the APA definition of “rule,” for purposes of the APA, the term does not include an order made or entered by the Tax Commission. The APA then defines “order” to mean all or part of a formal or official decision made by an agency including but not limited to final agency order and in that context defines “individual proceeding” to mean the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties that results in the exercise of discretion of a judicial nature.⁴⁰ The Uniform Tax Procedure Code, as a counterpart to APA applicable to Tax Commission individual proceedings, provides with respect to Tax Commission decisions in individual proceedings that after a

hearing, the Tax Commission shall make and enter an order in writing in which it shall set forth the disposition made of the case (protest). The order shall contain findings of fact and conclusions of law, and after removing the identity of the taxpayer, the Tax Commission shall make the order available for public inspection and shall publish those orders the Tax Commission deems to be of precedential value.⁴¹ Such Tax Commission orders are therefore not rules subject to the APA, although they can have a comparable application and precedential effect in the future.

In this regard, the Tax Commission, as a state administrative agency, is considered to have a “choice” in whether to use general rulemaking under the APA or a case-by-case application of its stated position on administering tax policy or procedure matters in individual proceedings.⁴² The distinction is primarily between a “general” statement by the Tax Commission on tax policy or procedure, as a “rule” subject to APA, and statements and action of the Tax Commission determining legal rights, duties, privileges or immunities of an identified individual or individuals as an “order” not subject to the APA. A “rule” is considered legislative in nature and generally applied to all individuals or entities, while an “order” is adjudicative in nature as to the law applied to the facts of a particular case.

An agency’s authority to make rules has been held distinguishable from that of adjudication. Rulemaking includes the power to adopt rules and regulations of general application, both substantive and procedural, that are legislative in nature, operate prospectively and have general application, while orders of an administrative agency are adjudicative in character, and they apply to named persons or specific



situations and have immediate rather than future operation.⁴³ This indicates the Tax Commission, in some situations, can choose to interpret and administer an Oklahoma tax law by adopting a rule that must be published to the public and approved by the governor and Legislature to become final and effective under the APA. In other situations, the Tax Commission can choose to interpret and administer an Oklahoma tax law by adjudication in individual proceedings involving taxpayers before the Tax Commission and in court under the Uniform Tax Procedure Code.

COURT DEFERENCE TO TAX COMMISSION RULES

The Tax Commission, in deciding taxpayer protests, regularly recites its view as to the effect of its rules promulgated in accordance with the APA and cites certain authorities to support it. This includes rules promulgated pursuant to the APA are presumed to be valid until declared otherwise by a court of competent jurisdiction – they are valid and binding on the persons they affect, have the force of law and are *prima facie* evidence of the proper interpretation of the matter to which they refer.⁴⁴

The Oklahoma Supreme Court has referred to principles that are applied with respect to interpretations of law made by an administrative agency. The court has stated (in a non-tax matter) it will show great deference to an agency’s interpretation of its own rules. When the terms of a regulation (rule) are amenable to more than one meaning, the court will ordinarily defer to the interpretation adopted by those charged with the duty of administration. When choosing between two or more possible meanings of a regulation (rule), controlling weight may be given to long-continued administrative usage unless it is plainly erroneous or inconsistent with the language. Finally, accepting an agency’s interpretation is even more clearly in order when the construction is that of an administrative regulation rather than a statute.⁴⁵

The policy of state courts and taxing agencies holding that agency interpretations should be given deference has been a topic of comment questioning its correctness.⁴⁶ At least one state has enacted statutory provisions to dispel and limit court deference to agency interpretations.⁴⁷

APA RULEMAKING RECORD REQUIREMENT PROVIDES A SOURCE OF INFORMATION

The APA, in addition to rulemaking requirements, provides that the Tax Commission shall maintain and provide information about its rules. The provisions contain requirements that appear beneficial to taxpayers and professionals advising them with respect to the status, rulemaking history, purpose and meaning of a Tax Commission rule. The rulemaking record requirements provide that the Tax Commission will make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, promulgated or used by the Tax Commission in the discharge of its functions. A variety of documents and information are required to be maintained and provided to the public by the Tax Commission.⁴⁸

PETITIONS FOR PROMULGATION OF TAX COMMISSION RULES

The APA provides any interested person may petition the Tax Commission requesting the

promulgation, amendment or repeal of a Tax Commission rule. The APA provides that the Tax Commission shall prescribe by a Tax Commission rule the form of such a petition and procedure for its submission, consideration and disposition. The APA provides that after submission of a petition, the Tax Commission shall initiate rulemaking proceedings or provide a written response and explanation of its failure to initiate rulemaking proceedings.⁴⁹ The Tax Commission has promulgated rules providing for petitioning for promulgation, amendment or repeal of a Tax Commission rule and for the procedure that is to be followed when the Tax Commission itself initiates the promulgation, amendment or repeal of a rule pursuant to the APA.⁵⁰

DECLARATORY JUDGMENT ACTIONS ON VALIDITY OF TAX COMMISSION RULES

The APA provides the validity or applicability of a Tax Commission rule may be challenged and determined in an action for declaratory judgment. The action must allege the rule, or

its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the person bringing the action.⁵¹ The Tax Commission must be a party to such an action for declaratory judgment as to the validity or application of its rules.⁵² Tax Commission rules that have been promulgated pursuant to the APA are presumed to be valid until declared otherwise by a district court or the Supreme Court.⁵³ In such a declaratory judgment action, the Tax Commission has the burden of proof to show it possessed the authority to promulgate the rule, the rule is consistent with any statute authorizing or controlling its issuance and does not exceed statutory authority, the rule is not violative of any other applicable statute or the Oklahoma Constitution and the laws and administrative rules relating to the adoption, review and promulgation of such rules were faithfully followed.⁵⁴ In any such action, a declaratory judgment may be rendered without the party seeking the declaratory judgment having to exhaust available remedies before the Tax Commission as

The rulemaking record requirements provide that the Tax Commission will make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, promulgated or used by the Tax Commission in the discharge of its functions.

to the validity or applicability of the rule.⁵⁵ An action for declaratory judgment on validity of a Tax Commission rule brought pursuant to the APA cannot be filed to overcome or reverse a final Tax Commission order or final court order involving the application of the rule.⁵⁶

CONCLUSION

The Tax Commission has authority under the Uniform Tax Procedure Code to promulgate and enforce reasonable rules to enforce state tax laws. This authority has been exercised by Tax Commission promulgation of an extensive set of rules pursuant to the APA that is codified in the Oklahoma Administrative Code. Tax Commission adoption and promulgation of rules must meet APA prescribed rulemaking requirements for the rules to be recognized as correct interpretations of the state tax laws to the extent provided in the APA. Taxpayers have the right to propose that the Tax Commission promulgate rules and the right under the APA to challenge the validity and application of rules adopted by the Tax Commission. The APA rulemaking requirements are for legal and practical purposes a test that must be met by the Tax Commission to give effect to its interpretations pursuant to the APA rather than in individual proceedings. The application and effect of the APA is an important part of determining the position of and representing a taxpayer with respect to Tax Commission rules.

ABOUT THE AUTHOR

Sheppard F. Miers Jr. is a shareholder at the Tulsa office of GableGotwals and practices in the areas of federal, state and local taxation.

ENDNOTES

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2. *Id.*
3. 75 O. S. §250.4 (OSCN 2021).
4. *Id.*
5. 68 O.S. §§201-295 (OSCN 2021).
6. Maurice Merrill, "Oklahoma's New Administrative Procedure Act," 17 *Okl. L. Rev.* 1 (1964); Michael P. Cox, "The Oklahoma Administrative Procedures Act: Fifteen Years of Interpretation," 31 *Okl. L. Rev.* 886 (1978); Phyllis E. Bernarda, "From 'Good Ol' Boys' to 'Good Young Law': The Significance of the Oklahoma Administrative Code," 18 *Okl. City U. L. Rev.* 267 (1993); Gary E. Payne, "A Primer on Administrative Law in Oklahoma," 79 *OBJ*, No. 1, 39 (2008).
7. Laws 1987, HB 1493, c. 207, §12.
8. 75 O. S. §250.4 (OSCN 2021). Local government exception is provided in 75 O. S. §250.5 (OSCN 2021).
9. 75 O. S. §250.2 (OSCN 2021).
10. 68 O. S. §§102, 203 (OSCN 2021); Title 710, Oklahoma Administrative Code (OAC) www.oar.state.ok.us, www.oklahoma.gov/tax.html.
11. 75 O. S. §250.2 (OSCN 2021).
12. 75 O. S. §§251-256, 302-304, 308 (OSCN 2021).
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14. Title 710, Oklahoma Administrative Code (OAC) www.oar.state.ok.us, www.oklahoma.gov/tax.html.
15. *The Oklahoma Register*, www.oar.state.ok.us.
16. OAC §710:1-3-71.
17. 75 O. S. §250.3(19) (OSCN 2021).
18. *Id.*
19. 75 O. S. §250.3(20) (OSCN 2021).
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23. *OSU-AJ Homestead Medical Clinic v. The Oklahoma Health Authority*, 2018 OK CIV APP 30, 416 P.3d 1082.
24. 75 O. S. §308.2(C) (OSCN 2021).
25. 75 O. S. §303 (OSCN 2021).
26. 75 O. S. §303.1 (OSCN 2021).
27. 75 O. S. §§303.1, 304, 308, 308.1 (OSCN 2021), Oklahoma Constitution, Article VI, Section 11; Executive Order 2019-11, OAC §175-1-5-13.
28. 75 O. S. §§308(E), 308.1, 308.2(A), 308.3, 304, 251(A)(2) (OSCN 2021).
29. 75 O. S. §253 (OSCN 2021).
30. 75 O. S. §308.2(A) (OSCN 2021).
31. *Id.*
32. *Id.*
33. 75 O. S. §302 (E) (OSCN 2021).
34. 75 O. S. §308.2(C) (OSCN 2021).
35. 2006 OK CIV APP 68, 136 P. 3d 1072.
36. Oklahoma Tax Commission Order No. 2002-10-01-033/PRECEDENTIAL.
37. Oklahoma Tax Commission 2020 Form 511, Oklahoma Resident Individual Tax Return and Instructions; 68 O. S. §227(f), 2373, 2385.10, 2385.16 (OSCN 2021) OAC §§710:50-9-1-710:50-9-10.
38. See, for examples: Oklahoma Tax Commission published document/statements examples: Field Audit Guide for Taxpayers, Voluntary Disclosure Agreement, Frequently Asked Questions re U. S. Supreme Court Decision in *South Dakota v. Wayfair?*, published online. www.oklahoma.gov/tax.html
39. 75 O. S. §308.2(A),(C) (OSCN 2021).
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41. 68 O. S. 221 (G) (OSCN 2021).
42. *El Paso Natural Gas Co. v. Oklahoma Tax Com'n*, 1996 OK CIV APP 69, 929 P.2d 1002.

43. *Harry R. Carlile Trust v. Cotton Petroleum Corp.*, 1986 OK 16, 732 P.2d 438.

44. See, for example, Oklahoma Tax Commission Decision 1992-09-29-048/PRECEDENTIAL; Oklahoma Tax Commission Decision, 2012-02-02-09, 02/02/2012.

45. *Cox Oklahoma Telecom, LLC v. Oklahoma Corporation Commission*, 2007 OK 55, 164 P. 3d 150; *In the Matter of the Sales Tax Protest of Betts Telecom Oklahoma, Inc.*, 2008 OK CIV APP 19, 178 P. 3d 197.

46. Margaret C. Wilson, "'Because I Said So' May Not Be Enough: Just How Far Does a Taxing Agency's Discretion and Presumption of Correctness Go," *Journal of Multistate Taxation and Incentives*, Aug. 2013; Maria M. Todorova, Erich S. Tresh, Justin T. Brown, "It's Time to Balance the Scales: Chevron Deference," *State Tax Notes*, July 8, 2019.

47. Frank Shepherd, Roberto Martinez, Ben Reaveley, Savannah Padgett, "The Demise of Agency Deference: Florida Takes the Lead," *Florida Bar Journal*, January/February 2020, describing Fla. Const. art. V, §21, which provides a state court or officer hearing an administrative action may not defer to an administrative agency's interpretation of a statute or rule and must instead interpret the rule *de novo*.

48. 75 O. S. §302(B) (OSCN 2021).

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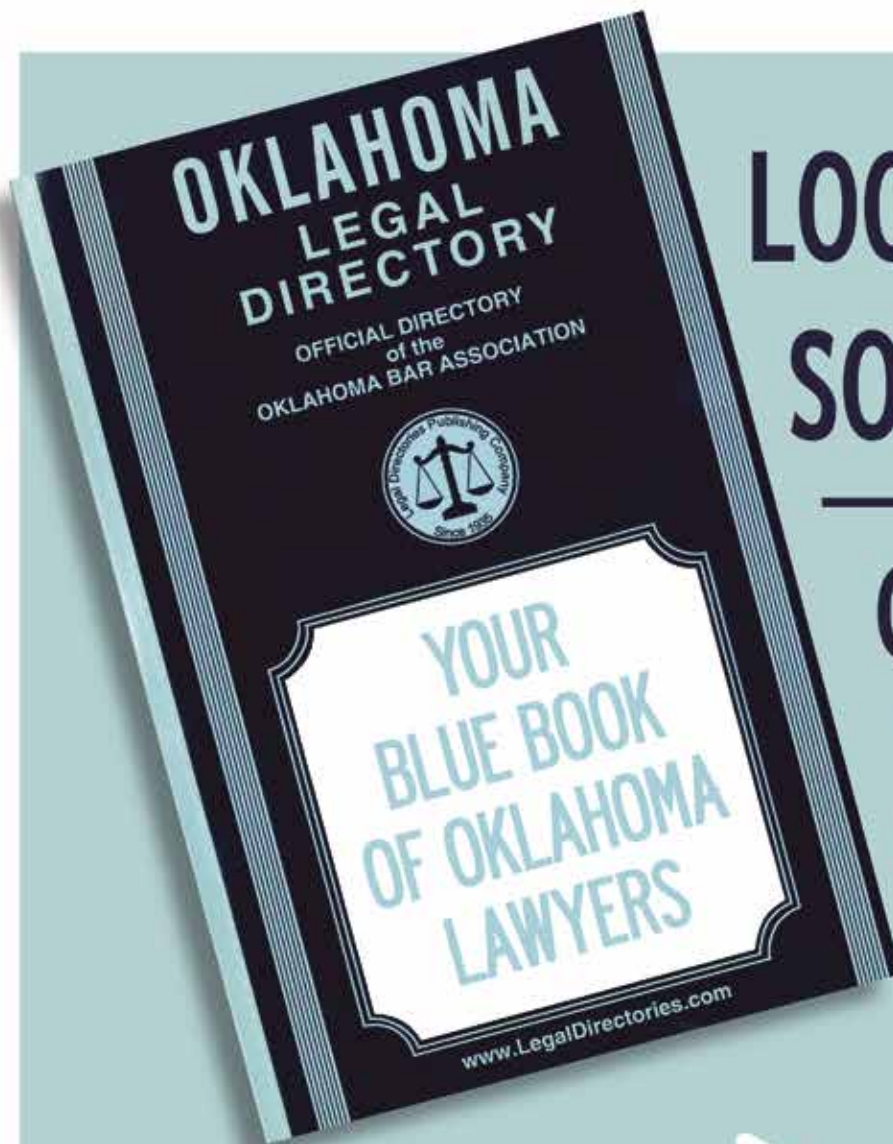
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The Insolvency Exclusion that Debt Settlement Clients Need to Know

By Kaylie S. Tucker

IN CONJUNCTION WITH THE COVID-19 PANDEMIC wreaking havoc on the American economy and causing the highest unemployment rates since the Great Depression, Americans are finding themselves struggling with overwhelming consumer debt. While some consumers already had significant credit card debt prior to the pandemic, others have been relying on credit cards throughout the pandemic and will feel the full effect of the crippling interest rates in the years to come. Although many economists expect bankruptcy rates to increase dramatically, there are favorable alternatives available for those who live in states with unfavorable bankruptcy exemptions. There are also options for those who are trying to avoid bankruptcy altogether, whether due to the additional expense involved or because some consumers still feel an obligation to pay at least some portion of the debts they owe.

One of the more popular bankruptcy alternatives is a debt settlement or debt negotiation program (debt settlement program). Although the actual blueprint for each debt settlement program varies, the core concept is for consumers to stop making minimum payments toward their unsecured debt and instead make monthly payments into a special purpose account that is specifically designated to accumulate the client's funds throughout the debt settlement program. The debt settlement program's negotiators will then use those accumulated funds to make settlement offers to resolve the consumer's accounts that have been "charged off" by the creditors. The negotiators present significantly discounted

settlement offers to the creditors along with hardship information explaining what caused the consumer to be unable to make payments toward the outstanding debt. In an attempt to collect at least some portion of past due debts, creditors will often accept discounted settlements, especially when an appropriate hardship is presented that explains the consumer's failure to pay.

These debt settlement programs can be beneficial for consumers, but the forgiveness of any portion of a debt has potentially adverse tax consequences. The United States Internal Revenue Code (IRC) generally defines any income from a discharge of indebtedness as income that must be included in a taxpayer's gross income.¹ The

Internal Revenue Service (IRS) requires creditors to file a Form 1099-C for each debtor for whom the creditor canceled \$600 or more of a debt owed.² The requirement to file a Form 1099-C is only triggered when the canceled debt is more than \$600; however, any amount of canceled debt generally needs to be included in the taxpayer's income. The Form 1099-C is sent to both the IRS and the debtor to report the amount of canceled debt as income to the debtor. The debtor would then report the canceled debt amount on the Form 1099-C on their individual income tax return. Many debt settlement program clients are unaware of the potential tax consequences of canceled debt. Often, they are surprised when they receive a Form 1099-C



from their creditors or when they receive a deficiency notice from the IRS upon a failure to report the canceled debt as income. The consequences to an individual taxpayer could result in more than just additional income tax owed. In fact, some taxpayers will find they no longer qualify for certain lower income tax credits when the canceled debt amount is added to their gross income.

Fortunately, the IRS has carved out several exclusions that, if applicable, can reduce the amount of canceled debt that would be reported as income.³ One such exclusion is based on the individual taxpayer's insolvency at the time the debt was canceled.⁴ For the purposes of this exclusion, insolvency is defined as "the excess of liabilities over the fair market value of assets."⁵ The IRS specifically limits the insolvency exclusion to the extent the taxpayer's liabilities were in excess of the fair market value of their assets immediately before the cancellation of the debt.⁶ For example, if a taxpayer received a Form 1099-C from a creditor reporting \$1,500 of canceled debt, and the taxpayer's liabilities exceeded the fair market value of their assets by \$800 immediately before the

The clients are encouraged to seek the advice of a tax professional when filing income tax returns throughout the duration of their debt settlement program.

cancellation of that debt, the taxpayer would be able to exclude \$800 of the canceled debt from their gross income. However, the remaining \$700 would still need to be reported as income.

To claim a canceled debt amount should be excluded from gross income, the taxpayer needs to complete IRS Form 982 and attach the completed form to their return. Form 982 notifies the IRS of the amount of canceled debt that should be excluded from the gross income and under which exclusion. Since the creditor is required to report the canceled debt to the IRS via a Form 1099-C, a taxpayer's failure to attach the Form 982 to their tax return will often result in an income tax deficiency notice. Further, it is important to note that excluding the canceled debt from gross income based on insolvency also requires that the taxpayer reduce certain tax attributes in an amount equal to the excluded canceled debt income but not below zero. The following tax attributes (if claimed) are generally required to be reduced in the following order: 1) net operating losses, 2) general business credit carryovers, 3) minimum tax credits, 4) net capital loss carryovers, 5) basis of property, 6) passive activity loss and credit carryovers and 7) foreign

tax credits. These reductions would occur on a dollar-for-dollar basis with the exception of tax credits that are reduced by one-third of the canceled debt income excluded.

In many cases, debt settlement program clients will not have any tax attributes they can reduce other than the basis of personal-use property. The IRS defines personal-use property as "any property that isn't used in your trade or business or held for investment."⁷ Examples of personal-use property include home furnishings, jewelry, home appliances, electronics, vehicles and cash in personal bank accounts. When reducing basis in personal-use property, the IRS has instructed taxpayers to reduce their basis by the smallest of either 1) the basis of your personal-use property held at the beginning of the current tax year, 2) the amount of canceled nonbusiness debt (other than qualified principal residence indebtedness) you are excluding from income on line two of Form 982 or 3) the excess of the total basis of the property and the amount of money you held immediately after the cancellation over your total liabilities immediately after the cancellation.⁸ The basis in each item of personal-use property must be reduced in proportion to the total adjusted basis in all of the

taxpayer's personal-use property. If a taxpayer later realizes a gain from the disposition of property that had a basis reduction due to the cancellation of debt provisions, the part of that gain that is attributed to the basis reduction under these provisions is taxable as ordinary income. IRS *Publication 544* has more expansive guidance on the recapture of gain as ordinary income.

CONCLUSION

Most debt settlement programs provide some type of disclosure to their clients that the cancellation or reduction of consumer debts may result in tax consequences. The clients are encouraged to seek the advice of a tax professional when filing income tax returns throughout the duration of their debt settlement program. Unfortunately, many consumers who turn to debt settlement programs do not have the ability to pay for a professional tax preparer or tax attorney. There are also many scenarios where a debt settlement program client will fail to disclose the receipt of a Form 1099-C even when they do seek the assistance of a tax professional. Further, taxpayers may receive a Form 1099-C and assume that since the creditor has reported the cancellation of debt to

the IRS, nothing further is needed from the taxpayer. However, a larger concern arises when taxpayers receive a Form 1099-C and report the canceled debt as income on their individual income tax return, despite being qualified for the insolvency exclusion, simply because taxpayers are generally unaware the insolvency exclusion exists. “Free versions” of standardized, online tax preparation programs typically only ask if a Form 1099-C was received and do not work through the steps to determine if an exclusion exists.

Debt settlement program clients should always seek the advice of a tax professional when filing individual income tax returns throughout their debt settlement program. The IRS website does provide many options for how taxpayers can receive free or reduced-cost tax preparation services. Debt settlement program clients should be directed toward those types of services to ensure any tax consequences from the cancellation of debts can be minimized as much as possible.

ABOUT THE AUTHOR



Kaylie S. Tucker is an assistant director of consumer litigation at National Litigation Law Group in Oklahoma City. She is licensed to practice in Arizona, Iowa, Massachusetts, Montana, Nebraska, Oklahoma and West Virginia. Ms. Tucker received a LLM in taxation from Georgetown University Law Center in Washington, D.C., after graduating *summa cum laude* from the Thurgood Marshall School of Law in Houston.

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2. Internal Revenue Service. “About Form 1099-C,” www.irs.gov/forms-pubs/about-form-1099-c. Accessed Sept. 1, 2021.
3. 26 U.S. Code §108.
4. *Id.*
5. 26 U.S. Code §108(d)(3).
6. *Id.*
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Tax Considerations for Trusts and Estates

By Ryan J. Duffy



RECENT TIMES HAVE GIVEN RISE TO A PAINFUL reminder for clients that two things are certain in this world: death and taxes. The uptick many attorneys have seen in attention to estate planning needs has been substantial. As an attorney, the job is not done once an estate plan is created for a number of reasons, not the least of which is tax planning. Tax ramifications for estate planning clients range from the simple need to monitor income being taxed within a trust (once irrevocable) to much more complex aspects of estate and gift taxes.

The estate and gift tax attributes are often a heavy consideration for individuals with taxable estates. The Tax Cuts and Jobs Act (TCJA) of 2017 doubled the estate and gift tax exemptions, and the exemptions have since ballooned to \$11.7 million per person for 2021. The TCJA is scheduled to expire in 2026, with the exemptions indexed for inflation between now and the expiration. The exemptions are at a historically high level. Considering the political climate and rumblings surrounding certain provisions of the TCJA (especially the exemptions) being modified, clients may want to take advantage of the historically high exemptions in light of the potential rollback of the exemptions' levels.

How can clients take advantage? If a couple has not utilized any of their lifetime gift tax exemption, the couple could gift up to \$23.4 million in 2021 without incurring any gift tax. However, clients must use extra caution in determining

the amount and the composition of any gifts. The basis of the proposed gift property should be heavily considered in determining whether a gift should be made during the grantor's lifetime or bequeathed upon death. Basis is a tax/accounting term that is utilized in determining the benchmark for a taxpayer's capital gain calculation utilizing purchase price and adjustments. By way of example, if a client purchased an asset for \$100,000 and took \$10,000 in depreciation, the taxpayer's basis would be \$90,000. A sale of such asset for \$110,000 would result in a \$20,000 capital gain (\$110,000 sale price less \$90,000 basis). A detailed comparison of estate tax versus future capital gains should be considered in such determination. The basis rules under IRC Sec. 1014 must be paid close attention.

Under current rules, a beneficiary would receive "carryover basis" in a gift from the donor. In other words, the beneficiary

would have the same basis in the property as the donor had immediately prior to transfer, with a few adjustments if gift tax is paid, etc.

If a beneficiary receives property as a result of the death of the decedent, the beneficiary generally receives a "step-up" in basis to the fair market value of the property. This means, regardless of the decedent's basis, the beneficiary's basis in the property is fair market value at the date of death or an alternate valuation date. As such, the estate planning attorney should get a full disclosure of the client's asset composition as well as basis for such assets.

Notably, under IRC Sec. 1014, property left to a surviving spouse receives a step-up in basis at the first spouse's death and a second step-up at the second spouse's death. As one can imagine, transferring property without careful consideration of basis may have severe, adverse consequences. A simple mistake, such as the

transfer of property with significant appreciation during the donor's lifetime, could result in the beneficiary paying quite unnecessary capital gain taxes. Notwithstanding, capital gains are typically at a lower rate than estate or gift taxes, hence the necessity to evaluate the overall economic effect of both aspects. In almost all situations, the donor (and donee) would be better off gifting an asset without a substantial appreciation above the asset's basis, all other things considered equal. Lifetime gifting of property, even considering the basis rules, may make great sense as a tool to "freeze" the estate value and effectively push any subsequent estate appreciation to the donee's estate.

Considering the foregoing, estate tax planners should also keep a close eye on legislative developments. Capitol Hill has been fairly active in pushing for changes, including the elimination of the step-up in basis on an individual's death. If that were to go into effect, the onus against gifting appreciated assets would be greatly diminished if not eliminated.

Another set of estate tax-saving tools that is under fire of late is discounts for lack of marketability and lack of control in family entities. Contributing the client's assets to a family entity, frequently a family LLC, is another invaluable tax savings tool. The individual simply puts assets into the family LLC and subsequently gifts interest in the family LLC over time to the desired beneficiaries. The family LLC would be under a transfer restriction, thus the discount for lack of marketability. Provided the client has reached a level of ownership interest that would be below the controlling vote threshold, the estate would also be entitled to a discount for lack of control. While these combined discounts can vary widely based on specific facts, they

certainly can reach a substantial percentage and corresponding tax savings. However, as mentioned before, these discounts have been under some scrutiny by Congress.

An additional consideration from an estate tax perspective is whether or not to utilize some or all of the first-to-die spouse's exemption when dealing with husband and wife clients. Under current IRC rules (and since 2010), if a spouse passes without using their entire estate tax exemption, the surviving spouse may make an election to have such deceased spouse's unused exemption (commonly called "DSUE") added to the surviving spouse's exemption. DSUE and the increased exemptions' amount have done away with some traditional estate planning techniques, such as the traditional A-B trust arrangement, where a trust is set aside equal to the remaining estate tax credit of the first spouse to die (to ensure the estate tax credit of the first spouse to die is exhausted), leaving the surviving spouse limited access to such "A" trust. Setting aside an amount unrelated to a decedent's remaining estate tax credit to care for children or other beneficiaries is still often desirable. This allows a client to shield a legacy for their preferred beneficiaries without concern of remarriage by a surviving spouse, creditors of a surviving spouse invading the funds and a number of other factors. Setting aside a specific dollar amount (not tied to the remaining estate tax credit of the first spouse to die as in the traditional A-B trusts of years past) to be held in trust away from a surviving spouse and creditors is likely to be more commonplace now. The amount can be a flat amount to be divided among beneficiaries, an amount per child or beneficiary or any other number of ways to figure a set amount.

In evaluating whether to utilize the estate tax exemption of the first spouse to die, an attorney must be mindful of the potential of remarriage of the surviving spouse. If a surviving spouse is predeceased by more than one spouse, the amount of unused exclusion that is available for use by such surviving spouse may only utilize the most recent spouse to die. In short, if a surviving spouse remarries and such remarried spouse predeceases their new spouse, the first spouse's DSUE is extinguished.

CONCLUSION

As we approach the end of 2021, clients have an opportunity to capitalize on the most favorable estate tax regime in United States history. It would seem likely that 2022 would carry a similar estate tax framework, but there certainly is no guarantee based on the velocity of legislation movement of late. With midterm elections soon, there is even greater uncertainty as to what the estate tax climate will look like in the near future. Perhaps more favorable? Sure. Perhaps less favorable? Definitely a possibility. In short, examining your estate planning client's desire and ability to capitalize on these favorable conditions is a worthwhile task. Attorneys must make sure to execute any such tax-saving plan with great caution to fully maximize the client's tax saving benefit as well as protect the client's donee from unwanted tax consequences.

ABOUT THE AUTHOR



Ryan Duffy received his BBA from OSU and his J.D. from the OU College of Law. His practice has focused on estate planning and administration, taxation, corporate organization, transactional law, oil and gas, real estate and nonprofit organization, with a specific concentration on tax controversies and business development.

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The Internal Revenue Service: A Taxing Nightmare

By Shiny Rachel Mathew

FEDERAL SPENDING HAS EXCEEDED FEDERAL REVENUE for over two decades, and this trend has grown exponentially in recent years.¹ However, the federal budget is unlike a traditional household budget, and some economists have cautioned against taking drastic measures to curb spending because of the harmful impact it would have on the economy.² Substantial spending cuts and significant tax increases could result in slowing the economy and thereby decreasing tax revenue, while also increasing federal spending on social programs to combat the self-inflicted harm caused by a downturn in employment across the nation.³ Meanwhile, the Internal Revenue Service (IRS) has been hemorrhaging funding and staff for over a decade as a result of legislators who have vilified the IRS to justify cutting its budget.⁴


Latest IRS reports reflect that nearly 84% of federal taxes are paid voluntarily and on time, leaving \$441 billion uncollected. The difference between taxes owed by law and the amount actually paid to the IRS is known as the “tax gap.”⁵ Many models have been advanced as to the size of the tax gap, but it is estimated to be somewhere between \$381 billion to \$1 trillion annually.⁶ Most unpaid taxes result from individuals reporting less income than they earned, especially business and self-employment income. About 9% of the gap is a result of failing to file, and 11% is due to underpayment of taxes that were accurately reported, according to the Committee for a Responsible Federal Budget.⁷

Considering the government is in dire need of revenue, one might logically conclude that providing adequate funding to the arm

of the government that collects the majority of revenue would be seen as beneficial. The IRS is actually one of the rare government agencies that generates a positive return on investment. For every 33 cents that are spent on funding the IRS, the IRS collects \$100.⁸ However, many legislators appear to have chosen to ignore this seemingly basic logic and have continued to vote to slash the budget of the IRS to tally political points. The IRS has been on the receiving end for over a decade of funding cuts to the agency. As a result, the IRS has lost more than 25% of the agency’s enforcement personnel to collect on the unpaid taxes owed by taxpayers.⁹ Recent figures on outstanding unpaid taxes owed to the government are estimated by the current IRS commissioner to be nearly \$1 trillion.¹⁰

LONG-TERM FUNDING CUTS HAVE HAD A NEGATIVE IMPACT ON THE EFFECTIVENESS OF THE IRS

Not only have IRS enforcement and collections dropped drastically due to the budget cuts, but the level of service and accessibility has dwindled to an all-time low. A recent National Taxpayer Advocate Objectives Report indicated the IRS is answering only one out of every 50 calls received from the public.¹¹ Practitioners have also reported receiving a pre-recorded message advising callers to hang up and try back again later without providing an option to wait on hold. This means, even for urgent matters such as seizure or levy action by the IRS, one may not be able to reach anyone at the IRS to lift a freeze on assets, even to purchase basic necessities like groceries. Worse still, numerous



taxpayers have languished at the mercy of the IRS for their 2019 and 2020 tax returns yet to be processed, with millions waiting on their refund checks to be issued.

Our firm has represented clients before the IRS over the last two decades. In our experiences with the various divisions within the IRS, we have seen first-hand that IRS employees are mostly trying to manage as best as possible without basic resources to enable them to do their job well. For example, our firm negotiated a settlement for a client in one case where, even though the settlement was paid in full by the taxpayer, the IRS lien department had failed to release the tax liens, which was extremely detrimental to the taxpayer's credit score. When we were finally able to speak to the right person in the IRS lien

department, they advised they could not release the lien until they "saw in the system that the offer in compromise had been paid in full." We proposed faxing them the official IRS documentation reflecting the full satisfaction of the offer in compromise but were told by an IRS agent "that was not the protocol," and they would not accept the documentation. We then called the IRS agent who had approved the settlement and were told the system reflected that the offer in compromise had been accepted and paid in full, and the lien department should "see it in the system." However, when we asked the agent to call the IRS lien department to have the lien released, the response was, "No, that's not the protocol: They have to see it in the system." In this case and, tragically, in many other

instances, the current state of the IRS demonstrates the axiom: The left hand does not know what the right hand is doing.

As much sympathy as we have for the agents who are tasked with these responsibilities, it is nonetheless frustrating when IRS agents routinely take weeks to respond on a matter (if they respond at all) with no apparent consequences or discipline from their superiors. We have handled cases where we have followed up with revenue officers for months on end in an attempt to push a matter forward. Often, after providing a revenue officer with all the documents requested, only to have the revenue officer or another IRS agent request all the documents all over again because the IRS code requires documentation reviewed by IRS agents be from the most recent three months in time.

A report from the Congressional Budget Office suggests the IRS could collect billions of dollars in additional revenue for each dollar invested in the IRS.

Similarly, we have found it often takes six months or more for a hearing date to be set on an appeal of action related to a levy or a lien. Furthermore, during the actual hearing itself, the appeals officers routinely take little to no action to correct matters that are noted as errors in the IRS system, such as a tax return showing as unfiled, even when it may be a return that is not required to be filed by the taxpayer or business. It is also very common for appeals officers to kick the case back to the collections division of the IRS without taking any substantive action towards reaching a judicious outcome during the appeal. Likewise, filing a petition to tax court typically means you may be set to appear on the tax court's docket approximately two years from the filing of your petition.

FUNDING CUTS HAVE LED TO FEWER AUDITS OVERALL, BUT MORE AUDITS FOR LOW-INCOME TAXPAYERS

The lack of funding at the IRS has also disastrously affected the examination/audit division of the IRS. With fewer people working within the examination division of the IRS, the share of individual income tax returns audited fell by 46%, and the share of corporate

income tax returns it examined fell by 37% between 2010 and 2018, according to the Congressional Budget Office.¹² The IRS has had fewer auditors during this period than at any time since World War II, and this tax shortfall cost the United States 3% of gross domestic product per year.¹³

Furthermore, recent reports on the trends in audit practices at the IRS have found an inequity in the treatment of taxpayers by the IRS that appears to be an unfortunate side effect of the funding cuts. An analysis of IRS audits found that, statistically, the IRS was less likely to audit a household with a gross income of over \$1 million per year or a business with a gross revenue of over \$20 million per year.¹⁴ Analysts surmise that many IRS officials believe they lack qualified enforcement staff and funding to successfully audit wealthy taxpayers and sophisticated corporations that may be exploiting the tax system and not paying what they owe. Audit levels of large corporations were at approximately 93% 10 years ago, while today's figures find that only about 38% are audited.¹⁵

Dorothy A. Brown, a tax-law professor at Emory University in Atlanta, provides a glaring and damning examination of the IRS's audit practices:

Without increased funding, the IRS will continue targeting low-income taxpayers for audits, particularly those claiming the earned-income tax credit. The EITC is a wage subsidy available to low-income workers. The typical EITC recipient makes less than \$20,000 annually ...

Moreover, while almost half of all EITC-eligible filers are white, an analysis by ProPublica found that the counties with the highest audit rates were 'poor, rural, mostly African American and in the South.'

Increasing the frequency with which the poorest Americans are audited, while not similarly increasing the rate of audits among the more affluent, serves to exacerbate America's racial and class inequities ...

The IRS argues that EITC claimants are audited frequently because the audits are cheap to conduct, can be done by mail, and do not require a lot of IRS personnel time. Audits of wealthy taxpayers, by comparison, involve hand-to-hand combat with the best lawyers the wealthy can buy. It is simply easier for the IRS to go after the most vulnerable among us ...¹⁶

Simply put, it appears from statistics the IRS may be targeting those who are less likely to hire representation to defend them.

OTHER FACTORS HAVE ALSO AFFECTED STAFFING AND RESOURCES

Unfortunately, the challenges of hiring adequate personnel for the IRS are not solely limited to funding constraints. Rather, the lack of funding exacerbates the hiring challenges of an employer who

faces difficulty overcoming its lack of appeal to prospective employees. For example, an IRS revenue officer is a local agent tasked with the responsibility of collecting on outstanding unpaid taxes by taxpayers. These jobs can be thankless and dangerous at times. IRS agents have received death threats and other menacing threats of harm. Revenue officers routinely give pseudonyms when dealing with the public rather than providing taxpayers with their real names to prevent taxpayers from finding and taking action against them.

The anemic state of the IRS due to funding cuts has been further compounded by a disruption and near-complete halt to operations as a result of COVID-19, as well as the IRS being tasked with various responsibilities related to approving federal funds for lending, such as the PPP loan offered by pandemic-related legislation. However, COVID-19 only served to further exploit the painful reality experienced by those who have been working with the IRS over the past decade. The level of service provided inside and outside the IRS has been and continues to be lacking.

INCREASED FUNDING FOR THE IRS IS A SMART INVESTMENT

It's easy to avoid the topic of funding the IRS by weaving the need for tax reform into the discussion. While there is room for thoughtful discussion over the most beneficial or effective taxing theories, tax rates and utilization of tax dollars, as well as debates to be had about the inefficiencies, redundancies and inconsistencies within government programs, statistics show that providing needed funding to the IRS would likely result in a good return on investment. A report from the

Congressional Budget Office suggests the IRS could collect billions of dollars in additional revenue for each dollar invested in the IRS.¹⁷

President Biden has proposed an \$80 billion funding boost for the IRS over the next decade, a major expansion of the tax agency that would double its enforcement staffing and give it new tools to combat tax dodging by the wealthiest Americans.¹⁸ IRS officials have said they need a multi-year commitment from Congress so they can hire and train enforcement staff and ramp up audits with less risk of lawmakers stopping such an initiative midway through. The money would let the IRS increase its enforcement staff by about 15% a year.¹⁹ The proposed enforcement provision would also include much more rigorous financial reporting to help crackdown on tax evasion and could yield as much as \$700 billion over 10 years.²⁰

CONCLUSION

As practitioners, although we may benefit from the disarray at the IRS driving the public's need for professional representation, we should genuinely wish taxpayers could be better served within the system. We cannot afford to continue ignoring the desperate state of the IRS. Providing substantial funding to this very important agency of the government will help us out of this financial nightmare that has taxed us all.

ABOUT THE AUTHOR



Shiny Rachel Mathew is a partner at Polston Tax Resolution & Accounting. She was an accountant before receiving her J.D. from the OCU School of Law in 2008. She is the host of the Tea & Taxes OBA CLE Series, an

Oklahoma Bar Foundation Trustee and previously served as chair of the Taxation Law Section.

ENDNOTES

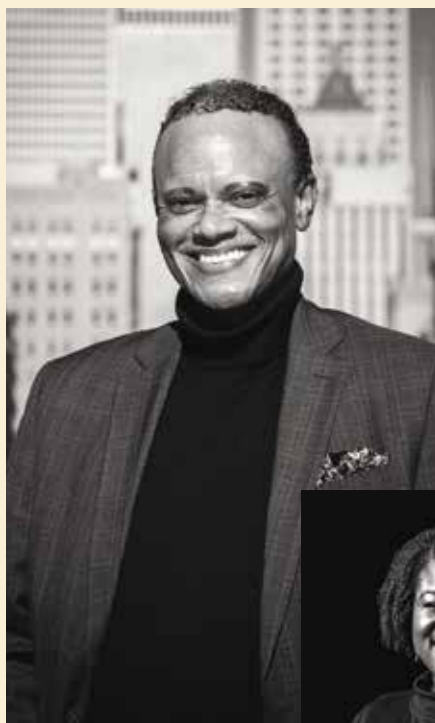
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OBA DIVERSITY AWARD WINNERS ANNOUNCED

By Telana McCullough

THE OBA DIVERSITY Committee is gearing up to host the 2021 Ada Lois Sipuel Fisher Diversity Awards Dinner on Thurs., Nov. 11, in conjunction with this year's OBA Annual Meeting. The dinner begins at 7 p.m. at the Sheraton Hotel in downtown Oklahoma City. During the ceremony, this year's OBA Diversity Award recipients



Hannibal Johnson, (inset)
Ruth Addison Martin



will be recognized, and noted author and attorney Hannibal Johnson will serve as the keynote speaker.

Mr. Johnson is an acclaimed author and attorney who has served prominently during the commemoration of the 1921 Tulsa Race Massacre and has kept the issues surrounding the tragedy in the forefront. He most recently authored *Black Wall Street 100: An American City Grapples with its Historical Racial Trauma*. As part of the celebratory evening, Mr. Johnson will interview Ruth Addison Martin, chief legal officer, Tulsa Housing Authority, on Tulsa's historic Greenwood District and its legacy.

"In this, the 100th anniversary year of the 1921 Tulsa Race Massacre, it is fitting that we pause to reflect on our 'hard history,'" Mr. Johnson said. "It is imperative that we leverage its lessons as we further embrace diversity, equity, and inclusion."

This year's Ada Lois Sipuel Fisher Diversity Award Winners are:

Member of the Judiciary



**Justice
Shawna S.
Baker**

Justice Shawna S. Baker was confirmed to the Cherokee Nation Supreme Court in

August 2020. Her first opinion grabbed international headlines when the court unanimously granted full rights of Cherokee citizenship to Freedman descendants. A graduate of the NYU School of Law, she told her *alma mater* in an *NYU Law* news article it became her priority to give back to those who have invested in her. "It is essential for Cherokee women and girls to see a woman sitting on the tribe's highest court, and likewise it is important for members of the LGBTQ community to see that they, too, can aspire to any profession and to the highest positions within the tribe," said Justice Baker. She is the founder of the Family Legacy & Wealth Counsel PLLC in Tulsa.

Attorneys



**Anthony
(Tony)
Coleman**

Tony Coleman is a top-rated and highly respected criminal defense attorney, but as someone who did not graduate from high school, his path was not always certain. “Having an absentee father, there were a lot of things I was destined to fall in the groove of, and that is exactly what happened.

But I quickly realized there was something bigger and better for me. And the only way to make that happen was to pursue a career in law.” He pursued his legal education at the OCU School of Law and forged a law career that included service to the Oklahoma State Senate leadership, the first Black Oklahoman in state history to serve in that capacity, before establishing his own law firm, The Coleman Law Firm PLLC. Mr. Coleman received the Clarence Darrow award in 2015 and is a member of the National College for DUI Defense.



**Francie
Ekwerekwu**

Frances “Francie” Ekwerekwu, a native of Arlington, Texas, most recently held the primary

role of Oklahoma County Pretrial Jail Release Initiative’s program director for The Education and Employment Ministry (TEEM), an Oklahoma City nonprofit organization. In tribute to her time at TEEM, she was named the 2021 honoree and first recipient of The Francie Ekwerekwu Empowerment, Equality and Social Justice Advancement Award. In conjunction, Ms. Ekwerekwu served as an Oklahoma County assistant public defender, specializing in pretrial and bond matters. While serving in these positions for six years, she provided program management, legal representation and advocacy to various individuals who encountered the Oklahoma County criminal justice system. In June 2019, she was appointed by Oklahoma County Commissioner Carrie Blumert to serve on the Oklahoma County Criminal

TICKETS AVAILABLE NOW!

OBA Diversity Awards Dinner

Thursday, Nov. 11, 7 p.m.

Oklahoma City Downtown Sheraton Hotel

Details and registration at www.okbar.org/annualmeeting

Justice Authority, addressing issues surrounding the Oklahoma County jail. She served in this role for over two years before resigning in October, when she was sworn in as an assistant public defender for the Federal Public Defender of the Western District of Oklahoma. Ms. Ekwerekwu is an OU graduate, where she earned bachelor's degrees in arts and sciences, a master's degree in human relations and was a varsity volleyball student athlete. She also received her J.D. from the DePaul University College of Law. Currently, she is an adjunct professor at OU, instructing undergraduate and graduate-level students in the Human Relations Department. In May, she joined the ACLU of Oklahoma's Board of Directors. Through this role and other community activities, she is dedicated to fighting for legal rights, civil liberties and protections, equality, well-being, quality of life and justice for others in her community, especially marginalized groups and individuals. A devoted advocate for children of incarcerated parents, she serves on the Oklahoma Messages Project Board of Directors. She also serves as an honorary guest of the Oklahoma Commission on Children and Youth's Children of Incarcerated Parents Advisory Committee. A member since 2006, she serves various ministries at her church, Fifth Street Baptist Church, on the east side of Oklahoma City. She also prioritizes serving as a volunteer volleyball coach with the Oklahoma City Police Athletic League for east side Oklahoma City schools, and she is a proud member of Leadership Oklahoma City Class 36 and Leadership Oklahoma Class 33. Her favorite role in life is being a mother to her eight-year-old son – this truly is her supreme honor and privilege.



Miguel Garcia

Miguel Garcia practices in the areas of complex federal and state criminal defense matters that can lead to immigration consequences. Born in Mexico and raised in Houston, he uses his passion for law in combination with his skill to serve an underrepresented group with compassion and understanding. He received his law degree from the OU College of Law after earning his undergraduate degrees from Texas A&M University. He established his law firm Miguel Garcia PLLC in 2015. Mr. Garcia serves on the boards of the Latino Community Development Agency, Oklahoma County Law Library, Youth Leadership Exchange Board, Oklahoma County Bar Association and is a member of the Ruth Bader Ginsburg Inn of Court.



Trent Shores

Trent Shores, a former U.S. attorney, is a shareholder in the Tulsa office of GableGotwals, where he advises clients regarding complex litigation, cybersecurity and Native American law and policy. He was recently named a Tribal Supreme Court justice for the Kaw Nation and a member of the U.S. Global Leadership Coalition's Oklahoma Advisory Committee. Mr. Shores graduated with a degree in political science from Vanderbilt University and received his J.D. from the OU College of Law. A member of the

Choctaw Nation, he established national initiatives to address the crisis of missing and murdered Indigenous people and led a presidential task force that investigated allegations of sexual abuse at the Indian Health Service. His work has been featured in national media outlets, including *The Wall Street Journal*, *The New York Times*, *Real Clear Politics* and the Associated Press.

Organization



CAIR Oklahoma (Council on American Islamic Relations)

CAIR Oklahoma's vision is to be a leading advocate for justice and mutual understanding. Its core principles include supporting free enterprise, freedom of religion and freedom of expression. CAIR Oklahoma is a nonprofit group, established in 2006 by a group of local Muslims, that serves the entire state through its Oklahoma City office on issues that include civil rights, government affairs, grassroots advocacy, research and education.

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



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2022 OBA BOARD OF GOVERNORS VACANCIES

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

One representative is elected from each of the nine Supreme Court judicial districts, as such districts existed prior to Jan. 1, 2020, pursuant to Order No. SCBD 4483 (2020 OK 17).

OFFICERS

President-Elect

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

Vice President

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

BOARD OF GOVERNORS

Supreme Court Judicial District Three

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

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: **Dustin E. Conner, Enid**

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: **Allyson E. Dow, Norman**

Member at Large

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

NOTICE

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

Terms of the present OBA officers and governors will terminate Dec. 31, 2021.

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.

A total of 510 signatures appear on the petitions.

Vice President

Miles T. Pringle, Oklahoma City

Nominating Petitions have been filed nominating Miles T. Pringle, Oklahoma City, for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2022.

A total of 88 signatures appear on the petitions.

BOARD OF GOVERNORS

Supreme Court Judicial District No. 3

S. Shea Bracken, Edmond

Nominating Petitions have been filed nominating S. Shea Bracken, Edmond, for election of Supreme Court Judicial District No. 3 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2022.

A total of 36 signatures appear on the petitions.

Supreme Court Judicial District No. 4

Dustin E. Conner, Enid

Nominating Petitions have been filed nominating Dustin E. Conner, Enid, for election of Supreme Court Judicial District No. 4 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2022.

A total of 30 signatures appear on the petitions.

Supreme Court Judicial District No. 5

Allyson E. Dow, Norman

Nominating Petitions have been filed nominating Allyson E. Dow, Norman, for election of Supreme Court Judicial District No. 5 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2022.

A total of 32 signatures appear on the petitions.

Member at Large

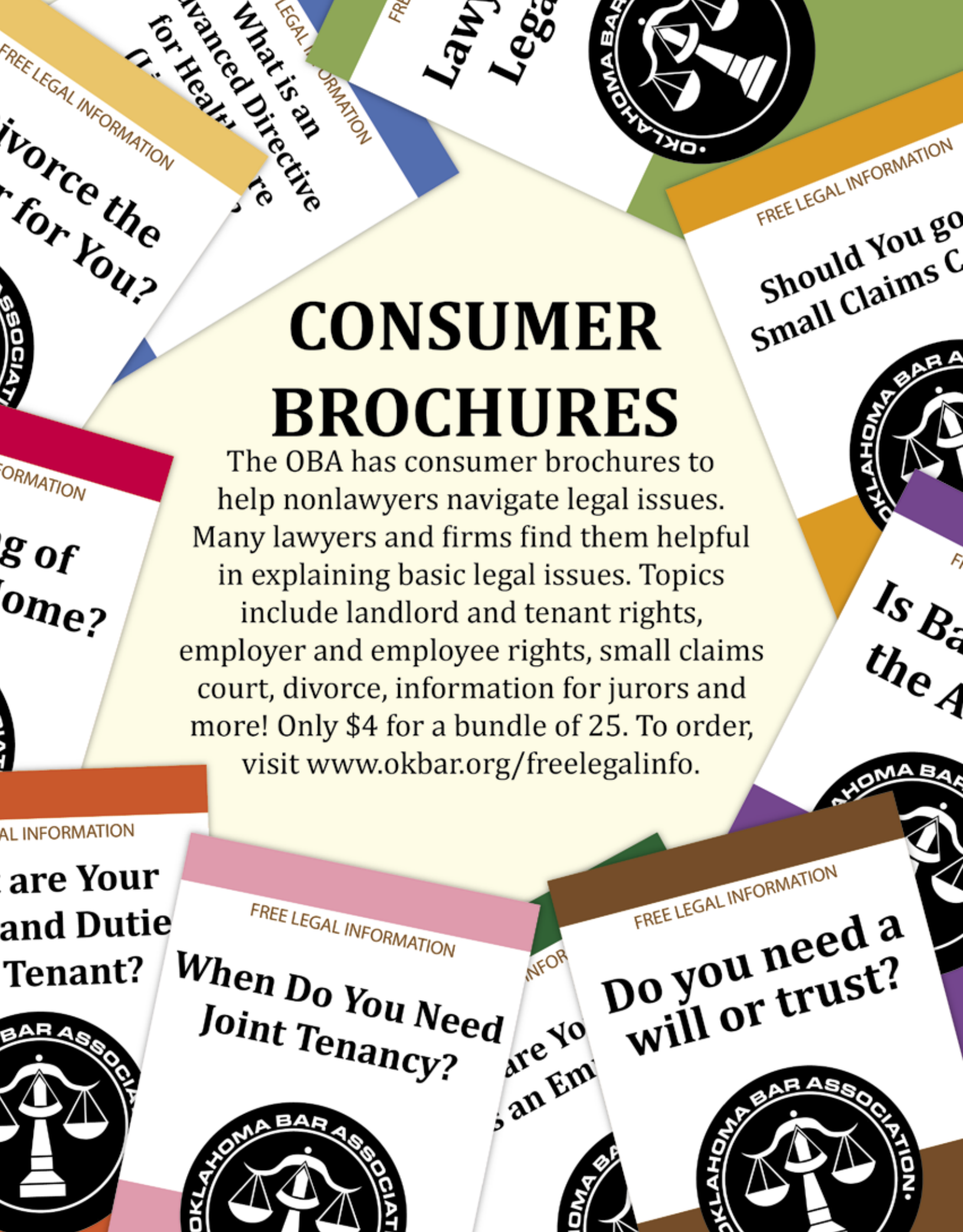
Angela Ailles Bahm, Oklahoma City

Nominating Petitions have been filed nominating Angela Ailles Bahm, Oklahoma City, for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2022.

A total of 95 signatures appear on the petitions.

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.



Your Legacy of Service Starts Now

ON ANY GIVEN DAY, ONE of the 20 plus OBA committees is meeting online or in person, demonstrating that OBA committee service is where the action is.

From Access to Justice to Strategic Planning, OBA committees touch most aspects of our profession and fortify the association with guidance and service. As a career-advancing move, many OBA members will join committees to get more involved, network with other lawyers and work together to elevate our profession. I understand there are many demands on our time, whether we are starting out as new lawyers or have been practicing for a while. However, I can

personally attest that involvement in the OBA has been wonderful for me, and I am grateful for the friendships that have fulfilled my life.

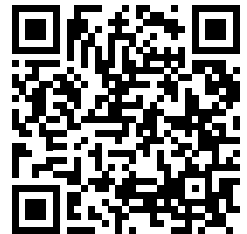
Committees might meet monthly, or just for a few times each year when they are needed. For example, the Awards Committee is busiest in August when OBA Annual Award nominations are under consideration. By contrast, the committee responsible for the Lawyers Helping Lawyers Assistance Program has monthly discussion groups that are open to all OBA members online, in Oklahoma City and Tulsa. The LHL committee works tirelessly

to remind OBA members that free confidential counseling is available.

There are many other committees to consider that are listed below. Committee work takes some time, but not a lot of time. It takes effort, but effort that is worth your time. The OBA will be better for your service!

How do you sign up? Choose your top three committee choices and fill out an online form. We will make appointments soon.

James Hicks,
President-Elect



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

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

Sovereignty Symposium 2021

Oct. 11 – 12 • Photographs by Selden Jones



1. The Sovereignty Symposium went virtual! Many thanks to the MIS department of the Administrative Office of the Courts.

2. From left: Jim VanDeman, 2021 Sovereignty Symposium Honored One; Justice Yvonne Kauger; Justice Noma Gurich, 2021 Hodges-Lavender award winner; Dr. Bob Blackburn, 2021 Sovereignty Symposium Friend of the Court; Justice Doug Combs; Judge Robert Henry; seated, Chief Justice Richard Darby.





3. From left: Dr. Jim Collard, Director of Planning and Economic Development, Citizen Potawatomi Nation; Honorable Reggie Wassana, Cheyenne and Arapaho Tribes; Geoffrey Standing Bear, Principal Chief of the Osage Nation; Honorable Dana Murphy, Oklahoma Corporation Commission.

4. Honorable Bill G. Lance Jr., Secretary of Commerce, Chickasaw Nation.

5. Honorable Leslie Osborne, Oklahoma Labor Commissioner.

6. Mr. Mithun Mansinghani, Solicitor General of Oklahoma.

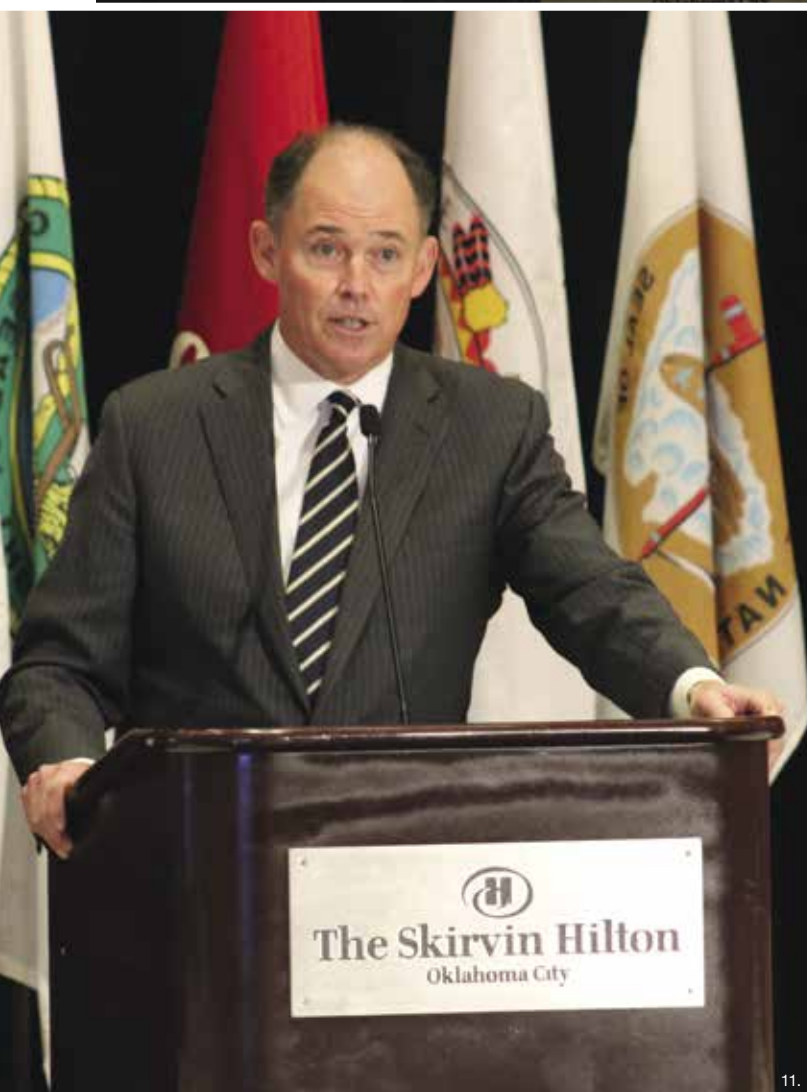
7. Honorable John "Rocky" Barrett, Chairman, Citizen Potawatomi Nation.



8.



9.



11.



12.

8. Honorable Reggie Wassana, Governor, Cheyenne and Arapaho Tribes.

9. Honorable Chuck Hoskin Jr., Principal Chief of the Cherokee Nation.

10. From left: Oklahoma Supreme Court Justices James Winchester, Noma Gurich and Dana Kuehn.

11. Mr. Ryan Leonard, Esq.

12. Honorable W. Mike Warren, Associate District Judge, Harmon County.

13. From left: Honorable Gary Batton, Chief, Choctaw Nation; Honorable David Hill, Principal Chief, The Muskogee Nation; Mr. Arvo Mikkanen, Assistant United States Attorney for the Western District of Oklahoma.



10.



13.

New Lawyers Take Oath in Admissions Ceremony

BOARD OF BAR EXAMINERS

Chairperson Tommy R. Dyer Jr., announces that 244 applicants who took the Oklahoma Bar Examination on July 27-28 were admitted to the Oklahoma Bar Association on Sept. 28. Due to the social distancing requirements caused by the COVID-19 state of emergency, Oklahoma Supreme Court Chief Justice Richard Darby administered the Oath of Attorney to the candidates on the steps of the Oklahoma Judicial Center in a morning ceremony. A total of 332 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Robert E. Black, Oklahoma City; Micah Knight, Durant; Juan Garcia, Clinton; Nathan A. Lockhart, Norman; Loretta Radford, Tulsa; Tomas M. Wright, Muskogee; Bryan W. Morris, Ada; and J. Roger Rinehart, El Reno.

THE NEW ADMITTEES ARE:

Heath Thomas Albert
Michelle Anne Albert
Kadijah Megan Almarales
Alexandria Paige Alvarado
Jonathan Dean Arrington
Michael Andrew Athey
Samantha Lee Baggett
Ashlee Drew Barker
Sydney Leigh Barrett
Preston Thomas Bennett
Kira Alexandra Benton
Alexander Chance Berney

Samuel Thomas Black
Madison Ann Botizan
Jack Coryell Bowker
Kennedy Marie Brian
Ashly Rene Brown
Cole Bradford Brown
Austin Curtis Browning
Blake T. Burns
Ethan Lee Byrd
Austin Lane Caldwell
Kelli Alison Case
Simon Frederick Cassel
Cooper Rhea Catlege
Chelsi Nicole Chaffin Bonano
Kyle Scott Chapman
Leyna Nicole Churchill
Will Jackson Collins
Julie Gale Combs
William Reid Council
Corby Joe Covalt
Alexandra Albert Crawley
Marissa Faith Crook
Steven Michael Crowley
Skye Blu Cruz
Diana Elena Cupps
William Edward Dakil
Joseph Michael Daniel
Spencer Ross Dawson
Beau Gaston Dismukes
John James Ditmars
Korbyn Jackson Easley
Littleton Tazewell Ellett
Samuel Catlett Endicott
Emily Jean Eslinger
Martin Dean Estes
Jacob Lee Fanning
Matthew Rue Ferguson
Amanda Mayo Finch
Kayla Nicole Finnegan
Debbie Minnie Firestone

Brittney Marie Flesch
Sydney Nicole Forsander
Carter Allen Fox
Sara Noemi Franco
Hannah Kirsten Frizzell
Christopher Garrett Fry
Elissa Marie Furlong
Joshua David Gateley



(From left) YLD Chair April Moaning and Brittany Byers celebrate after the ceremony at Junction Coffee, a doubledecker coffee bus sponsored by the YLD.



Nearly 250 candidates wait to take the Oath of Attorney on the steps of the Oklahoma Judicial Center.

Degol Tseggai Gherezghiher
 Cathryn Dennee Gibbs
 Spencer Pierce Gill
 Derek Michael Gilliam
 Ty James Gilmore
 Kevin David Glasco
 Stephanie Rae Gonsalves
 Grecia Elizabet Gramajo
 Michael Joseph Green
 MaryAnn Teresa Grover
 Victoria Renee Hack
 Aaron Michael Hall
 Keaton Lee Haney
 Margaret Danielle Hartman
 Spencer Marlow Harvey
 Christopher Blake Hauger
 Laurel Don Havens
 Grayson McGraw Haws
 Nakoma Dawn Hazlett
 McKayla Leigh Hendrix
 Hammons Paul Hepner
 Tanner Andrew Herrmann
 Morgan Ashley Higgins
 Nathan Alexander Hogan
 Sierra Rose Holling
 Elizabeth Rose Houston
 Caroline Faith Howard
 Kaitlyn Marie Huelskamp
 Heather Nichole Huff
 Dayten Aberaham Israel
 Kristopher Donnelly Jackson
 Sara Catherine Jeffries
 Marshall Allen Jones
 Morgan Nicole Jones

Nicole Renea Jones
 William Ray Keene
 William Porter Kennedy
 Zoe Alise Kent
 Cody Dwight Kerns
 Emma Cooke Kincade
 Jacob Christopher King
 Hope Caroline Klepper
 Harry Jacob Kouri
 David Paul Kritz
 Boden Gregory Lamb
 Adam Paul Lancelot
 Daniel Dean Lee
 Cameron Austin Leedom
 Michael Stephen Lewis
 Stephen Christopher Lopp
 Luke Jeremiah Luker
 Dilan Alexander Lyda
 Katherine Anne MacKenzie
 Zachary Clay Manley
 Madeline Marie Marshall
 Sarah Marshment
 Sage Frances Martin
 Tessa Jane Martin
 Victor Gabriel Martin
 Mary Ruth McCann
 Charles Cameron McCaskey
 Hunter Belle McCullough
 Wyatt Allen McGuire
 Peyton Shea McMillin
 Anna Howe McNeil
 Quincy Ann Metcalf
 Cody Ray Milner
 Cody Wayne Minyard

Heather Renee Mishket
 Daniel Kelso Mitchell
 Jennie Marie Mook
 Johnathon Ryan Moore
 Samuel Alan Moore
 Rachel Brooke Morefield
 Austin Michael Morris
 Kaitlyn Renee Mortazavi
 Linda Nkaupajtshiab Moua
 David Ty Mowdy
 Chloe McKale Moyer
 Nicholas Adam Munoz
 Anamayan Narendran
 Kelsey Elaine Neal
 Johnathan Matthew Needham
 Zachary Lee Neighbors
 Andie Beth Netherland
 Motahareh Hajimirzaei Nickel
 Ryan Robert Nigh
 Katelyn Mae Niles
 Kimberly Stacy Noe-Lehenbauer
 Blayne Phillips Norman
 Meghan Benson O'Connor
 Troy Austin Officer
 Jacob John Oliphant
 Casey Jack Osborn
 Emory Ann Osborn
 Skylar Lynn Pasquali
 Samantha Lea Patterson
 Erika Danielle Paul
 Rebecca Charlotte Peters
 Dustin Dwight Peterson
 Keagan Seth Michael Phares
 Jared Scott Plaudis

Alyssa Denae Poe
 Arnetta Jonnika Porter
 Michael Jay Power
 Margaret Mary Powers
 Audrey Anne Pratt
 Mark Harris Preslar
 Andrew Nash Rader
 Pete George Raju
 Jaime Ramos
 Holly Mischelle Randall
 Clay Townsend Raun
 Austin Taylor Ray
 Kyle David Reather
 Caroline Nicole Renner
 Cole Brandon Reynolds
 Madison Taylor Rhodes
 Kate Isabel Ricart
 Christian Dean Rinehart
 Elizabeth Ann Rischard Davis



Elizabeth Houston signs the roll of attorneys.

Matthew Thomas Robbins
 Tess Raquel Robbins
 Anastasia Rose Ruttkay
 McKenzie Leigh Ryan
 Anna Yesenia Sanchez
 Sean Michael Sanders
 Seth Albert Schwenn
 Chelsea Grace Scoggins
 Emily Arleen Scott
 Tyler Dean Scribner
 Robert James Seaver
 Anthony Victor Severin
 Clayborn Alexander Shepperson
 Allyson Elizabeth Shumaker
 Austin Lee Sides
 Garrett Hudson Sill
 Alexa Lynn Smart
 Alexandria Marie Smith
 Emily Gayle Smith
 Nathan Wayne Smith
 Kallen Burton Snodgrass
 Gweneviere Nichole Sommer
 Madison Renee Sorley
 Kate Ryan Springer
 Gatlin Cy Squires
 Lauren Elaine Stafford
 Mallory Grace Stender
 Summer Kay Stephens
 Colby Austin Stephenson
 Ronald James Stevens
 Allyson Anna Marie Stewart
 Thomas Austin Stone
 Elena Marie Sturdivant
 Alyson Marie Sulak
 Mallory O'Roark Sullivent
 Ethan Taylor Swindell
 Lauren Alexandra Swinney
 Matthew Owen Taylor
 Courtney Nicole Templeton
 Luke Alexander Thompson
 William Robert Tomlinson
 Braden Culley Turner
 Ashley Faith Vinson
 Katelyn Nicole Wade
 Zachary Alexander Waldroup
 Caitlin Nichole Watkins
 Daniel Alexander Weatherholt
 Quinn Carpenter Weedon
 Hunter Graham West
 Maxwell Graham West
 William Walton Whitehurst
 Caitlin Jill Wilguess
 Parker Lee Wilkerson



Gatlin Squires displays his certificate.

Jessica Andrea Wilkes
 Rachel Mary Williams
 Joseph Michael Winters
 Austin Lane Witt
 Anna Catherine Wood
 Darcy Nicole Worth
 Turner Jacob Thomas Wright
 Zheshu Xiao
 Zachary Scott Yarborough
 Maegan Rae Yost



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MANY THANKS

THE OBA LAW DAY COMMITTEE APPRECIATES THE CONTRIBUTIONS THAT HELPED MAKE THIS YEAR'S STATEWIDE LAW DAY ACTIVITIES AND COMMUNITY SERVICE SO SUCCESSFUL.

Chief Justice Richard Darby

OBA President Mike Mordy

OETA Television

Oklahoma County Bar Association

Tulsa County Bar Association

Oklahoma County Bar
Association Auxiliary

Dan Crawford

Katheryn Bell

Oklahoma County Bar Association
Young Lawyers Division

Volunteer lawyers statewide who
answered calls and emails during
Ask a Lawyer



Ask A Lawyer hotline



Law Day contest winner ceremony



Ask A Lawyer TV show filming

New Laws Effective Nov. 1

By John Morris Williams

ABSENT AN EMERGENCY clause, bills from the previous session generally become effective on or after Nov. 1 of each year. This year, there were 156 bills passed with emergency clauses and 490 bills taking effect on or after Nov. 1, 2021.

Since lawyers are in the business of the law, each new law is important, and staying informed in changes in the law is incumbent to remain professionally competent. The OBA takes very few positions, if any, on pending legislation. However, bills throughout the session are monitored so members can be aware of potential or actual changes in the law. As I said last month, there is no better way to stay informed of changes in the law than by participating in the Legislative Monitoring Committee. The committee's sole function is to educate members on proposed legislation and the results of the latest session. A description of all the legislation that passed this year was provided to committee members through the committee's community library. Due to copyright protections relating to our legislative service, we are unfortunately not able to make that material available to the public at large by posting it on our website.

Here are a few bills that might be of general interest to those who may not have previously seen them:



SB 198

This bill made changes to the Oklahoma Guardianship and Conservatorship Act. Of particular note is the new language emphasizing “least restrictive alternative” and “supported decision making.” The language suggests alternatives to guardianship, such as “supported decision making, appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual including under power of attorney for health care or finances ...” Those who practice in this area may want to carefully review this new law.

SB 200

Pursuant to this bill, victims of domestic violence, sexual violence or stalking may terminate a lease without penalty. Tenants must produce a protective order or police report within 30 days of the incident. Also, landlords may not deny tenancy or retaliate against a person because of previously terminating a lease due to being a victim of domestic violence, sexual violence or stalking.

HB 2229

The Uniform Interstate Depositions and Discovery Act outlines the procedure to take a deposition of a witness when the

Since lawyers are in the business of the law, each new law is important, and staying informed in changes in the law is incumbent to remain professionally competent.

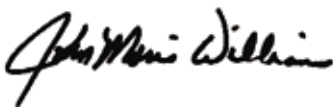
subpoena is issued by the court in another state. Although the filing of an application for the issuance of a subpoena does not constitute an appearance before the court, it does provide for judicial intervention for protective orders, enforcement, modification or to quash the subpoena.

HB 2548

This may perhaps be one of the bills every lawyer should read. Existing durable power of attorney documents will remain valid. However, as of Nov. 1, 2021, some significant changes in the law went into effect. Those changes may affect judicial proceedings relating to durable power of attorney documents executed prior to the new statute becoming effective. The new law has expanded definitions, addressed almost every conceivable scenario and has a statutory form and a form for certification as to the validity of the power of attorney.

The full text of these bills may be retrieved at the Oklahoma Secretary of State website: www.sos.ok.gov/gov/legislaiton.aspx. To get the bills to appear in numerical order, simply click or tap on "Doc Num" at the top of the table.

On a personal note, I want to wish everyone a wonderful Thanksgiving. While the last year for many of us has been personally challenging, I am so thankful for our Supreme Court, Board of Governors, OBA staff and countless volunteer leaders and workers who have kept us functioning and strong. For you, I am most thankful.



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



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Avoiding ‘Hello L’office’ and Other Law Firm Telephone Tips

By Jim Calloway

I HAD NO IDEA HOW MANY law firms answered their phones with “Hello L’office” until I went to work for the OBA. But it’s not limited to Oklahoma. I have received the same greeting calling lawyers’ offices in many states. Obviously, the intended greeting is “Hello Law Office,” but when you are busy and do a task hundreds of times, the unintended contraction of the phrase is understandable, if not acceptable. This month we will discuss the importance of law firm receptionist duties.

The receptionist is a very important position for the firm. Often, these duties are relegated to the least experienced and lowest-paid staff member. In some smaller law firms, the secretaries rotate who answers the phone during the day. Answering the phone is likely not their favorite time of the day, as their other work is slowed. But if we were to properly title this position based on importance to law office operations, we might use titles like “vice president of potential clients’ first impressions” or “first responder for client emergencies.”

Every law firm should have written instructions on how the phones should be answered. Every time the phone rings, it

could be a potential new client, and what will their first impression be? Many smaller firms have experimented with automated answering trees, “Press 1 for ...,” but others believe that is far too impersonal, and many small firm practice areas, like family law, are quite personal. Everyone answering the law firm phone lines should use a warm and friendly tone when answering the phone. It is very important to smile. Even though the smile cannot be seen over voice-only communication, it impacts one’s vocal tone. Incoming calls should be answered within three rings or less. This involves both training and teamwork to avoid placing someone on hold to answer another line.

Yes, what members of your team say when they answer the phone should be scripted. “Smith and Jones law firm. This is Mary speaking. How may we help you?” is one good example. Many prefer to use “law office” because several lawyers may be sharing office space, phone lines and a receptionist without being in a partnership. I would concur with your professional liability insurance carrier that answering the telephone Smith, Jones and Moore, when there is no law firm but three solo practitioners

sharing overhead, could be used as evidence of a partnership, giving rise to joint and several liability for a client with professional negligence claims.

While I concur, I also think “law office” is an uninspiring way to answer the phone; however, the primary problem is weak branding. A client may call the law firm often during the representation. Hearing the firm name repeated increases the chance the client will more easily remember the lawyer if a new legal matter arises years after the representation. So, if some lawyers operating independently have a long-term office sharing agreement, maybe they can try something creative like naming their office building and answering the phone “Main Street Law Center” (I should note, signage referring to the different entities at a location and having every client sign an attorney-client agreement indicating the client is contracting with the named attorney who is not a member of a law partnership are probably stronger evidence items to contest a “partnership by estoppel” claim). If you need to continue answering the phone “law office,” at least make sure everyone answering the phone reads this column’s headline. Focus can help assure the pause between the words.



The real point about “Hello L’office” is to recognize law offices are busy places, and everyone is working quickly to get their work done. You want no one, including the lawyers, to sound rushed when talking with clients or potential clients on the phone. Speak clearly and slowly. The caller cannot see your facial expressions and may draw negative conclusions from a “normal,” fast-paced law office tone. Let me repeat. Smile! It does make a difference.

I believe lawyers should record their own personal voice-mail messages. The phone has been answered by reception and

transferred to you. It is better for the caller to hear your voice, so it is clear they have reached you. If their cellphone connection is unstable, it is even more important. I appreciate some people hate hearing recordings of their voice, but hopefully, you won’t be listening to it very often.

Assist the receptionist by making certain they know the names of many of your clients and are also alerted when certain new clients have some urgency that may have them calling you frequently. Train the staff to use the client’s name while talking to them on the phone. It personalizes the encounter. This is especially

important when disengaging: “Mr. Green, is there anything else I can do for you today?” Some clients will tell your staff to call them by their first name, which I see as another building block in the new relationship.

A PROFESSIONAL ANSWERING SERVICE MAY BE A GREAT INVESTMENT

Many small law firms and solo practitioners now use professional answering services. These can be a great investment if the service frees up your staff for other duties. Most of these services can be scaled to use as much as you need them. Want

A well-trained receptionist, however, may engage your client with a positive attitude and perhaps bring in some new clients with offers to assist callers, including scheduling appointments.

to close the office every day for lunch? Forward the phones to the service for that time period. Maybe you have a practice that often receives calls in the early evening. The service can help with that.

You may also realize a return on that investment if you provide the service with several dates and times they can schedule a new client appointment for you and what types of matters are appropriate for them to schedule. I recall from private practice being in court all morning and returning calls from potential new clients in the afternoon, only to learn many had already hired a lawyer or at least said they had. "The lawyer is out of the office right now, but I can schedule an appointment for you this week," is something you want to offer.

Even if you don't hire an answering service, your staff should have the same instructions. If you are in court Monday morning and someone calls seeking to talk to a lawyer "right now," your staff should schedule an appointment for that afternoon. Of course, the lawyer will want to review any appointment scheduled this way to screen out obvious conflicts and cancel the appointment if need be.

Ruby (formerly Ruby Receptionists) is an OBA member benefit. You can call 866-611-7829 or visit www.ruby.com/okbar for more information. OBA members receive a lifetime 6% discount, backed by a 21-day money-back guarantee. Smith AI was a sponsor at our 2019 Solo and Small Firm Conference.

WHAT IS YOUR MARKETING GOAL? PHONE CALLS OR CLIENTS?

Many adults, particularly younger adults, hate talking on the phone when they believe it is avoidable. It is more than a casual belief. It is not that they don't want to talk to people in your office. But when all they want is to schedule an appointment, why have a conversational dialog of possible times and dates when there are more convenient ways to do that, particularly outside of business hours. Yet, the focus of most lawyer marketing, the "call to action," is to telephone the law firm to talk to someone, as I have noted in this space before. Website instructions on how to text the firm and online appointment scheduling are not services to consider for the future – they are tools you need today!

ARE YOUR CONVERSATIONS PRIVATE?

Lawyers spend a lot of time talking on the phone – in the office, the car and everywhere else. I cannot think of a busy law practice that doesn't involve a lot of telephone conversations. But when something is so routine and familiar, it is easy to make mistakes and fail to examine how to improve the process. It is easy to get involved in an important legal discussion on your mobile phone in public and forget others can hear you. If you must take a client phone call in public, move away from others to protect confidentiality.

Some law offices have their waiting area positioned where people can hear some of the staff's phone conversations. It makes sense as someone is needed to greet those who come in the door and inform the lawyers their appointment has arrived. But sooner or later, without careful training, someone in the waiting room will overhear something they shouldn't. If your practice is in a smaller community, it will be sooner.

Maybe some Plexiglas sheets can be installed to deaden the sound, or other measures can be taken. It is certainly something

to think about when designing a new office floorplan. Perhaps your waiting area needs some background music, or consider removing lobby chairs within earshot of the reception area.

CONCLUSION

It can be easy to hire someone to answer the phones and not fully train them because you are facing many deadlines. But a poorly trained receptionist can create problems for the law firm in many ways. A well-trained receptionist, however, may engage your client with a positive attitude and perhaps bring in some new clients with offers to assist callers, including scheduling appointments.

Consider using this article and your experience with how your law firm operates to build a simple and short set of

instructions for the receptionist position. That way, when any future problem is identified or someone wants to improve the process, you have a written set of instructions to modify. In addition, these instructions will prove invaluable if, due to unexpected absences, you find yourself staffing the receptionist position with a temporary worker. Your vice president of potential clients' first impressions deserves nothing less.

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.

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Meeting Summary

The Oklahoma Bar Association Board of Governors met Sept. 17.

REPORT OF THE PRESIDENT

President Mordy reported he attended a Carter County Bar Association event, OBA Strategic Planning Committee meeting and a Payne County Bar Association luncheon honoring Judge Donald Worthington. He also spoke at a Cleveland County Bar Association meeting and recorded a message for the *Ask A Lawyer* TV show to air on OETA Sept. 30.

REPORT OF THE VICE PRESIDENT

Vice President Geister reported he attended an Oklahoma County Bar Foundation board meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hicks reported he attended a 2022 budget planning

meeting with Executive Director Williams and Director Combs, an OBA Strategic Planning Committee meeting, OBA Budget Committee meeting, Oklahoma Bar Foundation meeting and OAMIC board meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended a Budget Committee meeting and budget-related meetings with President-Elect Hicks as well as OBA staff. He also met with members of the Strategic Planning Committee to discuss the process for creating a new strategic plan and selecting a moderator, and he conferred with a moderator to discuss next steps. He also conducted interviews with candidates for the position of executive assistant and attended a Payne County Bar Association luncheon honoring Judge Donald Worthington.

BOARD MEMBER REPORTS

Governor DeClerck reported he attended a meeting of the Garfield County Bar Association. **Governor Edwards** reported he attended a meeting of the OBA Clients' Security Fund Committee and a Pontotoc County Bar Association social event. **Governor Garrett** reported she attended an OBA Budget Committee meeting and served as a panelist for the *Ask a Lawyer* TV show to air on OETA Sept. 30. **Governor Pringle** reported he attended meetings of the OBA Budget Committee and OBA Strategic Planning Committee. **Governor Rochelle** reported he attended the Comanche County Bar Association monthly meeting and Access to Justice Committee meeting. **Governor Smith** reported she attended the OCU Law Student Mentorship opening reception. **Governor Vanderburg** reported he attended the Oklahoma Association

President-Elect Hicks said the Diversity Committee is hosting its annual Diversity Awards Dinner during the upcoming Annual Meeting, and he noted author and OBA member Hannibal Johnson will serve as keynote speaker.

of Municipal Attorneys Fall Conference and business meeting. **Justice Rowe** reported Justice Dana Kuehn has joined the Oklahoma Supreme Court and that a formal swearing will be held Oct. 7.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Moaning reported she attended an OBA Budget Committee meeting and served as a panelist for the *Ask a Lawyer* TV show to air on OETA Sept. 30.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported her office is processing a record number of out-of-state attorney registrations with a 25% increase over previous years. She also reported that renewals of existing registrations are outpacing new registrations. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Edwards said the **Clients' Security Fund Committee** met and examined 11 claims. Eight claims totaling \$100,000 were approved. He said the **Law Schools Committee** reports a 78% passage rate for the July Bar Exam, a rate which is typical for the summer exam and is considered average when compared to surrounding states.

President-Elect Hicks said the **Diversity Committee** is hosting its annual Diversity Awards Dinner during the upcoming Annual Meeting, and he noted author and OBA member Hannibal Johnson will serve as keynote speaker. The **Strategic Planning Committee** will convene soon to discuss long-range planning and determine membership needs. The Center for Nonprofits has been engaged to facilitate strategic planning and will make a presentation to the Board of Governors at its December meeting. Governor Garrett said the **Women in the Law Committee** met in September to finalize details for the 2021 Women in Law Conference to be held Oct. 1. in Oklahoma City. Governor Hilfiger said the **Law Day Committee** is wrapping up its work in 2021 with the *Ask A Lawyer* TV show taping complete. The show will air on OETA Sept. 30.

PETITION TO CREATE WOMEN IN LAW SECTION AND PROPOSED BYLAWS

The board approved a proposal to transition the Women in Law Committee to an OBA section, with the aim of greater flexibility and autonomy in achieving the group's goal of promoting and supporting women in the legal profession. The board also approved a motion to transfer Women in Law Committee funds to the new Women in Law Section before the end of the fiscal year.

PROPOSED 2022 BOARD OF GOVERNORS MEETING SCHEDULE

President-Elect Hicks outlined the proposed schedule. Discussion occurred as to whether the board will travel once again in 2022 and that the board must remain mindful of COVID in planning its events.

UPCOMING COUNTY BAR AND OTHER EVENTS

President Mordy reviewed a number of upcoming bar-related events, including the Boiling Springs Legal Institute Sept. 21; OETA Ask A Lawyer event Sept. 30; Women in Law Conference Oct. 1; Board of Governors meeting and group photograph Oct. 15; Access to Justice Summit Oct. 22; and the OBA Annual Meeting Nov. 10-12.

NEXT MEETING

The Board of Governors met Friday, Oct. 15, at the Oklahoma Bar Center. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved.

THANK YOU for helping raise \$60,000 for our Grantee Partners!



Diamonds & Disco might have been postponed but that didn't stop our amazing legal community from showing up for this year's OBF Grantee Partners! Thank you for your support, and we can't wait to celebrate our 75th with you next year.

It is not too late to help fund our Grantee Partners this year. 100% of all donations will go to fund programs providing legal services and education to Oklahomans across the state. Please visit diamondsanddisco.swell.gives to donate.

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- ♦ OG&E
- ♦ OU College of Law
- ♦ Valerie & Joe Couch

Oklahoma Bar Foundation Announces 2022 IOLTA Grantees

By Candice Pace

THE OKLAHOMA BAR Foundation is proud to announce \$785,858 in grants to 35 nonprofit organizations to provide program funding for fiscal year 2022. These programs are expected to help over 56,000 Oklahomans with legal services and support, including children and families,

court-ordered diversion participants, domestic violence survivors, refugees and immigrants and those in need of civil legal aid and law-related education.

Grant funding for OBF Grantee Partners comes from Interest on Lawyer Trust Accounts (IOLTA) and OBF fundraisers, including

two special campaigns conducted this year in honor of the OBF's 75th anniversary.

Ms. Pace is OBF director of development & communications.

IMPACT UPDATE

The OBF's new program to help end the shortage of court reporters in rural Oklahoma courts recently made its first Employment Grant. A \$15,000 Employment Grant was made to Angela Eylar, who will serve as an official court reporter for District Judge Jon K. Parsley in the district court of Texas County. Ms. Eylar's employment began on Oct. 1. Pursuant to the grant requirements, Ms. Eylar will serve a three-year term with the court.

Judge Parsley, who was instrumental in directing the *cy pres* award that funded this special grant program, describes his struggles to find and retain court reporters in rural western Oklahoma:

For many years, we have struggled with only one court reporter working for all five

judges in the First Judicial District. That one reporter recently secured a court reporting job in Texas, making more than double the salary we pay in Oklahoma. Our courts simply cannot function without a reporter, so I went on a desperate search for one. The Oklahoma Bar Foundation Court Reporter Rural Services Grant was critical to me employing a new court reporter. Informing my prospective reporter of the \$15,000 grant for taking the job in the Panhandle sealed the deal. I cannot thank the OBF enough for administering the program that has allowed me to keep the court system functioning in the First Judicial District.



From left Judge Jon K. Parsley and new Texas County Court Reporter Angel Eylar

The OBF is dedicated to improving the administration of justice in Oklahoma courts and is excited to help fill critical court reporter positions with this grant program.

OBF GRANTEE PARTNER ORGANIZATIONS

Grantee Service Categories	Grantee	Program/Services	Area of Service	Lives Impacted	Funding Amount
Children & Families	CASA of Canadian County	Advocacy for Abused Children	Canadian County	126	\$15,000
	CASA of Oklahoma County	Advocacy for Abused Children	Oklahoma County	705	\$15,000
	CASA of Southern Oklahoma	Advocacy for Abused Children	Carter, Love & Murray counties	118	\$15,000
	CASA of Western Oklahoma	Advocacy for Abused Children	Beckham, Custer & Washita counties	191	\$15,000
	Center for Children & Families	Court Ordered Divorce & Co-Parenting Program	Cleveland & Oklahoma Counties	629	\$15,000
	Oklahoma Guardian Ad Litem Institute	GAL Services for Low-Income Families	Statewide	200	\$50,000
	Oklahoma Lawyers for Children	Legal Services for Abused Children	Canadian, Logan & Oklahoma counties	2,600	\$69,000
	Pittsburg County Child Abuse Response Effort	Trained Advocates for Forensic Investigation & Recovery	Pittsburg County	250	\$10,000
	The Care Center	Victim Legal Services & Forensic Interviews	Statewide	1,000	\$10,000
	Tulsa Lawyers for Children	Legal Services for Abused Children	Tulsa County	300	\$50,000
Civil Legal Aid	Legal Aid Services of Oklahoma	Civil Legal Services for Low-Income Population	Statewide	20,000	\$85,000
	Oklahoma Access to Justice Foundation	Advocacy & Support for Access to Justice Programs	Statewide		\$8,000
	OBA Heroes Program	Legal Services for Low-Income Veterans & Military Personnel	Statewide		\$588
	OCU School of Law	American Indian Wills Clinic	Statewide	100	\$30,000
	Trinity Legal Clinic of Oklahoma	Community Justice Initiative	Canadian, Cleveland & Oklahoma counties	300	\$50,000
Court-Ordered Diversion	1st Step Diversion Program	Diversion & Mentorship Program	Tulsa County	40	\$15,000
	Mental Health Association of Oklahoma	Diversion & Mentorship Program	Tulsa County	196	\$20,000

Domestic Violence	Community Crisis Center	County Court Advocates	Craig, Delaware & Ottawa counties	550	\$8,770
	Domestic Violence Intervention Services (DVIS)	DVIS Legal Program	Tulsa & Creek counties	4,247	\$15,000
	Marie Detty Youth & Family Services	Domestic & Sexual Violence & Stalking Services	Caddo, Comanche & Cotton counties	1,122	\$15,000
	The Spring	Human Sex Trafficking & Domestic Violence Support	Statewide	8,714	\$10,000
	Wings of Hope, Family Services Center	Survivors Legal Support	Logan, Noble & Payne counties	1,336	\$5,000
	YWCA Oklahoma City	Forensic Exam Program	Oklahoma County	550	\$31,000
Immigrant/ Refugee Legal Services	Catholic Charities of Eastern Oklahoma	Immigration Legal Services	Muskogee, Osage, Tulsa counties	836	\$25,000
	Catholic Charities of the Archdiocese of OKC	Immigration Legal Services	Canadian, Cleveland & Oklahoma counties	1,138	\$35,000
	The Spero Project	The Common - Refugee Legal Services	Canadian, Cleveland & Oklahoma counties	270	\$20,000
	TU College of Law	Immigrant Rights Project	Statewide	400	\$20,000
	YWCA Tulsa	Immigration Legal Services	Rogers, Tulsa & Wagoner counties	1,250	\$15,000
Juveniles	Oklahoma County Juvenile Bureau	Connect to Redirect Program	Oklahoma County	1,500	\$4,725
	Oklahoma County Juvenile Bureau	Court Ordered Literacy Program	Oklahoma County	100	\$5,775
	Teen Court	First-Time Juvenile Offender Peer Court	Comanche County	1,000	\$25,000
	Youth Services of Tulsa	First-Time Juvenile Offender Peer Court	Tulsa County	502	\$10,000
Law-Related Education	Autism Foundation of Oklahoma	Law-Related Education/Training Program	Statewide	5,000	\$10,000
	OBA Young Lawyers Division	High School Mock Trial Program	Statewide	800	\$50,000
	YMCA of Greater OKC	Youth & Government Program	Statewide	800	\$8,000
				56,870	\$785,858

What's New With YLD?

By April Moaning

MEMBERS OF THE OBA YLD Board of Directors typically attend the ABA YLD Fall Conference in October. Unlike the ABA YLD midyear meeting referenced in my March 2021 article, participants are generally not expected to vote on resolutions. Instead, the fall conference is an opportunity for young lawyers across the nation to reconnect and let their hair down a little. Attendees participate in networking, community service and dining events. There are myriad innovative CLE seminars covering a broad range of topics. Board members look forward to traveling each year so they can mingle, dine and learn in a new environment. Last year's fall conference was conducted virtually, and we were hopeful that an in-person conference would be in the cards this year. Our wish was not granted, but we were presented with a perfect opportunity to start a new tradition.

TRAVEL TO THE LAND OF ENCHANTMENT

The board was invited to attend the Western States Regional Summit of ABA YLD Affiliates in Santa Fe, New Mexico. We swiftly accepted the invitation and are elated to attend. The regional summit will include programming related to diversity, inclusion, ethics and wellness. The topics are especially ripe considering the rise in mental health challenges during the pandemic.

We are hopeful that we can return to Oklahoma with nuggets of information and innovative mental health resources that we can share with the OBA Lawyers Helping Lawyers Assistance Program.¹

CONNECTING WITH GENERATION Z

I have referenced the OBA Young Adult Guide in prior articles, the purpose of which is to disseminate helpful information to those who are new to "adulthood" (a phrase coined by social media influencers). The board reconvenes every few years to develop innovative ways to connect with high school students and assist with

their transition from high school student to adulthood. We have tried filming skits, publishing a physical booklet and creating an iPhone app. Trends change quickly. Especially when you are competing with the newest TikTok dance and social media platforms. The board decided that it is once again time to re-evaluate the ways in which we connect with up-and-coming lawyers (*i.e.*, Generation Z). We understand that shareable experiences such as Instagram stories and memes are now paramount. Thus, we are eliminating the Young Adult Guide app and are opting for shareable, interactive videos that highlight topics important to younger generations.

As always, feel free to contact any member of the board if you wish to participate in our out-of-state trips or projects. Until next time!

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.

ENDNOTE

1. If you are in need of help with stress, depression, addiction and/or other mental health challenges, confidential help is available. Please contact the OBA Lawyers Helping Lawyers Assistance Program at 800-364-7886.



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FOR YOUR INFORMATION

WOMEN IN LAW SECTION HOSTS ANNUAL CLOTHING DRIVE

The OBA Women in Law Section hosted its fourth annual clothing drive Sept. 27 through Oct. 1. The section received over 200 items, including clothing, shoes and accessories.

The items were donated to Suited for Success, a nonprofit organization that helps women achieve self-sufficiency by providing professional clothing and career development services to low-income women who have completed a job training or job readiness program and are actively seeking employment.

It's not too late to contribute! Clothing donations and sales revenue from 1st Impression Resale Clothiers are the lifeblood of Suited for Success. If you have professional clothing, casual clothing, evening wear, sportswear, shoes, accessories and jewelry you would like to donate, you may drop them off at 1st Impression located in Oklahoma City at 4557 NW 23rd St. Please ensure clothing is on hangers, new or gently worn, in season and clean with sizes clearly marked.

The Women in Law Section thanks those who participated in the clothing drive, including 1st Impression Resale Clothiers, all Tide Dry Cleaner locations in the OKC metro area and Sherwood, McCormick & Robert in Tulsa.



IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Thursday and Friday, Nov. 25-26, for Thanksgiving and Friday, Dec. 24, for Christmas.

ASPIRING WRITERS TAKE NOTE

We want to feature your work on "The Back Page!" Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry, photography and artwork are options too. Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen, lorir@okbar.org.



MEMBER DUES STATEMENTS AVAILABLE ONLINE

In an effort to save money and cut down on the cost of printing and postage, the OBA Membership Department has posted member dues statements online in MyOKBar. As a follow up, a paper statement will be mailed around the first of

December to members who have not yet paid. Please help the OBA in this effort by paying your dues today!

Members can pay their dues by credit card online at MyOKBar or by mailing a check to the OBA Dues Lockbox, P.O. Box 960101, Oklahoma City, OK 73196. Dues are due Sunday, Jan. 2, 2022.

MCLE DEADLINE APPROACHING

Dec. 31 is the deadline to earn any remaining CLE credit for 2021 without having to pay a late fee. The deadline to report your 2021 credit is Feb. 15, 2022. Not sure how much credit you still need? You can view your MCLE transcript online at www.okmcle.org. Still need credit? Check out great CLE offerings at www.okbar.org/cle. If you have questions about your credit, email mcle@okbar.org.

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA



Have you checked out the OBA LinkedIn page? It's a great way to get updates and information about upcoming events and the Oklahoma legal community. Follow our page at www.linkedin.com/company/OKBarAssociation and be sure to check out the OBA on Twitter, Facebook and Instagram.

ON THE MOVE

Jason A. Reese has joined the Oklahoma City law firm of Goodwin Lewis PLLC as of counsel. Mr. Reese has 16 years of legal experience and practices in the areas of labor and employment law as well as oil and gas matters. Previously, he has held various positions in state government.

Iciss Tillis has joined the Tulsa office of Hall Estill as an associate. Ms. Tillis practices primarily in the areas of labor and employment, with a focus on representing employers in workplace matters. She also has experience in alternative dispute resolution, including proceedings before the Financial Industry Regulatory Authority. A former WNBA player, she previously served as a legal intern for the NBA. She received her J.D. from the Thurgood Marshall School of Law at Texas Southern University.

David Ty Mowdy has joined the Oklahoma City office of Riggs Abney Law Firm as an associate. Mr. Mowdy received his J.D. from the OU College of Law in 2021 and began his legal career as an intern at Riggs Abney in May 2020.

Annie Rischard Davis has joined the Oklahoma City law firm of Rischard & Associates PLLC as an associate. Ms. Davis graduated from the OU College of Law in May 2021 and will practice primarily in the area of elder law, including estate planning, Medicaid and special needs planning, and trust and estate litigation.

Allison Garrett, president of Emporia State University in Kansas, was selected by the Oklahoma State Regents for Higher Education to succeed longtime Chancellor Glen D. Johnson as the head of the Oklahoma State System of Higher Education. This is the first time Oklahoma has had a woman as its higher education executive. She takes office Nov. 8.

Blayne Norman has joined the Oklahoma City law firm of Gilchrist Aviation Law PC as an associate. Mr. Norman will practice in the area of corporate and commercial aviation transactions, with a focus on aircraft title, registration, finance, export and import and leasing law. He graduated from the OU College of Law in 2021.

Kayla Finnegan, **Emma Kincade** and **Michael S. Lewis** have joined the Tulsa office of GableGotwals as associates. **Motahareh H. Nickel**, **Taylor J. Freeman Peshehonoff** and **Allyson Shumaker** joined the firm's Oklahoma City office as associates. Ms. Finnegan practices in the areas of civil litigation, general insurance defense litigation and employment and labor law. Ms. Kincade practices in the areas of general corporate and health care transactions, in addition to advising tribes on Native American law. Mr. Lewis practices in the areas of general corporate, professional services, general insurance defense litigation and employment and labor law. Ms. Nickel practices in the areas of general litigation and regulatory matters, specifically in the energy and insurance industries. Ms.

Peshehonoff's experience includes drafting demand and settlement letters, deposition summaries, affidavits and motions. Ms. Shumaker practices in the area of general litigation matters.

GableGotwals has relocated its Oklahoma City office. The firm can now be found on the 22nd floor of the BOK Park Plaza building at 499 W. Sheridan Ave in Oklahoma City.

Natasha Prado and **Maxwell West** have joined the Oklahoma City law firm of Hornbeek Vitali & Braun PLLC as associates. Ms. Prado practices in the area of litigation, with a focus on the defense of rural electrical cooperatives and AT&T. She received her J.D. from the OCU School of Law in 2013 and was previously an attorney with Chesapeake Energy Corp. Mr. West practices in the area of litigation, focusing on the defense of municipalities, corporations and individuals. He received his J.D. from the OCU School of Law in 2021 and is a member of the William J. Holloway Inn of Court.


Gessica Sewell McLanahan and **Clay T. Raun** have joined the Oklahoma City law firm of Durbin Larimore and Bialick. Ms. McLanahan practices in all areas of insurance defense, including motor vehicle collisions, environmental law and insurance law. She received her J.D. from the OCU School of Law in 2015. Mr. Raun practices in the areas of environmental law, insurance law, products liability and civil litigation. He received his J.D. from the OCU School of Law in 2021.

AT THE PODIUM

George Leach III was appointed by Gov. Kevin Stitt to serve as district attorney for District One, covering Beaver, Cimarron, Harper and Texas counties. His appointment filled the vacancy created by the retirement of James M. Boring effective Sept. 30. Mr. Leach served as first assistant district attorney since 2003 and has earned the Professional Advocate Award and was recognized as the Region Five Prosecutor of the Year. Before working as first assistant, he was a partner at Boring and Leach Attorneys at Law from 1985 to 2002.

Judge Charles "Brent" Dishman was appointed to serve as an Oklahoma County district judge by Gov. Kevin Stitt. Judge Dishman is a 2000 graduate of the United States Air Force Academy and has served on active duty or as a reservist since that time. Upon graduation, he was an aircraft maintenance officer for two years before attending the OU College of Law, earning his J.D. in 2005. He then returned to the Air Force as a JAG officer, serving as both a prosecutor, defense counsel and in various leadership roles. Most recently, he served as senior JAG Reserve lawyer assigned to the 12th Air Force Headquarters in Arizona. He holds the rank of lieutenant colonel.

Steven A. Broussard presented "The EEOC Speaks: Current Guidance on Important Issues," **Diane L. Hernandez** presented "New Hire Paperwork: I-9 and E-Verify," **Johnathan L. Rogers** presented "Fierce Competition: A Primer on Restrictive Covenants," **Chelsea Celsor Smith** and **Lindsay Kistler** presented "Classified Information: Examining the Difference Between Independent Contractors v. Employees," **Iceiss Tillis** presented "Dollars and Sense: What to Expect from the USDOL Under the Biden Administration" and **Elaine R. Turner** and **Keith A. Wilkes** presented "Are We There Yet? The Ever-Changing COVID-19 Workplace" during the second annual J. Patrick Cremin HR Institute webinar, which was hosted by Hall Estill on Oct. 28.



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"Love this email format!
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2018 OBA President

Doug Dodd was named the 2021 Outstanding Senior Lawyer by the Tulsa County Bar Association. Mr. Dodd is an attorney with Doerner, Saunders, Daniel & Anderson LLP and is the lead attorney for the Oklahoma Press Association's Legal Services Plan. His practice includes representation of national and local media companies, with an emphasis on First Amendment and defamation issues.

Charlie Daniels has formed the Council for Oklahoma Private Education, a new Oklahoma nonprofit organization. COPE will provide professional development, networking opportunities and representation at the state capitol for its member schools.

John B. Heatly was honored as the 2021 Law Day Journal Record Award winner during the Oklahoma County Bar Association's Law Day Luncheon on Sept. 28. Mr. Heatly has been practicing law for over 45 years.

Lindsey Mulnix Ewert has been selected as an associate Fellow of the Litigation Counsel of America. The LCA is a trial lawyer

honorary society composed of less than half of 1% of American lawyers. Fellowship in the LCA is highly selective and by invitation only. Ms. Ewert is a litigator in Mulnix Eddy Ewert & McKenzie PLLC's civil litigation section, and she received her J.D. from the OU College of Law in 2011.

Senator Brent Howard was honored by the Oklahoma Department of Commerce for his work to support economic development. During the 2021 legislative session, Sen. Howard authored multiple commerce-related bills. SB 915 and SB 922 addressed venture capital and startups, while SB 587 addressed workforce training needs.

Michael C. Turpen was elected vice chairman of the Oklahoma State Regents for Higher Education Board for the 2021-2022 fiscal year. Mr. Turpen was appointed as an Oklahoma State Regent by Gov. Brad Henry in May 2009 to serve a nine-year term. In 2018, he was reappointed by Gov. Mary Fallin for a second nine-year term that will end in 2027.

Shanda McKenney was welcomed as the Oklahoma County Bar Association's 2022 president during the association's Raising the Bar event on Sept. 10. **Cami Ruff** was also recognized as the incoming YLD chair during the event.

Judge Vicki Miles-LaGrange received the Spirit of Vassar Award on Oct. 16 during a live, virtual ceremony. The Spirit of Vassar Award is presented annually to an alum who has demonstrated extraordinary and distinguished leadership, contribution and commitment to serving a community in which they affect positive, transformative societal change. Judge Miles-LaGrange was the first Black woman elected to the Oklahoma State Senate in 1986. Most recently, she served as chief judge of the United States District Court for the Western District of Oklahoma from 2008 until 2015.

HOW TO PLACE AN ANNOUNCEMENT:

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

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

Submit news items to:

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

Articles for the January issue must be received by Dec. 1.

The background of the top half of the image is a close-up, slightly blurred view of the American flag, showing the stars and stripes in shades of blue, white, and red. A white rectangular frame is superimposed over the flag, containing the text.

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IN MEMORIAM

E. Evans Chambers III of Enid died Sept. 17. He was born March 13, 1943, in Cleveland, Ohio. Mr. Chambers attended Shattuck Military Academy in Faribault, Minnesota, and graduated from Enid High School in 1961. He received his J.D. from the OCU School of Law in 1974 and became an assistant district attorney for Grant, Garfield, Kingfisher, Canadian and Blaine counties. Mr. Chambers entered private practice in 1982, where he practiced criminal law until his retirement in 2019. He served on the Oklahoma Criminal Defense Lawyers Association Board for many years, and he received the Thurgood Marshall Award in 2002. He was a voting member of the Cherokee Nation and a member of the Grand National Quail Club for over 50 years. Memorial contributions may be made to the Grand National Quail Foundation Inc.

James C. Daugherty of Oklahoma City died Sept. 25. He was born July 25, 1925, in Kiowa. **Mr. Daugherty served in the U.S. Army from 1945 until 1946. Two years later, he was recalled to active duty with the Oklahoma National Guard 45th Infantry Division. In 1973, Mr. Daugherty was appointed commander of the 45th Infantry Brigade and was subsequently promoted to brigadier general. He retired from the Oklahoma National Guard in 1976.** He received his J.D. from the OU College of Law in 1953 and began his legal career at the Holdenville law firm of Sandlin and Daugherty, where he worked for 20 years. He practiced at Daugherty & Heath until 1991. Memorial contributions may be made to the Oklahoma 45th National Guard Museum.

Alan W. Decker of Tulsa died Sept. 21. He was born Aug. 22, 1952, and received his J.D. from the TU College of Law in 1990. **Mr. Decker served in the U.S. Army.**

Joe E. Edwards of Edmond died Sept. 24. He was born Jan. 10, 1949, in Tulsa. Mr. Edwards began practicing law at Kornfeld, McMillin, Phillips & Upp after receiving his J.D. from the OCU School of Law in 1974. In 1982, he cofounded the law firm of Edwards, Roberts & Winterstein, which merged with another local firm 10 years later to become Day, Edwards, Federman, Propester & Christensen. In March 2011, Mr. Edwards joined Crowe & Dunlevy as a shareholder, director and leader of several practice groups and management committees. He was often involved in large and complex cases, representing some of Oklahoma's largest banks and other institutions before the U.S. Supreme Court, several U.S. circuit courts, the Oklahoma Supreme Court and numerous other federal and state courts. He was a graduate and lifetime member of Leadership Oklahoma Class IX, an active member of the Economic Club of Oklahoma, Men's Dinner Club and Rotary Club 29 in downtown Oklahoma City. Memorial contributions may be made to the American Heart Association.

Judge Roberta Pauline Collier Fahle of Taloga died Sept. 19. She was born July 15, 1935, in Taloga. Judge Fahle earned her bachelor's and master's degrees from OSU, and she received her J.D. from the OU College of Law in 1968. Passionate about education, she taught public school for nearly 10 years before becoming the first female lawyer to teach

at Southwestern Oklahoma State University, where she taught business law for more than 20 years. After retiring from the university, she practiced law in Taloga and served as a municipal judge in several rural towns until she was 80. Judge Fahle received many awards and commendations, including the OBA Outstanding Service to the Public Award. She was deeply committed to serving others, conservation and preserving history and served on numerous councils and boards to advance those causes. Memorial contributions may be made to the Taloga Senior Citizens Center or Mound Cemetery.

Karl Blake Hoenig of Oklahoma City died Sept. 10. He was born Jan. 6, 1942, in Oklahoma City. Mr. Hoenig received his J.D. from the OU College of Law in 1968 and moved to Washington, D.C., where he worked as a trial attorney for the United States Department of Justice Tax Division until 1974. After returning to Oklahoma City, Mr. Hoenig founded Struthers Oil and Gas Corp. and served as president, CEO and director from 1977 until 1983. He then started K.B. Hoenig Oil Co., where he worked until his death. He was a life member of the OU College of Law Association and served on the Heritage Hills Historic Preservation Inc. Board of Directors for over 40 years. He also served as trustee and past president of the Oklahoma City Museum of Art, trustee and director of Myriad Gardens Foundation and on the original MAPS oversight board for 10 years. Memorial contributions may be made to Christ the King Church.

James M. Little of Edmond died Sept. 29. He was born June 29, 1932, in Oklahoma City. Mr. Little received his J.D. from the OU College of Law in 1956. **He was commissioned a second lieutenant in the U.S. Army and completed 30 years of active and reserve duty in the Infantry and JAG Corps, retiring in 1985 as a colonel.** During his 50-year legal career, he was admitted to practice in state and federal courts and before the U.S. Supreme Court. He was a First Christian Church of Edmond member since 1974 and served as elder, Building Committee co-chair, board member and three separate terms as moderator of the congregation. He was also an adult scout leader, serving as cub master, Eagle District chairman and Last Frontier Council Board Member. He competed in the Senior Olympics in swimming events at the state and national level and placed second and third in the National Senior Games in 2013. Memorial contributions may be made to the First Christian Church of Edmond's Breakfast on Boulevard.

Douglas Carrol Loudonback of Oklahoma City died Sept. 12. He was born July 2, 1943, in Oklahoma City. **Mr. Loudonback grew up in Lawton and served in both the Army ROTC and the Army Reserves.** This enabled him to complete his bachelor's degree at OSU and receive his J.D. at the OU College of Law. He began his family law practice in Oklahoma City in 1970. He served as OBA Family Law Section chair in 1990 and was also named chair emeritus of the section. Mr. Loudonback was a frequent speaker at OBA CLE seminars and was the 1999 winner of the OBA's Earl Sneed

Award. In 2001, he received the OBA Family Law Section's Robert Spector Award for outstanding legal scholarship. Memorial contributions may be made to the American Lung Association or the Oklahoma Historical Society.

Bobby L. Pinkerton of Lone Grove died Sept. 6. He was born May 28, 1951, in Nashville, Arkansas. Mr. Pinkerton was a lifelong resident of Lone Grove, graduating with the Lone Grove Class of 1969. During high school, he loved riding saddle broncos in rodeos and was a certified scuba diver. He attended Southeastern Oklahoma State University in 1974 and received his J.D. from the OU College of Law in 1978. He opened his own law practice in Healdton in 1979, where he practiced until his death. Mr. Pinkerton was a member of the Oklahoma Cattlemen's Association, Healdton Lions Club and Ardmore Little Theatre.

Morgan K. Powell of Tulsa died July 20. He was born Aug. 16, 1946. Mr. Powell received his J.D. from the OU College of Law and had over 40 years of experience practicing in the areas of wills, trusts, real estate, probate and guardianship.

Reid E. Robison of Oklahoma City died Aug. 4. He was born Dec. 7, 1944. Upon graduating from OU in 1966, he received his J.D. from the OU College of Law in 1968. **Mr. Robison served as a captain in the U.S. Air Force Judge Advocate General's Corps for three and a half years.** After completing his military service, he joined McAfee & Taft, where he spent the next 48 years building a reputation as a preeminent trial lawyer. Prior to his retirement in February 2020, he was the firm's senior-most trial lawyer. He

was a fellow of the Litigation Counsel of America and the International Academy of Trial Lawyers, previously serving as Oklahoma state chairman. In 2013, he received the OBA Neil E. Bogan Professionalism Award and the Oklahoma County Bar Association's Bobby G. Knapp Leadership Award in 2015.

Joel Merrel Siler Jr. of Longview, Texas, died Sept. 21. He was born June 24, 1928, in Oklahoma City. **After graduating high school, Mr. Siler served three years in the U.S. Air Force.** He received his LLB from the OU College of Law in 1954. Although he was an OBA member for many years, he only actively practiced law from 1982 until 1989 in the Kay County area. Most of his professional career was spent as a landman and a land or right of way agent, mainly with Coates Field Service Inc.

Jonathan Dee Woods of Oklahoma City died Sept. 19. He was born July 11, 1951, in Oklahoma City. As the son of an Air Force colonel, Mr. Woods grew up living all over the world, including Madrid, Spain, and many states throughout the U.S. He received his bachelor's degree from Dartmouth College and his J.D. from the OU College of Law in 1975. While at OU, he helped found the school's rugby team. He served as assistant municipal counselor for the city of Oklahoma City for nine years and worked in private practice for three years. He recently retired as CEO of the Oklahoma Municipal Assurance Group after 31 years with the organization. Mr. Woods served as a scoutmaster and was involved with United Way, Sierra Club, Oklahoma Bicycle Society and Historic Preservation Inc.

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NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF SIDNEY WADE JONES, SCBD # 7126 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 Sidney Wade Jones 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, DECEMBER 7, 2021**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

2021 ISSUES

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Elder Law

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

2022 ISSUES

JANUARY

Meet Your Bar Association
Editor: Lori Rasmussen

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
Editor: Lori Rasmussen

MAY

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

AUGUST

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

SEPTEMBER

Bar Convention
Editor: Lori Rasmussen

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: Casandra 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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PERFECT LEGAL PLEADINGS works on Microsoft Word and contains automated Oklahoma pleadings and forms for divorce, paternity, probate, guardianship, adoption, real property, civil procedure, criminal procedure, and personal injury. We also provide access to thousands of other state and federal pleadings and forms. PerfectlegalPleadings.org.

RETIRED BOARD CERTIFIED EMERGENCY MEDICINE PHYSICIAN will review medical records for standard of care issues and or medical malpractice. drcarlo@gmail.com, 954-892-1786.

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OFFICE SPACE FOR RENT IN OKLAHOMA CITY one block north of federal courthouse. Both interior and exterior offices available; includes conference room, internet, receptionist and parking. For more information, please call 405-239-2726.

OFFICE SPACE AVAILABLE FOR RENT IN SOUTH OKC LOCATION. Close to I-240 and I-35. Easy access to Cleveland or Oklahoma County. 4 large offices with windows available. You will have access to 4 conference rooms and a full-size Courtroom, WiFi, receptionist to direct clients, access to a separate telephone line, cleaning provided, alarm system, all bills paid. Shared space with established Plaintiff firm. \$900 per office. Call or text 405-659-4148.

ONE MONTH FREE RENT. Perimeter Center Office Complex, located at 39th and Tulsa Ave., has Executive Suites available for rent ranging from \$200 to \$550 per month. Please call Sheila Richardson at (405) 943-3001 if you have any questions or wish to tour the facility.

CLASS A OFFICE SPACE at the Waterford Office Complex (63rd & Penn) sharing space with a small law firm, easy client access, referrals possible. The space comes with covered parking, Internet access, desk, conference room, reception room, storage, and kitchen. Potential administrative support. \$900.00. Email sjr@shawnjroberts.com or call 405.562.7371.

POSITIONS AVAILABLE

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.

BALL MORSE LOWE is accepting applications for a Client Intake Attorney to join the firm. Primary responsibilities include holding scheduled and real-time consultations with potential clients and assisting in the process of client acquisition. Qualified candidate will also oversee small client intake specialist team. Requirements include a minimum 3 years of experience as a practicing attorney – preferably in family law or estate planning. Health, vision, dental insurance and 401K benefits available. Salary commensurate with experience plus monthly performance bonus. Please submit additional inquiries about the position, resume, law school transcript and writing sample to office@ballmorselowe.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.

STATEWIDE LAW FIRM WITH OFFICES IN TULSA AND OKLAHOMA CITY IS SEEKING ATTORNEYS for both offices with 3+ years of experience in litigation. Compensation DOE. Excellent benefits, support and atmosphere to develop your practice. Submit confidential resume, references, writing sample and compensation requirements to OklaLawFirm@gmail.com.

POSITIONS AVAILABLE

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

AV RATED INSURANCE DEFENSE/CIVIL LITIGATION FIRM seeks sharp, self-motivated associate attorneys with civil litigation experience. Openings in both Oklahoma City and Tulsa offices. Candidates should be organized, detail oriented, have strong research and writing skills and be able to handle files from start to finish. Excellent long-term career opportunity for the right applicants. Send replies to Box DD, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

ATTORNEY POSITION OPEN FOR WORK IN THE OKLAHOMA CITY metropolitan area beginning January 1, 2022. Moderate to heavy criminal defense caseload. Experienced preferred, but not mandatory. Base pay is \$50,000.00 per year, with opportunity for significant additional income. Office space, internet and malpractice insurance provided. Additional benefits not provided. Include a letter of interest and writing sample with your resume. Send replies to advertising@okbar.org with the subject line "Position CA."

RUBENSTEIN & PITTS, PLLC, EDMOND LAW FIRM SEEKS an Attorney with experience in Family & Business law matters in both state and federal court. Excellent writing, analytical skills, and interpersonal skills are required. Full range of benefits and competitive compensation. Send cover letter, resume, references and writing sample to TheEdmondlawfirm@gmail.com.

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

POSITIONS AVAILABLE

ASSISTANT DISTRICT ATTORNEY - District 27, Sequoyah County is currently seeking a full time Assistant District Attorney. If you would like to be a part of an exciting team and obtain valuable experience both in and out of the courtroom, please apply. Our office has a fantastic staff and work very well with each other. Prior experience is welcome, BUT NOT REQUIRED. Salary will be commensurate with experience and includes a full benefit package. Please send your inquiries or resume to Diana Baker, at the following email: diana.baker@dac.state.ok.us.

THE LAW OFFICES OF JEFF MARTIN AND HANSEN DIRANI is seeking a new legal assistant/case manager with experience processing Social Security Disability claims to join our team. Pay is commensurate with experience. Full benefits package includes health, dental, vision, life insurance, paid vacation, PTO days, and 401k. Hours are 8:30-4:30 Monday-Thursday. Fridays 8:30-1:30. Submit resume to hansen@callhansen.com.

LITIGATION PARALEGAL – Parrish DeVaughn Injury Lawyers is currently seeking a Litigation Paralegal with 2-5 years' experience. Trial experience is preferred, but not required. The individual in this position will be responsible for various civil litigation matters including, but not limited to, preparing court filings, legal research and writing, discovery, trial preparation, scheduling and docketing, etc. Compensation will commensurate with experience. Interested candidates should apply online at www.parrishdevaughn.com and include a resume, references, and a cover letter with salary requirements.

THE CITY OF LAWTON, OKLAHOMA, is seeking applicants for the position of Assistant City Attorney. To view requirements and submit an application, visit <https://www.lawtonok.gov/departments/human-resources/jobs/assistant-city-attorney-legal-3352> or e-mail legal@lawtonok.gov.

ESTABLISHED OKC LAW FIRM seeks workers' compensation attorney with 0-5 years' experience. Salary based on experience. Health, dental and 401k available. Send resumes and cover letter to jobs@lawterlaw.com.

POSITIONS AVAILABLE

THE CIVIL DIVISION OF THE TULSA COUNTY DISTRICT ATTORNEY'S OFFICE is seeking applicants for an Assistant District Attorney. This position includes advising and representing county officials in various matters regarding all aspects of county government. Qualified applicants must have a J.D. degree from an accredited school of law and be admitted to the practice of law in the state of Oklahoma. Ideal candidates will have experience in civil litigation, discovery, motions, oral arguments, trials and settlements. Excellent research and writing skills are required. Excellent State benefits. Send cover letter, resume, professional references and a recent writing sample to: [Staci Eldridge seldridge@tulsacounty.org](mailto:StaciEldridge@seldridge@tulsacounty.org).

THE DISTRICT ATTORNEY'S OFFICE, DISTRICT #20, is looking for a full-time Assistant District Attorney. The attorney who fills this position will be expected to assess and make filing decisions on felony and misdemeanor criminal charges submitted to the D.A.'s Office for review. In addition, the attorney who fills this position will represent the D.A.'s Office in various court hearings including, but not limited to, initial appearances, preliminary hearings, revocation and acceleration hearings, various disposition dockets, non-jury trials and jury trials. This available slot with either the Murray County or Carter County D.A.'s Office offers an exceptional opportunity to any attorney with a sincere interest in growth as a prosecutor and trial attorney. Both offices are very active and come with a wonderful staff. If interested, please send a resume and any other pertinent information to craig.ladd@dac.state.ok.us.

OKLAHOMA CITY AV RATED MEDICAL MALPRACTICE AND INSURANCE DEFENSE FIRM seeks an associate attorney with zero to three years' experience for immediate placement. Applicants must have excellent verbal and writing skills and be highly motivated to work a case from its inception through completion. We offer excellent benefits and a competitive compensation package commensurate with experience. All replies are kept in strict confidence. Applicants should submit a cover letter with resumé and writing sample to gfolmar@johnsonhanan.com.

POSITIONS AVAILABLE

Oklahoma City University School of Law seeks experienced, diverse, and innovative candidates for three separate positions:

The Assistant Director of Academic Achievement will help train a diverse population of law students for the rigor of law school, the bar exam, and the practice of law with academic workshops and individual coaching. The Assistant Director will primarily provide one-on-one instruction for first and second-year students and will assist in the bar preparation program. This is a staff position. Candidates must have a J.D. degree, a law license in the United States, and a minimum of six months of experience in the areas of academic advising, academic support, teaching (adjunct instruction accepted), and/or one-on-one instruction in an ABA accredited law school. A suitable combination of education and experience may be substituted for minimum requirements.

The Assistant Director of Law Student Services will support students as an additional office counselor to support the Director of Student Success and the Director of Career Development & Student Programming. They will work closely with both Directors to support the goals and objectives of the Student Success Program, career and professional development programming and resources, and student programming.

The Director of Student Success will be responsible for the overall facilitation of the Student Success program including the development, planning, implementation and assessment of student transition, engagement, and retention from admission to graduation. The Student Success Position collaborates with a variety of faculty, staff, and student positions and departments to increase student success and retention.

For more information and to apply, visit <https://jobs.silkroad.com/OKCU/StaffCareers>.

POSITIONS AVAILABLE

THE OKLAHOMA OFFICE OF ATTORNEY GENERAL is seeking a full-time Assistant Attorney General for our Utility Regulation Unit. The Assistant Attorney General will be tasked with researching, evaluating, and presenting complex financial and legal information at trial and through briefing, including interfacing with non-attorney experts. This position will advocate for utility customers in proceedings before the Oklahoma Corporation Commission, with some practice before state courts and federal administrative agencies. A qualified candidate must be a licensed attorney with a minimum of two years' experience in the practice of law with an emphasis on litigation and/or administrative hearings, including discovery, hearings, and preparing written legal briefs. Preference will be given to candidates with a prior background in economics, accounting, and/or finance. Some travel is required. Please send resume and a writing sample to resumes@oag.ok.gov and indicate which particular position you are applying for in the subject line of the email.

APPOINTMENT TO PANEL OF CHAPTER 7 TRUSTEES – The United States Trustee seeks resumes from persons wishing to be considered for appointment to the panel of trustees who administer cases filed under chapter 7 of title 11 of the United States Code (Bankruptcy Code). The appointment is for cases filed in the United States Bankruptcy Court for the Northern and Eastern Districts of Oklahoma, primarily in the Eastern District. Chapter 7 trustees receive compensation and reimbursement for expenses under 11 U.S.C. §§ 326 and 330. Trustees are not federal government employees. For additional information, qualification requirements, and application procedures, go to <https://www.justice.gov/ust/advertisements-vacancies-private-bankruptcy-estate-trustees/public-notice-appointment-panel-chapter-7-trustees>.

My Lucky Mental Illness

By Tom Hird

I CAME OUT OF THE MENTAL illness closet earlier this year in a talk I gave to the Oklahoma Pardon and Parole Board. A co-worker told me I was brave, but considering I was diagnosed with manic depression (bipolar disorder) in 1984 and am just now talking about it in public, I feel the opposite.

I told the board members how fortunate I was compared to so many that come before them. Deeply harmful childhood trauma and deprivation are just one piece of the mental health puzzle for so many in our state's prisons. Oklahoma has not done enough for its mentally ill, and many fall through the cracks. From what I hear, this is currently trending in the wrong direction, which will have costly consequences.

My mental health story is different from the stories of Oklahoma's incarcerated mentally ill – not part of the least among us, not mired in deprivation and trauma, I had a great childhood (no comorbidities based on trauma, brain damage, anxiety, abuse, etc.). My loving family had the resources and knowledge to get me the medical care I needed, as well as places to stay and even jobs. As a result, I've done alright. I was lucky.

There is stigma associated with mental illness, and there are dangers associated with mental health issues. But there are people living well with mental illness all around



you: family, friends, neighbors and co-workers.¹ There are so many effective treatments out there. The people in your life dealing with mental health issues are doing alright and functioning members of society, but remember we were likely given more of a chance than Oklahoma's poor incarcerated mentally ill ever were (no doubt the pandemic is making things harder on everyone right now).

It is easier to think of the mentally ill, the homeless, the incarcerated, as different from you and me, as "the other." We are not. I know this and more thanks to my lucky mental illness.

Note: The OBA Lawyers Helping Lawyers Assistance Program assists OBA members who are having difficulties that adversely affect their practice. All bar members are offered up to six hours of free short-term, problem-focused or crisis counseling, and the service is strictly confidential. For help, call the Lawyers Helping Lawyers hotline at 800-364-7886 to be referred to a counselor in your area. The hotline is available 24 hours a day / 7 days a week.

ENDNOTE

1. One in four adults suffer from a diagnosable mental disorder in a given year. www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics.

Mr. Hird practices in Oklahoma City.

THURSDAY & FRIDAY,
DECEMBER 16 & 17, 2021
9 A.M. - 3:10 P.M.



DAY ONE: MCLE 6/1

TOPICS INCLUDE:

- **Wellness Workshop**
Robyn Goggs, Chance to Change, Oklahoma City
- **Workplace Marijuana Issues**
Charlie Plumb, McAfee & Taft, Tulsa
- **Health Law Update**
Maggie Martin, Crowe & Dunlevy, Oklahoma City
- **Criminal Law Update**
Barry L. Derryberry, Assistant Federal Public Defender, Tulsa
- **Oklahoma Tax Law Update**
Rachel Mathew, Partner, Polston Tax Resolution & Accounting
- **Cannabis Law Update**
Amber Peckio Garrett, Allen & Garrett, Tulsa
Felina Rivera, The Felina Firm, Oklahoma City

DAY TWO: MCLE 6/1

TOPICS INCLUDE:

- **Business and Corporate Law Update**
Gary Derrick, Derrick and Briggs, LLP, Oklahoma City
- **Law Office Management and Technology Update**
Jim Calloway, Director, Management Assist Program, OBA, Oklahoma City
Julie Bays, Practice Management Advisor, OBA, Oklahoma City
- **Real Property Update**
Kraettli Epperson, Mee Mee Hoge & Epperson, PLLP, Oklahoma City
- **Estate Planning & Probate Law Update**
David P. Hartwell, Oklahoma City
- **Family Law Update**
Professor Robert Spector, Univ. of Oklahoma College of Law, Norman
- **Ethics Update**
Gina Hendryx, General Counsel, OBA, Oklahoma City

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