

ALSO INSIDE: Annual Meeting • 2022 Committee Sign-Up
Lambird Spotlight Award Winners

THE OKLAHOMA BAR Journal

Volume 92 — No. 8 — October 2021

A photograph of a tall glass of beer with a thick head of foam, sitting on a wooden table. In the foreground, a set of car keys with a black fob and a metal key is lying on the table. The background is blurred, showing what appears to be a bar or restaurant setting.

DUI

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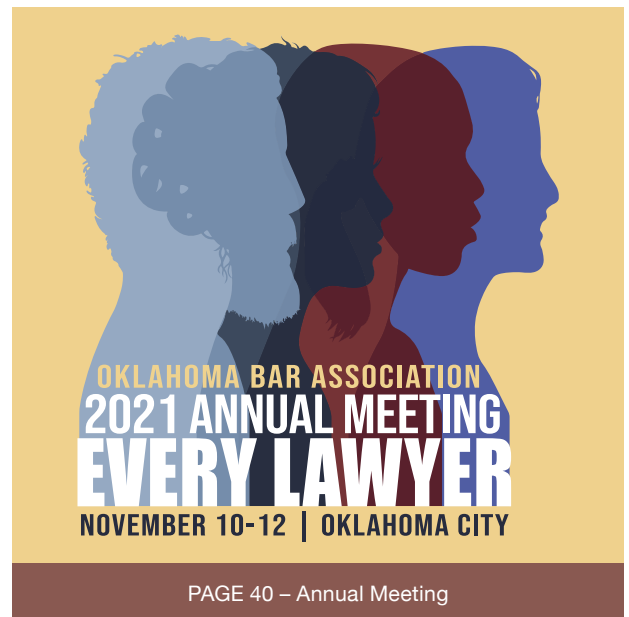
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Start Your Own Legacy of Service

By Mike Mordy

THIS OKLAHOMA BAR JOURNAL DESCRIBES the Oklahoma Bar Association's annual award recipients and coincidentally has a description of the various OBA committees, which make our association function as well as it does. This is the perfect opportunity for all our members to see where their help is needed and to realize that participation will benefit them and other members, along with members of society who need legal assistance.

The awards are named after great past leaders of the legal community, and the attorneys who have been bestowed these honors have carried their mantle. In our effort to earn a living and support ourselves and our families and our lifestyles, we as attorneys do not always acknowledge that we are providing services to our communities. These

awards that are given every year, as a general matter, acknowledge that being an attorney is not just another occupation, but rather we are helping our fellow man. Individuals for whom these awards were named had a long-standing history of service to the OBA and society.

Chad Kelliher is the recipient of the Earl Sneed Award, which is the OBA Continuing Legal Education Award named in honor of Earl Sneed. I knew Earl Sneed, who was a brilliant legal scholar and later in life played a major role in raising funds for the Oklahoma Bar Center.

The Joe Stamper award has been awarded to David Petty. Mr. Stamper

was proud to be an attorney and showed his gratitude by serving on the OBA Board of Governors and the American Bar Association House of Delegates for 17 years. David Petty is

a long-time member of the OBA and a true example of a gentleman lawyer.

Jordan Haygood Coltrane of Oklahoma City has been bestowed the Outstanding Young Lawyer Award. Jordan has worked tirelessly to recruit and obtain the involvement of young lawyers in Oklahoma to continue the success of the OBA in the future and to maintain camaraderie amongst the members.

This is the perfect opportunity for all our members to see where their help is needed and to realize that participation will benefit them and other members, along with members of society who need legal assistance.

Justice Alma Wilson was the first woman to be appointed as a justice to the Oklahoma Supreme Court and became its first female chief justice in 1995. She was known for her contributions to juveniles and children at risk, and the Alma Wilson Award honors an OBA member who has made contributions to improving the lives of Oklahoma children. The recipient of this year's award is Oklahoma City attorney Mark McDaniel.

Judge Allen Welch is the recipient of this year's Award of Judicial Excellence. This esteemed award is issued to a sitting judge for recognition of their excellence of character, job performance and achievement.

The esteemed award for Outstanding Pro Bono Service has been bestowed upon

(continued on page 73)



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THE OKLAHOMA BAR Journal

Volume 92 — No. 8 — October 2021

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The Oklahoma Bar Journal (ISSN 0030-1655) is published monthly, except June and July, by the Oklahoma Bar Association, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. Periodicals postage paid at Oklahoma City, Okla. and at additional mailing offices.

Subscriptions \$60 per year. Law students registered with the OBA and senior members may subscribe for \$30; all active members included in dues. Single copies: \$3

Postmaster Send address changes to the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.



Using the Chapter Method to Try Your First ... or 50th DUI Trial

By Matt Dodd

JUST AFTER LAW SCHOOL, I remember walking down the road telling a fellow graduate how I was going to move to Montana and open my own practice. He asked the reasonable question, “How do you expect to make any money when you don’t know that many people up there, and you haven’t handled your first case?” Armed with more confidence than I was entitled to have, I responded, “It’s dark and cold in Montana a lot of the year. People love to drink, and there’s no public transit. I bet I can make a living trying DUI cases.” It didn’t take long for my lack of experience to catch up to my cocky attitude.

People, even in Montana, don’t like the fact that others are drinking and driving, even if there aren’t any public transit options. Jurors have lost faith in our professionalism and expect tricks and loopholes from those of us who represent DUI clients. Then there are the jurors who expect us to prove our client’s innocence rather than hold the government to its heavy burden of proving our client’s guilt. Gone are the days where we can simply swagger into the courtroom, put on a good show and expect to sway a jury on sheer charisma alone.

While the tide may be turning back to skepticism of law enforcement and the government (particularly in more rural states like Montana and Oklahoma), we cannot count on that potential skepticism to carry our clients to not guilty verdicts. We must be organized in our understanding of the facts, prepared to affirmatively tell our client’s story and ready to

win our cases with constructive cross-examination. The “Chapter Method” provides the structure through which we can accomplish those goals and give our clients the best chance to hear that sometimes elusive two-word verdict, “Not Guilty.”

THE CHAPTER METHOD ISN’T JUST FOR CROSS-EXAMINATION

The “Chapter Method,” developed by Roger Dodd and Larry Pozner,¹ was originally applied only to cross-examination and provided a way to break down a specific cross-examination into a series of self-contained chapters. Much like the chapters in a children’s book, each chapter in a cross-examination tells a portion of the story, with all the chapters coming together to tell the whole story. What I learned, though, is the Chapter Method has applications beyond cross-examination. We can utilize the Chapter Method

to break down our cases into bite-sized chunks that help us focus on the relevant and important facts and issues during trial preparation and help a jury easily understand and appreciate our client’s case at trial.

‘JUST THE FACTS, MA’AM’

While there is some dispute whether Joe Friday ever uttered the famous line, “Just the facts, ma’am,”² there is no doubt facts can drive the outcome of our cases. Particularly in this day and age of hyper-partisan politics and jurors who will not take our conclusions as truth, we must understand the unique facts of our cases. We cannot make the mistake of assuming that because we’ve tried 10, 50 or 200 DUI trials we’ve done “enough” DUI cases to skim the facts of a particular case the day before trial. We have to remember each case is unique, and we have to be ready to communicate those unique facts to a jury. To do so, we sort the relevant from

the irrelevant and organize the relevant facts into boxes that will eventually become the “chapters” of our case (and our cross-examination).

From the minute our client walks in (or calls or Zooms in these days), we begin gathering facts that may or may not help us at trial. We must listen for the thread of a narrative amongst the disjointed facts our clients invariably lay on our desk. In a recent case, I had a client who was stopped in a small, rural town for rolling through a stop sign. The client almost immediately admitted to the officer he’d had a number of drinks throughout the afternoon. The officer saw “blood-shot and watery eyes.” Without much other investigation, the officer determined my client was impaired and arrested him.

When I dug deeper into the events of that afternoon, the client revealed a number of positive facts that allowed me to craft a different narrative than I assumed the prosecution would present. The client left home before sunrise to travel many hours for a softball tournament. His team had done well, and they were on the field, out in the heat and sun most of the day. Though he and his team were camping at the field, he was unfamiliar with the area (and the municipal park in which he was stopped) because they only played one tournament a year in this particular town. He was arrested when he went out to get dinner for the team.

In addition to understanding the facts as presented by our client, favorable witnesses, government witnesses and objective evidence, we must know the policies and procedures required of the officers in our jurisdictions. Since almost every DUI case involves the administration of

standardized field sobriety tests (SFSTs), every lawyer taking DUI cases should be familiar with the administration and assessment of SFSTs as taught by the National Highway Transportation Safety Administration. Without an understanding of the policies and procedures that control our officers’ actions and without understanding how the officer should administer the SFSTs, we will miss opportunities to show how a good officer completes an investigation and show the officer in our particular case did not live up to the high standard they will preach during the direct examination.

EMBRACE THE NARRATIVE APPROACH

After we have a good handle on the facts and we have used the Chapter Method to sort the relevant from the irrelevant, we need to develop our client’s narrative and be prepared to communicate that narrative to our jury. Our client’s narrative is our client’s story – it is our telling of the facts that (hopefully) leads the jury to our desired outcome. Our client’s narrative is “the why that helps explain the what.”

We must organize the disjointed facts lifted from our client interview(s), the police report and the video into a narrative theory that is understandable, relatable and provides answers to the following questions:

- Why should the jury care about our client’s case?
- Why should the jury side with our client?
- How can the jury help our client?

To aid us in providing these answers and most efficiently presenting our client’s narrative, we develop a theory of the case and a

related theme or themes. Our “theory of the case” is the one-sentence version of our client’s narrative. It is the elevator pitch – a short, easily understood statement of our client’s position that justifies our client’s desired outcome. It is the thread that unifies our *voir dire*, opening statement, directs, crosses and closing argument. Though it is not a legal statement, our theory of the case takes into consideration what facts are legally admissible and how we can use those facts to support our legal arguments. In DUI cases, our theory of the case almost always begins the same: “Ladies and gentlemen of the jury, Mr. Marshall is not guilty because ...”

Themes support our theory of the case and help regularly remind the jury of our client’s narrative.

A “theme” is a recurring thought, idea or catchphrase that summarizes and reinforces our theory of the case. Our theme (or themes) must embrace our theory of the case and the word selections we have chosen to communicate our client’s narrative. For instance, “scared, not impaired” was my theme in a recent DUI case in which my young, female client’s poor driving and poor field sobriety testing resulted from an aggressive officer who tailed her closely and intimidated her at the roadside. In another case in which my client’s apparent impairment was due to a head injury suffered in a fight just before he left the bar, I used the theme “punch drunk.” And in my most recent DUI trial, I used the simple theme of “disconnect” as a refrain to explain the obvious disparity between my client’s drinking and roadside behavior and the breath test on which the state hoped to hang my client.

By aligning our presentation with our theory of the case and using our theme(s) early and often, we reinforce our theory of the

case and provide the jury with a narrative framework in which to integrate the facts we develop on cross-examination.

VOIR DIRE AND OPENING PROVIDE THE STRUCTURE

From the minute we begin speaking to a jury, we have an opportunity to communicate our client's narrative, theory of the case and themes. To do so, we once again use the Chapter Method. This approach allows us to take the individual chapters we have created and sequence them in an appropriate and compelling order. Because we have broken down our case into chapters, we retain the flexibility to dynamically adjust our sequencing as needed. We also have the ability to reuse chapters that come up over and over again (*i.e.*, chapters on reasonable doubt or other recurring issues in our DUI cases).

Facts need a framework to be memorable; facts standing alone do not drive the retention or emotion we need jurors to carry into the jury room. For instance, during the *voir dire* in my softball case, I started by asking how far people had to drive just to get to the courthouse. In Montana, it is not unusual for jurors to have to leave their house at 6 a.m. to reach the courthouse by 8 a.m., particularly if there is a snowstorm. We talked about the different activities in which the jurors participated – softball, farming, hunting and other activities that had them outside in the heat and sun for hours every day. While on the surface the chapters of these questions didn't have anything to do with a DUI, they provided a framework in which to integrate all the positive facts I learned in my preparation.

In my opening, I was able to expand on all those chapters and

flesh out my client's narrative. While I sequenced the chapters in a bit different way than I had in my *voir dire*, I reused those chapters and had the opportunity to build my client's story from start to finish. I was able to provide a more substantial framework in which the jurors could understand the



context of the questions I had earlier asked about their drive times and hobbies. By using the Chapter Method to organize my client's story in *voir dire* and my opening, I gave the jury a structure in which to integrate all the facts that would come out during my cross-examination of the officer.

CROSS-EXAMINATION PROVIDES FACTS

Our role in cross-examination is to present and teach facts, not conclusions. Facts trump conclusions, interpretations, opinions, generalities and legalisms. Facts persuade a jury who is open to our arguments and our client's requests. Facts allow a juror who has already made up their mind to "backfill" the decision they have

already made. Facts are for cross; conclusions are for closing.

DUI cases are particularly unique because often, the only witness through whom we can tell our client's story is the state's witness – a law enforcement officer who arrested our client and who has been trained to testify in a way

that is harmful to our client's case. We, therefore, need to arm ourselves to tell our client's story through this adversarial witness. The contemporary approach of constructive cross-examination coupled with the traditional approach of destructive cross-examination allows us to affirmatively tell our client's story and maintain the focus on our client's story – our client's theory of the case.

TEACHING OUR CLIENT'S CASE THROUGH DESTRUCTIVE AND CONSTRUCTIVE CROSS-EXAMINATION

Destructive cross-examination is the traditional approach to questioning an adversarial witness and the style with which most are familiar. Its purpose is to

On the other hand, the use of constructive cross-examination allows us to structure cross-examinations in a way that highlights our client's story and advances our client's theory of the case.

attack the opposing theory or the opposing witness, and it almost universally appeals to those of us who try criminal cases and DUIs. The downside to such an approach is that, as with a Coke advertisement that includes references to Pepsi, destructive cross-examination keeps the focus on the state's theory of the case. Even when we are scoring points in a destructive cross-examination, we are focusing the jury's attention on the narrative constructed by the state.

On the other hand, the use of constructive cross-examination allows us to structure cross-examinations in a way that highlights our client's story and advances our client's theory of the case. By eliciting facts that support our client's theory of the case through the officer, we can teach the jury in a way that gives more worth to each fact, presents the material in a more efficient manner and keeps the jury focused on our client's theory throughout the cross-examination.

In the softball case, my client's interactions with the officer after he was stopped supported the theory that my client was tired and unfamiliar with the area but not impaired. I was, therefore, able to

constructively focus on these facts during the first portion of the officer's cross. There was no need to come out swinging and make the officer defensive. I needed him to concede facts that supported our theory. To do that, I used constructive cross-examination to force the officer to "build up" my client and my client's interactions on the evening of his arrest.

During the first few chapters of cross, I was able to establish (through the officer) that my client wasn't from the area, he had traveled a great distance to the field, and it was late in the day. I then used a series of chapters to constructively highlight many of my client's behaviors that showed my client was not impaired.

- Officer, when you walked up to my client's door, he had already rolled down the window?
 - He was ready to speak to you?
 - He was not distracted?
- When you spoke to my client, he answered all our questions?
 - He answered without hesitation?

- He answered without slurring his words?
- He answered in a friendly tone?
- When you asked him for his license and registration, he got them out of his glove box?
 - He reached over and opened the glove box without fumbling?
 - He quickly shuffled through the papers in the glovebox to retrieve his insurance card?
 - He handed you just the insurance card?
 - He didn't hand you a stack of papers?
 - You've seen folks do that?
 - You've seen drunk folks do that?
 - And you've seen drunk folks hand you the wrong piece of paper?
 - He didn't hand you a stack of papers?
 - He handed you just what you asked for?

Even where an officer may have received more training, corrected bad habits and learned to testify

more persuasively in the time since they arrested our client, the use of constructive cross-examination provides an opportunity to use the officer's newfound talents to our client's advantage. In that same softball case, I used other constructive chapters to get the officer to establish the foundation with which we would destructively demonstrate his failure to comply with the proper procedures:

- Officer, you've received extensive training on the SFSTs?
 - Over 40 hours at the academy?
 - Another five hours every two years since you graduated?
- In the time since you arrested my client, you've taken additional, advanced training?
- That training has made you an educated officer? A diligent officer?
- As an educated and diligent officer, you are aware of the importance of following the standardized administration procedures of the SFSTs?
 - You are aware that an officer's failure to follow the standardized administration procedures can compromise the validity of any conclusions?
 - As an educated and diligent officer, you do not want to compromise the validity of our conclusions?
 - As an educated and diligent officer, you would not want to mislead this court?
 - As an educated and diligent officer, you would not want to mislead this jury?

These types of questions are safe because an officer will almost universally agree with the discrete fact enclosed in each question. An officer who disagrees with any of the above questions loses credibility with the judge and jury. Therefore, no matter how the officer responds, it is a win for our client.

After allowing the officer to educate the jury on good police procedures (which took many more chapters than the above excerpt) through constructive cross, I then attacked him on each of his failures in properly administering and assessing the SFSTs through destructive cross chapters. I walked him through each of the SFSTs and each of the ways in which the officer's administration of the SFSTs did not align with the standardized requirements and those of an "educated and diligent officer." In that way, the two approaches to cross-examination support each other and allowed me to use the officer's "superior" knowledge of police procedure to his disadvantage and my client's advantage.

SEQUENCING CROSS-EXAMINATION WITH THE CHAPTER METHOD

Almost every direct examination of an officer follows the same, chronological arc. It begins with the officer's initial observations that led to the investigation and concludes with the arrest of our client for driving while impaired. In almost every case, this sequence of events does not support our client's theory of the case.

While we've all heard the admonition, "Don't chase the direct," very rarely does the one giving the admonition suggest a good starting point for our cross. Under the constructive cross-examination approach, the answer is relatively straightforward – begin with a chapter, a series of questions, that

sets up our client's narrative and immediately focuses the fact finder on our client's theory of the case. The Chapter Method allows us flexibility in sequencing our cross-examination, just as it does during our *voir dire* and opening.

While there are cases in which we need to attack the officer right out of the gate, don't let that be your default approach. Allow yourself to consider that a less aggressive, less adversarial and less destructive path may be more beneficial to your client. You have to keep in mind that many of our younger jurors do not want to see the "fight" that characterized courtrooms of the past. They want to be presented facts without the showiness. For those jurors, a conversation is easier to follow than an argument. And a less adversarial approach is also less likely to draw an objection early in the cross.

LISTEN FOR OPPORTUNITIES TO ENHANCE THE NARRATIVE

Listening is a learned skill. How many of us have attempted to multitask only to respond to the one we claim to love with a variation on, "Of course I was listening ... wait, what did you say again?" This same inability to multitask during cross-examination presents a lost opportunity for those lawyers who are not prepared before they step to the podium. When we have prepared our cross-examination as a persuasive narrative broken down into individualized chapters, we are free to listen during direct and cross-examination to make use of the officer's own testimony.

Because we know the same fact or the same phrase elicited from the officer on cross will have more impact than that fact or phrase asserted during closing, we must be alert to the opportunities presented whenever the officer

is talking. By actively listening to the officer's testimony (rather than loading our next question or searching for the record cite that will support our next impeachment), we can loop the officer's testimony whenever it coincides with our client's theory of the case. By looping the officer's testimony – intentionally reusing the officer's words and phrases that are supportive of our client's theory – we continue our client's narrative and add emphasis and focus while avoiding objections and decreasing the risk the officer will challenge our word choice.³

Late in the cross of my officer in the softball case, he compared the breath test machine to a DVD player. Since my theory focused on the disconnect between my client's performance on the video and the result produced by the breath test, I used the officer's DVD analogy to minimize the alleged scientific accuracy and reliability of the breath test machine. In contrast to the officer's reference to the breath test machine as a piece of "scientific equipment," I referred to it as "the DVD player." Because he had created the analogy, the officer gave me permission to use the phrase "the DVD player" during the rest of my cross-examination and in closing. With his analogy in hand, I closed with the following questions designed to empower the jury during deliberations:

- Officer, when a DVD player does not work, no one is arrested?
- When a DVD player does not work, no one goes on trial?
- When a DVD player does not work, no one goes to jail?

CONCLUSIONS ARE FOR CLOSING

It is naïve to believe our cross-examination will be so effective that the officer suddenly abandons their conclusion that our client was impaired. That only happens on television. In real life, those cases do not make it to trial and those officers who do admit they shouldn't have arrested our client do not remain on the force for long. But even though we may never see an officer change their conclusion on cross, we can use the Chapter Method and constructive cross-examination to accumulate admissions that are supportive of our client's narrative and our client's theory of the case. By mining for admissions during our cross-examination, we can build a foundation for our closing argument.

During closing, no one gets to argue with our conclusions. The prosecutor can object, but most judges will respond that it's called "closing argument" for a reason. And if we did our job well on cross-examination, we have a stack of admitted facts to back up our argument. We integrate those facts into the chapters we established early in the trial and argue persuasively that the testimony of the state's witnesses actually supports our theory of the case. From the other side, we can argue the testimony of the state's witnesses actually undermines the state's conclusions of impairment. Through it all, the Chapter Method provides the organization in which we frame our arguments and integrate the facts that came out during trial.

ABOUT THE AUTHOR



Matt Dodd has been in the courtroom for as long as he can remember. He lives in Montana, where he handles criminal,

civil and family cases and enjoys teaching judges and juries why they should help his clients. Mr. Dodd lectures and teaches nationwide, and he is coauthor of the book *Cross-Examination for Depositions*.

ENDNOTES

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Eviction Prevention and Right to Counsel
(Panel Discussion)

Technology in the Courtroom - Innovations
and Challenges (Panel Discussion)

Summer Pro Bono Challenge Awards

Limited Scope Representation - A Piece of
the ATJ Puzzle (Panel Discussion)

Attorney Deserts - Addressing Rural Legal
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The Role of Law Students in Expanding
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Closing Remarks - Katherine Alteneder,
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Impaired Driver Accountability Program or Challenge the Revocation of the Driver's License?

By Brian K. Morton



IN NOVEMBER 2019, OKLAHOMA'S IMPLIED CONSENT LAWS changed dramatically with the passage of Senate Bill 712. Gone are the days where a client's only choices were to either sit out a revocation for driving under the influence (DUI) or actual physical control (APC) or request an administrative hearing from the Oklahoma Department of Public Safety (DPS) within 15 days of receiving a notice of revocation. SB 712 created a new alternative in the Impaired Driver Accountability Program (IDAP)¹ and changed the method of challenging a revocation of driving privileges.²

Under the new law, a client now has 30 days from the date they receive a notice of revocation to either apply for IDAP³ or file an appeal of the revocation directly to the district court in the county where the arrest occurred.⁴ If the client does not apply to IDAP or file an appeal in district court within the 30-day time frame, their driving privilege will be revoked by DPS at the end of the 30 days.⁵

The basic idea behind IDAP is that if a client, who is subject to revocation of their driving privilege for DUI or APC, agrees to forego challenging the revocation and have an ignition interlock device installed on their vehicle for a period of time, then upon successful completion of the program, a revocation will not appear on their driving record.⁶ However, under the statutes and Oklahoma Administrative Code (OAC), there

are a number of issues to consider in applying for IDAP and completing the program.

ISSUES IN APPLYING FOR IDAP

The first issue to consider in applying for IDAP is whether the client holds a commercial driver's license (CDL). Under DPS administrative rules, only people who held a Class D license at the time of arrest are eligible for IDAP.⁷ This is due to the Federal Motor Carrier Safety Administration's ban on masking of convictions for DUI.⁸ Based on this, if the client held a CDL at the time of arrest, regardless of the type of vehicle they were operating at the time,⁹ they would not be eligible for IDAP and would instead need to challenge the revocation and/or disqualification.

A second issue to consider is whether the client is eligible to have a license. To enter IDAP,

the client must be able to hold a valid license and is not otherwise ineligible.¹⁰ Oftentimes, the client may have their license revoked due to a prior DUI or APC arrest or have their license suspended due to points, failing to appear in court, etc. If the client can get their driving privilege reinstated prior to enrolling in IDAP, it is still an option. However, if the client is unable to do so, they will not be eligible to enroll in IDAP.

A third issue to consider is whether the client has a vehicle in which they can install an interlock device. There have been instances where the person was arrested for DUI resulting from an accident, and the vehicle is being repaired or is totaled. If the client does not have a vehicle in which to install an interlock, IDAP would not be an option. However, if the delay in getting a vehicle is a minimal

amount of time, DPS may work with the individual in getting them into IDAP.

A fourth issue to consider is whether alcohol was involved in the arrest. If alcohol was not a factor in the arrest, the client is not eligible for IDAP. This would occur in a situation where the officer believes the client to be under the influence of drugs only, and the client refuses the requested blood test. If the client submits to the blood test and tests positive for drugs only, DPS will not revoke the driving privilege under Oklahoma's implied consent laws.¹¹

A last issue to consider is one that rarely arises but is worth discussing. In some instances, the client may suffer from a respiratory problem that could cause them difficulty in providing sufficient air volume to use an interlock device. It is recommended that while still in the period to either request IDAP or file a challenge, the client makes arrangements with a few different interlock companies to blow into an instrument and find one that may work for them. If the client is unable to find an interlock in which they can blow, IDAP will not be an option.

BENEFITS OF IDAP

Assuming a client does not fall into one of the previous categories and is eligible for IDAP, should they do IDAP, and what is the benefit? As stated previously, the biggest benefit to IDAP is that upon successful completion, the client does not have the revocation appear on their driving record. Additionally, the client does not have to pay reinstatement fees to DPS since their driving privilege was not revoked.¹² However, if the client chooses IDAP, they give up their right to challenge the merits of the revocation of their driving privilege. So, the

decision whether to choose IDAP or file a petition in district court to challenge the revocation is going to come down to the strength of DPS's case against the client and, more importantly, if the client can live with the revocation on their driving record should the district court sustain the revocation.

STEPS FOR ENROLLMENT AND PHASES OF THE PROGRAM

If the client chooses IDAP, the first step is to complete the DPS enrollment request form. As of May 2021, DPS does not have the form available on its website,¹³ but information from DPS is that the form will be forthcoming. Absent a request form, a letter to DPS requesting enrollment in IDAP that contains the client's name, date of birth and driver's license number would suffice. The enrollment request form must be received by DPS within 30 days of the client receiving the notice of revocation. The enrollment request form can be mailed or hand delivered to DPS headquarters in Oklahoma City or emailed to DPS at IDAP@dps.ok.gov.

Once DPS approves the request, the client will then be required to submit to DPS a \$250 fee, ignition interlock installation certificate, proof of insurance on their vehicle and a signed IDAP agreement form that DPS will provide. Everything needs to be completed within 45 days of when the person was given the notice of revocation. Once all of that is submitted, the client is enrolled in IDAP.

The IDAP period is the same as the revocation period the client would be facing. For a first-time DUI or APC arrest, the revocation period is 180 days; for a second DUI or APC arrest within 10 years of the commencement of prior revocation or completion of IDAP, the client is

facing a revocation period of one year; and for a third or subsequent DUI or APC arrest within 10 years of the commencement of two prior revocations or completion of IDAP, the client is facing a three-year revocation period.¹⁴

Although the benefit of the IDAP program is that a revocation does not appear on the client's driving record, IDAP can still be used to increase the revocation period or IDAP length should the person be arrested again for DUI or APC within 10 years of the completion of IDAP. This is different than a revocation in which a subsequent DUI or APC is within 10 years of when the revocation commenced.¹⁵

The IDAP program is split into two phases, and its length is dependent upon the length of the program the client is enrolled in. For a 180-day program, Phase I is the first 120 days, and Phase II is the last 60 days of the program. For a one-year program, Phase I is the first 245 days, and Phase II is the last 120 days. For a three-year program, Phase I is the first year of the program, and Phase II is the last year of the program.^{16 17}

While the client is Phase II, the program length can be extended if the client has either a verified ignition interlock violation or a verified program violation reported to DPS by the Oklahoma Board of Tests for Alcohol and Drug Influence (BOT). A verified ignition interlock violation consists of three penalty fails at startup within a 15-minute time frame or three retest violations. After the initial three retest violations, each additional retest violation is a reportable violation. A verified program violation includes a circumvention of the interlock device, unauthorized removal of the interlock device, tampering with the device or missing a service appointment.¹⁸

During Phase I, the program length is not extended for interlock violations. However, during both Phase I and II, remedial measures may be taken by DPS, including removal from the IDAP program, which will result in a revocation of driving privilege. Other remedial actions that can be taken by DPS for interlock violations include retraining with the interlock manufacturer, installation of an interlock device with a camera, restricting the days and times of driving and referral to reassessment.¹⁹

For a 180-day program, a violation during Phase II results in a 60-day extension from the date of the violation. For a one-year program, a violation during Phase II results in a 120-day extension. For a three-year program, a violation during Phase II results in a one-year extension.²⁰ Before DPS can extend the program length, they must give notice to the client, and the client has a right to request an informal hearing with DPS. The request must be made within 15 days of completion of the notice.²¹

To complete IDAP, the client must submit to DPS a Drug and Alcohol Assessment completion certificate or an affidavit if the client lives more than 70 miles away from an Oklahoma assessment center and an interlock history from BOT showing no violations during Phase II. Once DPS has received these items, the client has completed IDAP.²²

ADDITIONAL ISSUES TO CONSIDER

There are two issues regarding IDAP that are worth mentioning. First, the installation of the interlock under IDAP is to be credited toward any court order arising out of the same incident.²³ For example, if the client has the interlock installed for 180 days under IDAP,



and in the client's criminal case, the court orders the installation of an interlock as part of the client's sentence, the client is to be given credit toward their criminal case for the time they had the interlock installed under IDAP.

The second is regarding a conviction in the criminal case. Successful completion of IDAP results in no revocation appearing on the driving record. If DPS receives an abstract of conviction from the criminal court from the same arrest, this will not result in a revocation on the driving record.²⁴ However, DPS will report the conviction on the driving record.

If the client elects not to enroll in the IDAP program or is not eligible to enroll, their other option is to file a petition in the district court in which the arrest occurred. Under SB 712, the cash bond requirement was removed, so no cash bond needs to be posted.

At the hearing, the burden is on DPS to prove the issues in Title 47 O.S. §754(D): 1) The officer had reasonable grounds to believe the person had been operating or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other

public places in this state while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance as prohibited by law and 2) the person was placed under arrest.

If the revocation is based upon a breath or blood test, DPS must additionally prove 1) the person was not denied a breath or blood test if the person requested one; 2) the specimen was obtained from the person within two hours of arrest; 3) if the person is under 21 years of age, they were advised their driving privilege would be revoked if the test reflected any measurable amount of alcohol, or if the person is over 21 years of age, they were advised their driving privilege would be revoked if the test reflected an alcohol concentration of 0.08% or more and 4) the test results reflect the alcohol concentration.

If the revocation is based upon a refusal to submit to a breath or blood test, DPS must prove 1) the person refused to submit to the test or tests and 2) the person was informed their driving privileges would be revoked if they refused to submit to the test or tests.

It is anticipated there will be additional DUI bills submitted next legislative session.

If the court finds DPS has not met its burden, the court will order the revocation to be set aside. If the court finds DPS has met its burden, the court will sustain the revocation. If the revocation is sustained, a modification to allow the person to drive with an ignition interlock can be requested, but it is no longer discretionary with the court. SB 712 created a new law codified at 47 O.S. §754.2 that states:

The district court shall modify, upon request, the revocation or denial occurring pursuant to Section 753 or 754 of Title 47 of the Oklahoma Statutes. The district court shall enter a written order directing the Department of Public Safety to allow driving, subject to the limitations of Section 6-205.1 of Title 47 of the Oklahoma Statutes and the requirement of an ignition interlock device as provided in Section 754.1 of Title 47 of the Oklahoma Statutes; provided, any modification under this paragraph shall apply to Class D driver licenses only.

Similar to the extension of the IDAP program for violations, the length of a revocation can likewise be extended for violations. DPS must receive a report from BOT that there have been no violations in the last 180 days of the revocation. If a violation is reported, the

revocation will be extended for 180 days from the date of the violation. However, DPS must give the client notice prior to any extension, and the client has the right to request an informal hearing that must be made with 15 days of the notice.²⁵

The last issue to take into consideration is the client who submitted to a blood test. In these instances, the client is not given a notice of revocation or disqualification because the blood alcohol results are unknown until an analysis is done. Accordingly, their 30 days to choose either IDAP or file a petition has not commenced. In this case, it is recommended to send a letter to DPS advising them of the client's representation, and if any notice of revocation is issued by DPS, a copy should be sent to the attorney in a timely fashion.

CONCLUSION

As always, it's important to keep up to date on changes in the DUI laws that can affect a client's driving privilege. This past legislative session saw the passage of SB 367, which will go into effect Nov. 1. Under the bill, it does away with the requirement that law enforcement officers seize the client's driver's license and submit it to DPS. Additionally, it does away with the language in 47 O.S. §759 stating that for a breath or blood test to be admissible, it must be done in accordance with BOT rule and

instead puts directly into the statute what constitutes a valid breath and blood test. It is anticipated there will be additional DUI bills submitted next legislative session.

ABOUT THE AUTHOR



Brian K. Morton is an Oklahoma City attorney and a 2000 graduate of the OU College of Law. Since July 2014, he has handled all driver's license matters for the Edge Law Firm in Tulsa and the Hunsucker Legal Group in Oklahoma City. He is a member of the Oklahoma Criminal Defense Lawyers Association, the Oklahoma State Delegate to the National College of DUI Defense and served as an OBA governor at large from 2018-2020.

ENDNOTES

1. Title 47 O.S. §6-212.5.
2. Title 47 O.S. §754.
3. Title 47 O.S. §6-212.5 (B)(1).
4. Title 47 O.S. §6-211(D) and (E).
5. Title 47 O.S. §754 (B).
6. Title 47 O.S. §6-212.5 (C).
7. OAC 595:40-7-3(e)(2).
8. 49 CFR §384.226.
9. 47 O.S. §6-205.2(B)(2) and (3).
10. Title 47 O.S. §6-212.5(B)(4).
11. DPS cannot revoke under implied consent for a positive blood test for drugs only because 47 O.S. §6-205(A)(2) only allows for revocation based on a finding the client was, in fact, DUI/APC. However, under 47 O.S. §754, the issue to be determined is that the officer had probable cause to believe the person was DUI/APC. Completely different standard.
12. Title 47 O.S. §6-212.5(C).
13. oklahoma.gov/dps.html.
14. Title 47 O.S. §6-205.1.
15. Title 47 O.S. §6-205.1(A).
16. OAC 595:40-7-2.
17. DPS's administrative rules fail to classify what phase a client enrolled in a three-year program is in during the second year of the program.
18. OAC 595:40-7-2.
19. OAC 595: 40-7-5(d).
20. Title 47 O.S. §6-212.5(D).
21. Title 47 O.S. §6-212.5(E).
22. OAC: 595:40-7-6.
23. Title 47 O.S. §6-212.3(D).
24. Title 47 O.S. §6-205.1(A).
25. Title 47 O.S. §6-212.3(G).



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Bad Breath is Not a Crime!

By Bruce Edge

A BREATH TEST NUMBER IS THE LAST THING that should be considered when evaluating a DUI case. Many factors go into the disposition of a DUI case, such as video, other charges, current probation and the client's willingness to assume risks in their case – but bad breath should not generate a quick plea. Repeating: **BAD BREATH IS NOT ENOUGH TO CONVICT OUR CLIENTS.** Yes, the prosecutors think a breath test number is a golden ticket, but it is the place of a zealous advocate to educate the judges and the juries of what this simple number really means.

WEIGHT OF THE EVIDENCE

The starting point in evaluating a case should be determining what weight is given to a breath test, assuming it is accepted as evidence. State law¹ says a Breath Alcohol Test (BrAC) of:

- A 0.05% or below is *prima facie* evidence a person was not under the influence of alcohol;
- A test result of 0.06% or 0.07% is relevant evidence the person's ability to operate a vehicle was impaired;² and
- A test result of 0.08% or greater is *prima facie* evidence a person was under the influence.³

A person can be charged for driving under the influence,⁴ which involves their driving behavior. Additionally, they can be charged for simply blowing 0.08% or greater⁵ even when their driving behavior is normal (per se violation).

As you see, you can be convicted based on a number alone,

but the number is not an automatic conviction. The number is only *prima facie* evidence. This is where the determined attorney demonstrates the fallacies and inaccuracies surrounding the number produced by the breath estimator, the Intoxilyzer 8000.

AN ESTIMATE, NOT AN ACCURATE MEASUREMENT

Keep in mind, the estimator is taking a sample of a person's breath and then converting it into an estimate of what a blood alcohol concentration would be. In two different rules, the state showed their lack of confidence in the accuracy of this estimate. The supposed accuracy of each machine is tested by injecting a known quantity solution into the estimator and comparing that estimator's results to the known quantity. The Oklahoma Administrative Code allows a variance of 0.01% from the known quantity.⁶ If the canister tested contains a known solution of 0.08%, a test by the estimator of 0.07%, 0.08% or 0.09% is considered a valid test. Also, it

should be noted this is a test of the known canister only. It is injected in a different insertion port of the equipment from the one a citizen's breath will be tested. The air path used to test a citizen's breath is not being tested.

Next is the person's sample. By statute, two breath samples must be taken, and the lower of the two tests will be considered the test number. These two samples must be within 0.03% of each other.⁷ Using an example of a 0.1% for the first breath sample, the second sample could be as high as 0.13% or as low as 0.07% – a range of 0.06%. A 60% variance would make a measurement useless for anything other than sending a person to jail! This is the equipment, the level of confidence and the variance used in Oklahoma.

ARE YOU AVERAGE?

The state's estimator makes calculations based on the assumption everyone is average. One example we will discuss in more detail below will be body temperature. A temperature of 98.6 degrees is



commonly considered an average body temperature. You will see temperature variances can result in large test result differences. But we must realize 98.6 degrees is an average, not necessarily normal. Most people have a “normal” body temperature that varies from 98.6 degrees. This issue of evaluating an average person will be present in other calculations the estimator makes. In each incident, the person being tested will be judged against the standard of being average – not their actual personal standard.

BODY TEMPERATURE

As mentioned above, the estimator makes calculations assuming a person's body temperature is 98.6 degrees. This totally ignores daily variances in a person's temperature and ignores the fact most people have a normal body temperature higher or lower than 98.6 degrees. The estimator ignores the accuracy of a person's temperature before blowing, instead assuming it is 98.6 degrees Fahrenheit or 34 degrees Celsius. Studies have shown a normal body temperature ranges from 31 to 35 degrees Celsius.⁸

Why is this important? Studies have documented 1 degree of change in temperature causes an 8.6% variance in the estimator's reported results.⁹ An 8.6% variance just for being your own normal self. The estimator does not allow for a person who has been in the sun, is feeling ill or whose normal

temperature is higher than others. A scientific measurement would collect an actual temperature for the subject before testing. The estimator does not.

EQUIPMENT TEMPERATURE

The evaluation is performed by having a person blow into a rubber tube approximately 3 feet long. A mouthpiece is placed on the tip to help prevent moisture from entering the machine and testing sequence. Also, the rubber tube is heated by a wire heating element that is enclosed in the rubber supposedly to help prevent moisture from entering the sample chamber. The temperature of this tube is never evaluated or documented. There is not a standard for the correct temperature of the tube. The author owns a number of Intoxilyzer devices and had five of them running side by side simultaneously. A casual touching of each tube produced a noticeable variance in temperatures. This means a person could be reported as intoxicated merely because they were tested on a machine that was artificially elevating the temperature and producing incorrect results.

GENDER DISPARITY

Alcohol dilutes in water quickly but not as easily in fat. As a general rule, women have a higher fat content than men, while men have a higher water content than women. Thus, treating everyone as being average, as the estimator does, will result in a higher reading for women when all remaining items are equal.¹⁰

PARTITION RATIO ERROR

Remember BrAC is attempting to estimate blood alcohol. This is accomplished through Henry's Law (a scientific principle, not legal) that postulates liquid and air concentrations will reach equilibrium in a sealed space. This is then applied to breathe and the lungs, where the attempt is to measure alveolar, deep lung air. The fact the lungs are not a sealed container is conveniently ignored. The assumption is alcohol concentration in the blood will pass into the deep lung air at a ratio of 2100-to-1, the partition ratio.

Again, the estimator assumes everyone is average and arbitrarily assigns a ratio of 2100-to-1 to every person evaluated on the device. Studies have shown an individual's partition ratio can range widely during any given day, and the general population can range

from 900 to 3400.¹¹ To illustrate using the 2100 average, a subject is evaluated with a reported result of 0.1%. If the test is adjusted to reflect the range of partition ratios, it would produce BrACs from 0.04% to 0.16%. A person could be sober or twice the legal limit all depending on the arbitrary number selected for the calculations.

HEMATOCRIT ERROR

In layman's terms, hematocrit is a measurement of the ratio of solids and liquids in a person's blood. A common situation is dehydration, which causes a higher hematocrit. A higher hematocrit will result in an elevated alcohol concentration. Studies have shown errors of 10 to 14% in breath testing due to high hematocrit.¹²

BREATHING PATTERN ERROR

The way a person breathes can have a major impact on the reported results. Studies have shown hyperventilation can lower a test result by as much as 20%, while holding your breath before blowing can increase the breath results by as much as 15%.¹³ This means the measurement is compromised by external factors, and the estimate is open to manipulation by the equipment operator's instructions.

This means a person could be reported as intoxicated merely because they were tested on a machine that was artificially elevating the temperature and producing incorrect results.

MOUTH ALCOHOL ERROR

The estimator is purported to replicate blood alcohol concentrations by extrapolating from a breath alcohol test. Many people are stopped shortly after leaving a bar, and often the last thing they may do is take one last sip of a drink. This will eventually be absorbed into the bloodstream, but initially, it sits in the stomach and can produce mouth alcohol. Mouth alcohol is producing the full percentage of alcohol before being diluted by absorption into the bloodstream. A video example of this is demonstrated using a Portable Breath Tester (PBT). A person with no alcohol in their system used a breath spray and produced a BrAC reading of 0.259%.¹⁴ Currently, the PBT is not evidentiary for DUI in Oklahoma, but it is used in probable cause hearings. You can see how unreliable it is from the example. The issue of mouth alcohol, as tested in the video, is prevalent with the estimator also. The manufacturer claims this issue is eliminated by the use of a slope detector. A slope detector is not a physical item. It is programming in the machine to detect large spikes and drops of alcohol as would be expected with mouth alcohol. This does provide some protection for people, such as the lady in the video because she had no alcohol in her system. For people who have both a degree of alcohol in their system and mouth alcohol, the slope detector becomes much less useful or reliable.¹⁵ This could account for the client who swears they had one drink, looks normal on video but has a high BrAC.

EXTRAPOLATION ERROR

Oklahoma statute defines alcohol concentration as grams per 210 liters of breath.¹⁶ This is equivalent to a 55-gallon drum. Obviously, a human lung cannot hold that much air, so any breath sample collected is multiplied. The estimator sample chamber is only 29.4 milliliters in size, so the collected sample must be multiplied 7,142 times to approximate the 210-liter statutory measurement. The 0.08 gram that would constitute being intoxicated by law would be similar to a coffee shop's Sweet and Low packet (1 gram) divided in half, half again, half again and half again. This minute amount is measured in a 55-gallon drum. When measuring in the sample chamber, the 0.08 gram becomes a microscopic 0.000011 gram! Any deviation will be magnified 7,142 times in computing what is supposedly an accurate breath alcohol measurement.

CONCLUSION

The problems mentioned above are a beginning point in the evaluation of any breath estimate. The estimator is subject to numerous other issues that have not been discussed in this article. The key point to remember is the number generated by the Intoxilyzer is an estimate, not an accurate measurement. Let's be sure bad breath is not a crime.

ABOUT THE AUTHOR



Bruce Edge practices in Tulsa and is 1 of only 42 attorneys in the United States who is board certified in DUI defense according to ABA guidelines. He is a national and international speaker on DUI topics and the coauthor of 20 books regarding DUI.

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2. 47 O.S. §761.
3. 47 O.S. §11-902.
4. 47 O.S. §11-902 A. 2.
5. 47 O.S. §11-902 A. 1.
6. OAC 40:30-1-3 (b) (5).
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15. "The Slope Detector Does Not Always Detect the Presence of Mouth Alcohol," *The Champion* Vol XXX, No 2, March 2006.
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Impaired or Not, Medical Marijuana Patients Risk DUI Every Day

By Sabah Khalaf

ON ANY GIVEN DAY, AN ESTIMATED 1 in 10 Oklahomans are breaking the law when they drive to work or run errands.¹ The reason? They legally consumed medical marijuana within the last month.² Under Oklahoma's current DUI laws, they could be guilty of DUI even if they haven't consumed marijuana that day or even that week.³

When Oklahoma voters passed SQ 788 and legalized medical marijuana in 2018, a paradox of legal consumption and illegal driving was created. This has led to hundreds of thousands of Oklahomans being at risk of arrest and conviction of a DUI when they are not actually impaired.

The personal impact of a DUI arrest can be financially, emotionally and socially devastating. "False positive" DUI arrests of people who are not impaired also do nothing to make our roads safer. At a time when our state is actively working toward criminal justice reform and the people have voted to legalize medical marijuana, we cannot ignore this gap between our DUI laws and reality.

ZERO TOLERANCE – PERIOD

Oklahoma law is quite clear: Driving with any registrable amount of marijuana in your system is illegal, whether it was legally prescribed or not.⁴ While

at first this might seem like a common-sense policy to make our roads safer, it leaves no room for major differences in how marijuana affects the body and how impairment is measured. Our no tolerance per se DUI laws passed in 2013 treat marijuana consumption by the federal standard. Since marijuana is a Schedule I drug and illegal federally, any trace amount of marijuana or its metabolites in bodily fluid is enough to trigger a DUI arrest, regardless of intoxication or impairment.⁵

MARIJUANA INTOXICATION CANNOT BE MEASURED LIKE ALCOHOL

We have an established system of measuring alcohol intoxication and a long history of scientific research to back it up. Generally speaking, alcohol in the breath or blood directly correlates to intoxication and impairment. For marijuana, there is no such evidence-based system and standard.

The 2017 National Highway Traffic Safety Administration (NHTSA) report on marijuana driving safety concluded, "There are currently no evidence-based methods to detect marijuana-impaired driving."⁶

Despite this, two approaches of detection are currently used in Oklahoma. The first – Standardized Field Sobriety Tests (SFST) – is also commonly given for determining alcohol impairment. They are not, however, validated for anything other than alcohol. In one illustrative example, officers in Colorado conducted SFST training on volunteers, some actively impaired by marijuana.⁷ Officers demonstrated an inability to determine who was impaired based on SFSTs, failing to identify intoxicated people and falsely identifying some who were not intoxicated. An April 2021 National Institute of Justice (NIJ) study found similar results, noting, "One leg stand, walk and turn, and modified Romberg



balance tests were not sensitive to cannabis intoxication for any of the study participants.”⁸ Despite the mounting evidence against their accuracy, officer recognition of drugged driving through SFSTs is still in widespread use across the country and Drug Recognition Expert (DRE) training continues.

Blood testing is the current “gold standard” for determining marijuana impairment, despite serious problems with the underlying science. In the same study, the NIJ notes, “THC Levels in study participants’ biofluids were not reliable indicators of marijuana intoxication,” and, “There is little evidence correlating a specific THC level with impaired driving.”⁹ To understand why, we can compare alcohol and marijuana and how they behave in the

body. Alcohol is water soluble and metabolizes at a relatively steady rate.¹⁰ This means intoxication can be reliably measured in the hours after an arrest, but detectable traces of consumption (and therefore impairment) disappear after 12 to 24 hours.¹¹ Practically, this means alcohol impairment can be measured at or soon after an arrest with reasonable accuracy, and a false positive won’t appear the next week. Put simply, drinking on Friday will not lead to a DUI arrest on Monday.

Marijuana interacts with the body in a completely different way. The main psychoactive ingredient in marijuana is Delta-9-tetrahydrocannabinol, commonly known as THC.¹² Because THC is fat soluble, it remains in the body long after the psychoactive effects

have worn off.¹³ In fact, THC can stay in the body for 30 days after consumption, long after impairment.¹⁴ The April 2021 NIJ report found that marijuana’s cognitive and psychomotor effects, those that indicate potential impairment, returned to baseline after four to eight hours.¹⁵ But in Oklahoma, THC presence in the blood is often used to convict, regardless of a prescription or actual intoxication. Smoking marijuana on Friday can lead to a DUI arrest on Monday, or next Monday or longer, even when there is no impairment.

Compounding the problem, blood THC levels vary widely based on a number of different factors compared with the more uniform reliability of BAC. Peak levels of THC can occur at low levels of impairment and vice



versa.¹⁶ Regular marijuana users, such as medical patients, can have ongoing blood THC levels similar to the amount of someone who consumed marijuana recently.¹⁷ Paradoxically, people who do not regularly consume marijuana can have no blood THC level despite being actively impaired.¹⁸ Blood THC levels also peak within minutes of smoking and drop 80 to 90% from the peak level within 30 minutes.¹⁹ By the time a driver has been transported to the hospital for a blood draw or a search warrant is obtained, the THC level in the blood is relatively low.²⁰ At this THC level, impairment is often indistinguishable from regular use. A 2017 NHTSA report summarized it best as "... the poor correlation of THC level in the blood or oral fluid with impairment precludes using THC blood or oral fluid levels as an indicator of driver impairment."²¹

TWO SCENARIOS: THC IN THE BLOOD DOESN'T SIGNAL IMPAIRMENT

How might this impact individuals? Imagine two people,

Bill and Susan. Bill goes out for a night of drinking on Friday and does not drive. On Monday night, he is stopped for a minor traffic violation and because his eyes are bloodshot, the officer suspects he has been drinking. Bill isn't intoxicated, he's just tired, and a breathalyzer and blood test back this up. He is not arrested because he is not impaired. Susan, on the other hand, is prescribed medical marijuana and consumes it on Friday. She does not drive while intoxicated. On Monday, she is stopped for a minor violation. Because of the smell of marijuana in her car and her bloodshot eyes, the officer concludes she is high. She's also just tired and is legally transporting her prescribed medicine. However, because THC is present in her body, a blood test could be enough to arrest and convict her of DUI. She could still be arrested and convicted of this same DUI, based on the current per se laws, even if she had been stopped up to 30 days later and had not consumed marijuana in a whole month.

THC (SCHEDULE III) IS NOT MARIJUANA (SCHEDULE I)

While the lack of connection between THC and impairment is enough to invalidate it as a reliable measurement, there's another problem with blood testing for THC: It's not a Schedule I drug in Oklahoma. Oklahoma's DUI statute says a person driving who "has any amount of a Schedule 1 chemical or controlled substance ... or one of its metabolites or analogs in the person's blood, saliva, or urine" is guilty of DUI.²² Tetrahydrocannabinols are separately classified as Schedule III under Oklahoma law, meaning the mere presence of THC or its metabolites while driving is not illegal.²³ To put it another way, the blood test police are using to determine if someone is guilty of DUI tests for a substance that doesn't qualify under the statute.

WHAT TO DO? THESE LAWS DON'T SERVE OUR STATE

Oklahoma's DUI laws are woefully behind the available science and the reality of legal medical marijuana use. Multiple studies have shown there is no statistically significant connection between blood THC level and impairment or driver risk, THC in the body does not indicate marijuana use and THC levels are not correlated with impairment. Yet, we continue to use THC as the primary determinant of impairment. The Governors Highway Safety Association (GHSA) does not recommend per se DUI laws because there is little science to back up their use: "The [alcohol] DUI per se laws are justified because of the overwhelming scientific evidence that drivers are impaired when their BAC reaches the per se level. While many wish that per se limits could be justified similarly for drugs in general and marijuana in

particular, they cannot (Compton, 2017; GAO, 2015).”²⁴

As written, our current DUI laws with respect to marijuana do not promote safer driving nor are they fair to the more than 380,000 legal users of marijuana in Oklahoma. The law must change to better reflect our changed reality.

ABOUT THE AUTHOR



Sabah Khalaf graduated from the TU College of Law in 2010 with honors and served as a Tulsa County assistant district

attorney. His practice is hyper-focused on DUI defense, drug conspiracies and major crimes. He is the recipient of the Tulsa County Bar Association Outstanding Young Lawyer Award and the American Inns of Court Athens Sontag Award.

ENDNOTES

1. Estimated based on active medical marijuana licenses compared with total state population (~9.6%).
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18. Nathalie A Desrosiers, Sarah K Himes, Karl B Scheidweiler, Marta Concheiro-Guisan, David A Gorelick, Marilyn A Huestis, "Phase I and II Cannabinoid Disposition in Blood and Plasma of Occasional and Frequent Smokers Following Controlled Smoked Cannabis," *Clinical Chemistry*, Volume 60, Issue 4, April 1, 2014, pages 631-643, <https://doi.org/10.1373/clinchem.2013.216507>.
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20. *Id.* at page 6.
21. *Id.* at page 27.
22. 47 O.S. §11-902 (OSCN 2021) (A)(3).
23. 63 OK Stat §63-2-208 (2014).
24. Governors Highway Safety Association, "Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States," (May 2018) (page 32) <https://docs.house.gov/meetings/IF/IF17/20180711/108525/HHRG-115-IF17-20180711-SD003.pdf>.

NOTICE OF JUDICIAL VACANCY

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

**Judge for the Oklahoma Court of Criminal Appeals, Judicial District 1,
which is comprised of Congressional District 1 as constituted on January 8, 2019**

This vacancy is created by the appointment of the Honorable Dana L. Kuehn to the Supreme Court on July 23, 2021.

To be appointed to the office of Judge of the Court of Criminal Appeals an individual must have been a qualified elector of the judicial district applicable for one year immediately prior to his or her appointment, and additionally, must be at least 30 years of age and have been a licensed attorney, practicing law within the State of Oklahoma, or serving as a judge of a court of record in Oklahoma, or both, for five years preceding his/her appointment.

Application forms are online or contact Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, October 8, 2021. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed, they must be postmarked on or before October 8, 2021, to be deemed timely. Applications should be mailed/delivered to:

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

Are the Standardized Field Sobriety Test Validation Studies Reliable?

By John Hunsucker



ANY LAWYER HANDLING DUI CASES, either as a prosecutor or defense attorney, has encountered field sobriety tests. We have heard terms like “standardized” and “validated.” We have been told there are studies that give us percentages of reliability. This article will look at the studies and how the data were collected.

It is important to realize the National Highway Traffic Safety Administration (NHTSA) does not actually conduct studies on its own but contracts out to individuals and groups who submit grant proposals. NHTSA settled on a three-test battery after spending millions of dollars on grants and research. The three-test battery consists of the Horizontal Gaze Nystagmus (HGN) test, the Walk and Turn (WAT) test and the One Leg Stand (OLS) test. Collectively, these tests are referred to as the Standardized Field Sobriety Tests (SFSTs).

NHTSA claims the SFSTs are standardized and validated. What do these terms mean? “The term ‘standardized’ refers to a method of administering and interpreting the SFST’s. Standardized tests are supposed to be administered and interpreted in the same manner and under the same conditions no matter where they take place.”¹ Basically, this means the tests are designed to be given the same every time regardless of location

or time ... much like fast-food restaurants. A Big Mac in New York City should be the same Big Mac in Oklahoma.

Validation is the correlation of the test performance and the blood alcohol content (BAC) level. Although some will argue the test results correlate to impairment, that simply is false. The SFSTs crudely attempt to predict BAC.

Starting in 1977, there have been six major studies looking at field sobriety tests (FST). The first three focused more on standardization,² and the other three focused on “validating” the SFSTs.³ For purposes of this article, we are going to focus on the three validation studies conducted in Colorado, Florida and San Diego, as well as look at a 1991 study by Dr. Spurgeon Cole at Clemson University.⁴ I include the Dr. Cole study to highlight how often false positives can occur.

FIRST VALIDATION STUDY

The first validation study was performed in Colorado utilizing law enforcement officers experienced with SFSTs.⁵ Using the three-test battery, the study purports correct arrest decisions 93% of the time. There were 305 subjects involved in the study, with 234 of them cooperating. Eighty-two percent of those stopped were stopped for impaired driving behavior. This arguably can skew the officer’s decision on actual SFST interpretation. If the effectiveness of the actual psychophysical field testing is paramount, steps should be taken to minimize any outside influencers. Ideally, for scientific purposes, having another officer perform the test who was unaware of the reason for the stop would provide a more accurate picture of the actual test’s effectiveness in determining correlation to a person’s BAC level. This would limit the officer’s opinion to what they saw strictly on the driver’s performance on

the test battery without outside influences of driving patterns. Although the arrest decision is based on a totality of the circumstance, this article is discussing the accuracy of the actual test battery validation study.

It is important to note that Colorado has a lesser included offense like Oklahoma's Driving While Impaired and, thus, the level used for a correct arrest decision was 0.05%. One in eight people testing below 0.05% had four or more HGN clues. This potentially calls into question arrests for DUI refusal cases where the evidence is based on the SFST results. If those results are showing at below 0.05%, then how do you distinguish that they are 0.08% or higher? The study even acknowledged this, noting, "It is possible that the lack of smooth pursuit and distinct nystagmus at maximum deviation occur at low BACs with some subjects, but not with others, or on some occasions, but not others."

There were several other issues with the participant pool. Women were severely underrepresented, with 82% of the participants being male. Of the 18% of women, none were between the ages of 51-70. Only 5% of the sample were men over 50, leaving older adults also severely underrepresented.

The mean BAC level was 0.156%, indicating a majority were well over the legal limit. "In other words, it should not generally be difficult to determine if someone is driving under the influence of alcohol when the BAC is this high, and the field sobriety tests have little influence on the decision to arrest as a practical matter."⁶

Monitoring and control were issues. The study used trained observers to ensure and monitor that the field tests were performed in the standardized manner.

It is important any attorney defending DUI and alcohol-related cases be versed on SFSTs.

However, the monitors were only present 41% of the time. We know there was no strict adherence to the standardized method and guidelines as impaired balance was the most frequently observed clue during the WAT test even though it is not a clue.

SECOND VALIDATION STUDY

The second validation study was the 1997 Florida study conducted by the Institute of Police Technology & Management, University of North Florida, Pinellas County Sheriff's Office and Southern California Research Institute.⁷ The Florida study used eight trained officers, all of who were DUI instructors, and four were also DRE trained. The officers completed a refresher course right before the study. The final report was only 29 pages long and claimed 88% accuracy in arrest/no arrest decisions and 95% accuracy in arrest decisions.

There were 379 drivers stopped, but only 256 were evaluated for the final report. This is partially the result of the officers using additional psychophysical field tests in addition to the three SFSTs they were tasked with validating. Those 53 subjects were removed from the final report, as well as those who refused to submit to a breath test. This is important to note as, like the Colorado study, the trained observers were only present 64% of the time. Also, similar to the

Colorado study, there was a very high mean BAC of 0.156% with 80% of the subjects being over the legal limit. Only 20% of the participants were female.

Those falsely arrested exhibited clues on the SFSTs. They averaged 3.6 clues on the WAT test and two clues on the OLS test. Sixty-seven percent of those falsely arrested (under 0.08%) had all six clues on the HGN test.

THIRD VALIDATION STUDY

The third validation test was the 1998 San Diego study conducted by ANACAPA Sciences Inc.⁸ This study used seven officers from one agency. The officers participating were formally trained and had significant experience in DUI enforcement. "The results of the HGN were adjusted to assume that four of six cues indicated a BAC of .08 or more as opposed to .10 or more and that two cues or more indicated a BAC of .04 or more."⁹

The study looked at 297 motorists, with just 12% being women. The mean BAC was 0.122%. The accurate arrest decision purported was 91% for BACs over 0.08% and 80% for BACs between 0.04% and 0.08%. There were 24 false positives, meaning 24 people were wrongfully arrested. The officers were equipped with portable breath testing devices and were instructed not to use them until after they estimated the BAC at

the conclusion of administering the SFSTs. However, monitors only “periodically” observed, and there was little supervision to ensure the study parameters were being followed correctly. A high number of the participants had a high BAC.

Thirty of the 81 drivers who were below 0.08% had at least four HGN cues. That is 37% or 1 in 3. On the WAT, 40 out of 76 (53%) had two or more cues. Of the 75 people under 0.08% who took the OLS, 41% had two or more cues. Two or more cues on either of these tests are supposed to indicate the person is above 0.08%.

‘FIELD SOBRIETY TESTS: ARE THEY DESIGNED FOR FAILURE?’

One final study worth mentioning was conducted at Clemson University by Dr. Spurgeon Cole in 1994.¹⁰ I alluded earlier to outside influencers like driving patterns when looking at the effectiveness of SFSTs. To really look to see if they work, those outside influencers should be taken away. Dr. Cole did exactly this in his study. Dr. Cole taped 21 individuals performing six common field sobriety tests. These tapes were shown to 14 police officers and asked if the subjects had “too much to drink.” Forty-six of the decisions resulted in the conclusion the individual was too inebriated to drive. This is an interesting result as all 21 individuals had a BAC of 0.00%. Although the officer in the field has the benefit of the totality of the circumstances, this study illustrates the fallacy of relying upon FSTs for the brunt of the evidence someone may be a certain BAC.

CONCLUSION

SFSTs have some usefulness in determining probable cause, but they have greatly been oversold by the police and NHTSA as a means to determine impairment or a BAC

level. As stated in the San Diego study, “It is unlikely that complex human performance such as that required to safely drive an automobile can be measured at roadside ... The link between BAC and driving impairment is a separate issue involving entirely different research methods.”¹¹

It is important any attorney defending DUI and alcohol-related cases be versed on SFSTs. There is an old saying that knowledge is power. This is especially true in the case of SFST. I have reviewed thousands upon thousands of DUI cases, and it is rare that I see the tests are done correctly. It is a discredit to your client to not have the ability or knowledge to cross-examine an officer when he testifies, “I administered the SFST battery and the defendant exhibited all of the clues.” This statement alone should lead to a very lengthy cross-examination breaking down every clue and step of the tests that were given and how the clues and cues were interpreted.

In conclusion, the late, great Georgia DUI attorney Allen Trapp sums it up perfectly: “The numbers from NHTSA’s own field validation studies cast long shadows over the validity of the tests, and both the bench and the bar should take note. The bench should take a fresh look at the purposes for which the tests are admitted into evidence and reconsider how much weight they should be given in determining probable cause to arrest and proof warranting a conviction.”¹²

ABOUT THE AUTHOR



John Hunsucker is board certified in DUI defense by the National College for DUI Defense and is internationally recognized as a leader in the field. He handles hundreds of alcohol-related driving

charges every year, ranging from municipal DWIs to DUI felony murder II cases. Mr. Hunsucker is a director and sustaining member of the Oklahoma Criminal Defense Lawyer’s Association and a Fellow of the Litigation Counsel of America.

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DUI Prosecution on Military Installations in Oklahoma: Different Justice for Civilians and Service Members

By John P. Cannon

THE MILITARY AND OKLAHOMA

Oklahoma has a substantial military presence and history. Since 1869, Fort Sill has played a role in every major American conflict.¹ Additionally, Tinker Air Force Base, Vance Air Force Base, Altus Air Force Base and McAlester Army Ammunition Plant are active-duty installations with thousands of men and women stationed at these facilities who serve our nation. Moreover, Oklahoma has multiple reserve components, including Reserve and National Guard units, like the 45th Infantry Division, nicknamed “Thunderbirds.”

It is undeniable the military and the men and women who serve within its ranks play a significant role in Oklahoma. Although most Oklahomans are familiar with the military and the installations mentioned above, few are versed in the military criminal justice system or what happens to a civilian arrested on one of these military installations. The rights and constitutional protections citizens enjoy in our civilian criminal justice system are mirrored, and in some respects greater, in the military justice system.² However, when, where and how someone is prosecuted for criminal offenses on a military installation is determined by a number of factors, first and foremost the person’s status.³

JURISDICTION ON MILITARY INSTALLATIONS

The federal government has exclusive jurisdiction over crimes committed on any military reservation or base,⁴ *i.e.*, Tinker Air Force Base or Fort Sill, including the offense of driving under the influence (DUI). Although Tinker Air Force Base is geographically within Oklahoma County, or more importantly, the state of Oklahoma, our state criminal justice system does not have jurisdiction over crimes allegedly committed on any federal installation as the federal government has reserved jurisdiction over criminal actions that occur on federal territory.

Criminal offenses on military bases are investigated or reported by potentially many different

federal law enforcement entities, including but not limited to military police, the Criminal Investigation Department (CID) or the Office of Special Investigations (OSI). Following the completion of an investigation within a military installation, including DUI, the findings are presented to the relevant authority.

Service members alleged to have committed the same conduct as a civilian, driving under the influence of alcohol, are subject to a much wider range of punishments, including non-criminal administrative action or prosecution under the Uniform Code of Military Justice (UCMJ).⁵ Conversely, as the following sections will explain, civilians who are alleged to have driven under the influence of

alcohol or drugs on a military base will be prosecuted in federal court.

ORIGINS OF THE MILITARY JUSTICE SYSTEM

Our military justice system, the court-martial system, is the oldest system of justice in the United States. Our system is a derivative of the British Articles of War and the British Code of 1765. It is a system of limited jurisdiction, and its authority comes from the United States Constitution,⁶ the Uniform Code of Military Justice⁷ and the Manual for Courts-Martial.⁸

As early as 1857, the legitimacy of our court-martial system has routinely been held lawful, including the United States Supreme Court's decision in *Dynes v. Hoover*, in which the court held the Constitution grants authority for Congress to provide for criminal justice for military offenses.⁹ In 1954, Chief Justice Vinson held the following in *Burns v. Wilson*, "Military law ... is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment."¹⁰



FOUNDATIONS OF THE MILITARY JUSTICE SYSTEM

The purpose of our military justice system is in large part to allow commanders, in any setting across the world, to handle misconduct and criminal offenses by service members under the commander's authority *without substantial interference with the commander's mission*. Military commanders have the authority to prosecute service members under the UCMJ for conduct on and off post, related to and unrelated to military service. Additionally, the military may have concurrent jurisdiction with non-military law enforcement that could result in prosecution by both justice systems. However, when an offense occurs on a military installation, concurrent jurisdiction does not exist as state and local law enforcement lacks jurisdiction over military installations in most cases.

The Uniform Code of Military Justice provides for two types of offenses: 1) common law crimes, including DUI and military-specific crimes and 2) military-specific crimes that include offenses such as disrespect,¹¹ disobedience,¹² absent without leave (AWOL),¹³ conduct unbecoming an officer and gentleman¹⁴ and conduct prejudicial to good order and discipline.¹⁵ Military-specific offenses are designed to give commanders authority to prosecute conduct that is not found in the common law system but necessary for maintaining discipline within the military command structure.

The military justice system includes key personnel not found in the civil justice system, including the suspect's commander. The commander at each level has prosecutorial discretion and exercises independent judgment with the input of their subordinate leaders

as well as the advice of counsel, a judge advocate. Commanders, not prosecutors, are the convening authority who determine what level of court-martial or prosecution will take place in response to a given allegation. Additionally, the staff judge advocate (SJA) is a senior attorney who advises the General Court-Martial Convening Authority (GCMCA) for the installation and is similar to in-house counsel for the GCMCA commander.

Therefore, unlike our civilian criminal justice system, our military justice system gives commanders very wide discretion to determine what, if any, course of action to take in response to misconduct, even criminal offenses. Commanders have access to one or potentially many judge advocates (uniform attorneys) for non-binding advice on what level of action to take for misconduct. Although most crimes, including DUI offenses, are investigated by military police or Criminal Investigation Command (CID), commanders retain discretion to determine the disposition of an offense. Commanders consider at least the following in evaluating what course of action to take for a given offense: *speed of the resolution* and necessity for the same, *good order and discipline* (impact on command and society) and *justice* (evaluation of service member and each case on its own merit).

Additionally, the Rules of Courts-Martial, Rule 306 *Initial Disposition* states, "Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition listed in subsection (c) of this rule."¹⁶ The dispositions listed in Rule 306(c) including the following:

- 1) *No Action*. A commander may decide to take no action on an offense.

If charges have been preferred, they may be dismissed.

- 2) *Administrative action*. A commander may take or initiate administrative action, in addition to or instead of other action taken under this rule ... include[ing] corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above.
- 3) *Nonjudicial punishment*. A commander may consider the matter pursuant to Article 15, nonjudicial punishment.
- 4) *Disposition of charges*. Charges may be disposed of in accordance with R.C.M. 401¹⁷
- 5) *Forwarding for disposition*. A commander may forward a matter concerning an offense, or charges, to a superior or subordinate authority for disposition.¹⁸

COMMANDER DISCRETION IN MILITARY PUNISHMENT

Rules of Courts-Martial, Rule 306(c)(2) administrative actions, provides one of the greatest contrasts between the military justice system and the civilian system as commanders have the authority to enforce a gambit of punishments in lieu of or in addition to criminal prosecution. Although court-martial proceedings require proof beyond a reasonable doubt, commanders are held to a lower standard of "preponderance of the evidence" in administrative actions. Some of the most commonly exercised forms of administrative action are as follows:

- Counseling¹⁹
- Corrective training²⁰
- Letter of reprimand²¹
- Nonjudicial punishment (NJP)²²
- Bar to reenlistment²³
- Revocation of security clearance²⁴
- Adverse annual evaluation, *i.e.*, Non-Commissioned Officer Evaluation Report (NCOER) or Officer Evaluation Report (OER)
- Reduction in rank²⁵
- Administrative separation²⁶

Nonjudicial punishment under Article 15 of the Uniform Code of Military Justice is one of the most common forms of punishment in the military. The title of these proceedings will vary based on the specific service, *i.e.*, “NJP” or “Captain’s Mast.” However, the purpose is always to educate, reform or correct service members under the specific commander and to dispose of minor offenses without a court-martial. The non-judicial aspect largely stems from the fact the commander determines guilt or innocence at the conclusion of evidence, not a jury, attorney or judicial officer. This authority and principle is codified in federal statutes at 10 U.S.C. §815, “Any *commanding officer*, may in addition to in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial.”²⁷

One of the greatest benefits of an Article 15 instead of a court-martial is the fact an Article 15 does not result in a conviction on a criminal record. However, service members have the right to refuse an Article 15 and proceed to court-martial. Military members facing an allegation of DUI may be subject to one or many of the

However, as mentioned above, service members face multiple potential punishments for a DUI offense on base, largely at the discretion of their commander.

above-mentioned forms of administrative action or nonjudicial punishment; however, it may coincide with court-martial proceedings.

CRIMINAL PROSECUTION IN THE MILITARY

The criminal charge for a DUI committed by a military member on base is “Drunken or Reckless Operation of a Vehicle, Aircraft, or Vessel,” which is found in Article 111 of the UCMJ. However, as mentioned above, service members face multiple potential punishments for a DUI offense on base, largely at the discretion of their commander. As discussed above, commanders have a wide range of discretion in how to handle punishment on suspicion of DUI by a service member.

Courts-martial are the only form of criminal prosecution in the military and can result in imprisonment, negative discharge characterization and federal conviction. Only the most serious military-specific offenses and criminal allegations are handled by court-martial proceedings. Service members facing an allegation of DUI during military service may or may not face a court-martial proceeding for DUI, dependent upon the facts and circumstances of the DUI allegation

and the discretion of the commander at each level of the service member’s chain of command.

TYPES OF COURTS-MARTIAL

There are three types of court-martial proceedings with increasing severity and increasing rights: Summary Courts-Martial, Special Courts-Martial and General Courts-Martial.

The *Summary Courts-Martial* (SCM)²⁸ is the lowest level court-martial and is designed to deal with minor offenses for infractions a commander determines to warrant more punishment than nonjudicial punishment. Service members have the right to refuse trial by SCM; however, this may result in referral to more serious action. Although confinement is a possibility in SCM actions, it is limited to a brief period of time. This type of court-martial cannot result in a punitive discharge from the military, and the service member does not have a right to representation; however, they may retain counsel. This type of proceeding is limited to misdemeanor-level misconduct, including DUI allegations.

The *Special Courts-Martial* (SPCM)²⁹ is designated to handle more serious, military-specific misconduct and minor criminal

offenses that are too serious to handle by an SCM. Soldiers are entitled to representation; however, they may receive up to 12 months confinement and a bad-conduct discharge (BCD). Additionally, this type of court-martial is heard by a panel of three members unless the service member elects to proceed by judge alone. The SPCM is the most common form of court-martial and shares many characteristics with prosecution in state and federal courts. This type of proceeding may be used for a DUI offense by a service member; however, it is the most serious form of punishment a service member will face for a DUI unless some element of the case makes the offense comparable to a felony under common law, *i.e.*, manslaughter³⁰ as a result of DUI.

The *General Courts-Martial* (GCM) is the most serious court-martial and is reserved for felony offenses under common law and the most serious military-specific offenses. This level of court-martial is reserved for offenses more serious than DUI. These proceedings entitle a service member to an Article 32 hearing, which is an investigative hearing comparable to a preliminary hearing in Oklahoma state court.³¹ In place of the grand jury indictment in federal court, the military provides the right to this pretrial investigation.³² The Article 32 is investigatory in nature, and the finds are the only recommendation the convening authority may adopt or ignore.³³ GCM proceedings are heard by a panel of at least five senior service members unless the service member elects to proceed by judge alone. The potential punishment in a GCM is comparable to Oklahoma and federal felony offenses in that the punishment range is specific to the *charges* and *specifications* and may range from short periods of

confinement to life in prison or even death in capital cases.

DUI COMMITTED BY NON-SERVICE MEMBERS ON BASE

Generally, in Oklahoma, when a person is arrested for suspicion of DUI, they will be prosecuted in municipal court or state district court. However, that is not the case when the events giving rise to the suspicion of DUI occur on a military base within Oklahoma. Criminal offenses, including DUI, that allegedly take place on military installations in Oklahoma are not prosecuted in state courts. All criminal offenses that take place on military installations in Oklahoma are handled under federal criminal law. Non-service members do not have a status authorizing a command authority to prosecute them; therefore, federal courts outside the military must prosecute these actions. A non-service member arrested for suspicion of

Prior to 1940, it was presumed under federal law that the United States had exclusive jurisdiction on lands obtained within any state. After 1940, exclusive jurisdiction was only obtained by affirmative action by the federal government.³⁴ The state of Oklahoma has given consent to the federal government to acquire land in the state.³⁵ Our state has granted exclusive jurisdiction to the federal government over federally obtained land, except for service of process on federal land, "*Exclusive jurisdiction in and over any lands so acquired by the United States shall be, and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.*"³⁶

The Oklahoma Legislature has ceded exclusive jurisdiction to the United States for all lands



DUI on a military installation will be charged in federal court pursuant to the authority granted to the federal government by the United States Constitution, federal law and state law.

acquired by the United States, which is in conformity with the United States Constitution and 50 U.S.C. §175. The Oklahoma attorney general stated the following in relation to this question:

[O]n federal property under the exclusive jurisdiction of the federal government, the State may serve process on persons located thereon, but has no authority to enforce Oklahoma laws against violations of those laws committed on such federal land. To put it another way, *an act committed on land under the exclusive jurisdiction of the federal government is a crime only to the extent that federal law makes it a crime, despite any State law which would make the act a crime.*³⁷

The federal government retains jurisdiction over criminal matters taking place on military installations under the federal enclave doctrine. The doctrine dictates the United States government retains jurisdiction in a specific geographical area under the control of a specific branch of the federal government. Military installations and federal courthouses are two of the most common examples of federal enclaves – such was the case of *State v. Smith*,³⁸ where the Supreme Court of North Carolina held Marine Corps Base Camp Lejeune was a federal enclave. Oklahoma courts have not specifically ruled on the issue of military installations as federal enclaves; however, The Oklahoma Supreme Court stated in the 2003 opinion of *Local 514 Transport Workers Union of America v. Keating* “the trial court held the right to work amendment ... did [not] have any application to federal enclaves, such as military bases.”³⁹

More importantly, since at least 1930, the United States Supreme Court has determined the federal government has exclusive jurisdiction to prosecute offenses on federal enclaves.⁴⁰ Earlier in 2021, the Oklahoma Court of Criminal Appeal, citing the Major Crimes Act,⁴¹ held in *Bosse v. State*,⁴²

“Congress provides that *crimes committed in certain locations or under some specific circumstances are within the sole and exclusive jurisdiction of the United States.*”

Interestingly, in *Akin v. Big Three Industries*,⁴³ the 5th Circuit held that a toxic tort case arising out of Tinker Air Force Base properly invoked enclave jurisdiction, thereby prohibiting that tort action to continue in state court. The 5th Circuit held “all plaintiffs performed all duties on Tinker Air Force Base. And the plaintiffs now claim these very duties repairing jet engines resulted in personal injuries ... enclave jurisdiction is properly invoked.”⁴⁴

The United States is the largest holder of real estate in America, and a very large part of the government’s land holdings are military installations, including (in Oklahoma) Tinker Air Force Base and Fort Sill. These territories and other categories of federal territory are known as “federal enclaves.” The source of federal enclave doctrine is found in the U.S. Constitution, which provides at Article I, Section 8, Clause 17:

Congress shall have power ... to exercise exclusive Legislation in all Cases whatsoever over such District[s] ... as may, by Cession of particular States ... become the Seat of the government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings.⁴⁵

Government property can be categorized in three ways pertaining to federal criminal jurisdiction: exclusive jurisdiction, concurrent jurisdiction and proprietary

jurisdiction, in which the federal government has no criminal jurisdiction. There are three means that provide the United States exclusive or concurrent jurisdiction over federal land in Oklahoma or any state, including military bases: 1) reservation of federal land upon a state’s admission to the union, 2) state statute consenting to the purchase of land by the federal government⁴⁶ or 3) state cession.⁴⁷ The jurisdictional status of federal land dictates the application of federal enclave statutes, specifically 18 U.S.C. §7 “Special Maritime and Territorial Jurisdiction of the United States” that includes, “*Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.*”⁴⁸

DUI offenses committed by non-service members upon military installations are prosecuted in the federal district court in which the military installation is found. The Western District of Oklahoma is the federal forum for offenses on Fort Sill, Tinker Air Force Base and Vance Air Force Base. These offenses are prosecuted in federal court but under Oklahoma DUI laws⁴⁹ pursuant to the Assimilative Crimes Act.⁵⁰ This act gives the federal government the authority to prosecute under state criminal law when, as the Supreme Court held in *United States v. Sharpnack*, no “enactment of Congress” covers the conduct.⁵¹ As federal criminal law is limited in scope to the powers granted by the Constitution,⁵² including the 10th Amendment that dictates the powers not reserved by the

federal government are bestowed on the states, *i.e.*, general policing power.⁵³

DUI offenses in federal court are typically handled by special U.S. attorneys⁵⁴ who are full-time military judge advocates assigned to handle criminal offenses by non-service members on base, subsequent to an appointment by the attorney general. Code of Federal Regulations, Title 32 *National Defense* provides, "Army attorneys ... will prosecute cases, in which the Army has an interest, in federal court."⁵⁵ The military commanders have many interests in the enforcement of *criminal law* upon base, including the safety of the service members and families on post.

Most DUI offenses by civilians, including those on military bases, are prosecuted as misdemeanor offenses, specifically Class B misdemeanors, which carry up to six months in federal prison. DUI allegations prosecuted in federal court are usually handled by a magistrate judge, and their prosecution is governed under the Federal Rules of Criminal Procedure for petty offenses.⁵⁶

CONCLUSION

An accused facing prosecution for a DUI on a military base is better off if they are a service member. The benefits afforded a service member are greater than required under the Constitution, and defense counsel and the commander have more options for resolution in the military criminal justice system than a defendant facing federal prosecution for a DUI offense on a military base. Although substantial protections exist for a civilian facing federal prosecution for a DUI on a military base, the options are limited to largely contesting the case through motion practice and eventually trial or entering a plea of guilty and being sentenced by a federal magistrate judge.

Alternatively, as discussed above, the service member client faced with a DUI offense on a military base in Oklahoma provides defense counsel the opportunity to craft a wide variety of dispositions that may potentially allow the client to avoid criminal prosecution via the means

of non-judicial punishment or administrative action, including a letter of reprimand if the commander is inclined to provide the service member with the opportunity to avoid criminal prosecution. Additionally, if prosecution in the court-martial system is inevitable, the opportunity for a pretrial agreement (PTA) or resolution with the guarantee of no confinement and the opportunity to seek relief from higher commanders if a bad outcome is reached is only part of the rights afforded a service member facing criminal prosecution for DUI on a military base or any other comparable offense.

This primer on the differences between prosecution for a DUI occurring on a military base for a service member versus a civilian is only a glimpse at the contrast between the criminal justice system for these similarly situated hypothetical defendants. However, it is highly interesting to consider the rights and options afforded to a service member in this setting based on their status as such. Hopefully,

The benefits afforded a service member are greater than required under the Constitution, and defense counsel and the commander have more options for resolution in the military criminal justice system than a defendant facing federal prosecution for a DUI offense on a military base.

this has inspired some defense attorneys to seek the privilege of defending those that defend our nation or at least shed light on the contrasts between these two criminal justice systems.

ABOUT THE AUTHOR



John P. Cannon is the founder of Cannon & Associates in Edmond. His practice focuses on empowering his team to provide the best in criminal defense and family law. Additionally, he serves in the Oklahoma Army National Guard as the brigade judge advocate for the 45th Field Artillery Brigade.

ENDNOTES

1. *Encyclopedia of Oklahoma History and Culture*. "Fort Sill," by Lance Janda.
2. It is "a system of military justice that is notably more sensitive to due process concerns than the one prevailing through most of our country's history ..." Justice Ginsburg, concurring opinion, *Weiss v. United States*, 510 U.S. 163, 194 (1994).
3. The United States Supreme Court held in *Solorio v. United States*, 483 U.S. 435 (1987) that jurisdiction of a court-martial depends on the accused's status as a service member alone.
4. Exclusive jurisdiction.
5. 10 U.S.C. §§801 *et seq.*
6. Article II, Section 2, "The President shall be Commander in Chief of the Army and Navy of the United States ..." and Article I, Section 8, clause 14, "The Congress shall have Power ... [t]o make rules for the Government and Regulation of the land and naval forces."
7. 10 U.S.C. §§801-946.
8. R.C.M. 201-204.
9. *Dynes v. Hoover*, 61 U.S. (20 How.) 65, (1857).
10. *Burns v. Wilson*, 346 U.S. 137, 140 (1954).
11. UCMJ, Article 89 and 91.
12. UCMJ, Articles 90-92.
13. UCMJ, Article 86.
14. UCMJ, Article 133.
15. UCMJ, Article 134.
16. RCM 306(b).
17. RCM 401 is the introduction to Chapter IV of the Manual for Courts-Martial, Forwarding and Disposition of Charges that holds only commanders authorized to convene courts-martial or nonjudicial punishment may dispose of charges.
18. RCM 306(c).
19. AR 600-20.
20. *Id.*
21. AR 600-37, AR 25-400-2, Para. B-80.
22. UCMJ, Article 15, 10 U.S.C. §815, AR 27-10, Chapter 3 for the Army.
23. AR 601-280.
24. AR 380-67.
25. AR 600-8-19, Chap. 6.

26. Army administrative actions include formal counseling (AR 600-20), corrective training (AR 600-20, Para. 4-6b) and Personnel Separations-Enlisted Personnel (AR 635-200).
27. 10 U.S.C. §815 (emphasis added).
28. MCM, Chapter XIII Summary Courts-Martial.
29. 10 U.S.C. §819.
30. UCMJ, Article 119.
31. OKLA. STAT. tit. 22 §258.
32. *U.S. v. Roberts*, 10 M.J. 308 (C.M.A. 1981) and R.C.M. 405(a).
33. 10 U.S.C. §382.
34. 54 Stat. 19 (Feb. 1, 1940) and 40 U.S.C. §255.
35. OKLA. STAT. tit. 80 §1.
36. OKLA. STAT. tit. 80 §2 (emphasis added).
37. *Okla. Op. Att'y Gen. No.* 1998 OK AG 21, ¶17 (emphasis added).
38. *State v. Smith*, 328 N.C. 161 (1991).
39. *Local 514 Transport Workers Union of America v. Keating*, 2003 OK 110, ¶5.
40. *United States v. Unzeuta*, 281 U.S. 138 (1930).
41. 18 U.S.C. §§1153 *et seq.*
42. *Bosse v. State*, 2021 OK CR 3, ¶23 (emphasis added).
43. *Akin v. Big Three Industries*, 851 F. Supp. 819 (1994).
44. *Id.* at 822.
45. U.S. Const. art. I, §8, cl. 17.
46. See 18 U.S.C. §§81, 661, 662, 1363 and 2111.
47. See *Collins v. Yosemite Park Co.*, 304 U.S. 518 (1938).
48. 18 U.S.C. §7(3).
49. OKLA. STAT. tit. 47 §11-902.
50. 18 U.S.C. §13, state crimes not codified in the UCMJ may be incorporated by the Assimilated Crimes Act and UCMJ Article 134.
51. *United States v. Sharpnack*, 355 U.S. 286 (1957).
52. United States Constitution, Article 1, Section 8 details the majority of the powers granted by the Constitution.
53. United States Constitution, Bill of Rights, 10th Amendment.
54. 28 U.S.C. §543.
55. 32 C.F.R. §516.4(e)(1).
56. *Federal Rules of Criminal Procedure*, Rule 58 Petty Offenses and Other Misdemeanors.



EVENTS & HIGHLIGHTS

What Every Lawyer Needs to Know About Living and Practicing in Indian Country (6-Hour CLE) | Wednesday Morning & Afternoon

The *McGirt v. Oklahoma* case related to tribal sovereignty is generating numerous questions for lawyers across a broad spectrum of practice areas. This program features a slate of experts who will cover several topics, including Indian law basics, tribal jurisdictions, related tax issues, state and tribal compacts, ownership and property rights in Indian country and tips for practicing in tribal courts. Attend online or in-person. Sponsored by OAMIC.

President's Reception | Wednesday Evening

Join President Mike Mordy on Wednesday evening to network and socialize with colleagues from across the state at the President's Reception. The event is free with Annual Meeting registration, and complimentary heavy hors d'oeuvres and drink tickets will be provided. Sponsored by OAMIC.

Speed Round: Hot Topics for Every Lawyer (3-Hour CLE) | Thursday Morning

Our Thursday morning plenary session will feature quick yet informative discussions on a variety of legal topics including immigration and criminal law, guardianship and power of attorney, issues in state and federal courts, and hot topics in the Oklahoma Legislature. Attend online or in-person. The cost of this program is included with your Annual Meeting registration fee.

Annual Luncheon | Thursday at Noon

Keynote speaker Judge Robert Bacharach, U.S. Court of Appeals for the 10th Circuit, will speak during the Annual Luncheon on Thursday at noon as part of the OBA Annual Meeting. OBA award winners will also be honored at this event. Sponsored by the OBA Family Law Section.

All events will be held Nov. 10-12 at the Sheraton Oklahoma City Downtown Hotel unless otherwise specified.

Wellness Matters: Lawyers Helping Lawyers CLE Program | Thursday Afternoon

Lawyers who take care of their own physical and emotional needs are best equipped to take care of their clients. The focus will be wellness, mental health and substance abuse during this afternoon session. Every lawyer who attends will discover best practices for self-care while earning three hours of Ethics MCLE credit. The cost of this program is included with your Annual Meeting registration fee. Attend online or in-person. Sponsored by the OBA Lawyers Helping Lawyers Assistance Program.

Diversity Awards Dinner | Thursday Evening

OBA Diversity Awards are presented to Oklahoma businesses, groups or organizations promoting or developing diversity initiatives that advance justice, fairness and inclusivity. Awards are also presented to Oklahoma lawyers and members of the judiciary. Join us during this Thursday evening banquet to celebrate as the 2021 winners are announced and hear from Oklahoma lawyer and author Hannibal B. Johnson who will speak about the Tulsa Race Massacre. Sponsored by LawPay.

Delegates Breakfast | Friday Morning

Kick off the last day of the Annual Meeting with a generous breakfast and a presentation by Oklahoma lawyer Jim Priest, CEO of Goodwill Industries of Central Oklahoma. The breakfast will be a ticketed event, free for delegates or only \$30 for nondelegates.

General Assembly and House of Delegates | Friday Morning

The most important association business of the year takes place Friday morning – OBA award presentations, updates from judicial and OBA leaders, elections and consideration of resolutions. For resolutions to be published in the official General Assembly and House of Delegates publication, proposed resolutions in bill format must be submitted to Executive Director John Morris Williams by **Oct. 1**. The deadline to publish proposed resolutions in the November *Oklahoma Bar Journal* is **Oct. 14**.

Submit meeting room and hospitality suite requests to Craig Combs, craigc@okbar.org, by Sept. 30 for inclusion in the official Annual Meeting program.



2021 HOUSE OF DELEGATES

Delegate certification should be sent to OBA Executive Director John Morris Williams. The list below was up-to-date as of time of press.

COUNTY	DELEGATE	ALTERNATE
Adair Co.		
Alfalfa Co.		
Atoka Co.		
Beaver Co.	Todd Trippet	Cole J. Trippet
Beckham Co.		
Blaine Co.	Erik G. Roscom	
Bryan Co.	D. Michael Haggerty II.....	Chris D. Jones
Caddo Co.	Keenan Haught.....	Dustin Compton
Canadian Co.	Rene'e Little.....	Alex Handley
	Kristy Loyall.....	Jack Dawson
	Magda Way.....	Judge Khristan Strubhar
	Austin Walters	
Carter Co.		
Cherokee Co.	Grant Lloyd.....	B.J. Baker
	Brian Duke.....	Crystal Jackson
Choctaw Co.	J. Frank Wolf III.....	Jon Ed Brown
Cimarron Co.	Judge Christine Larson	Judge Ronald L. Kincannon
Cleveland Co.		
Coal Co.		
Comanche Co.		
Cotton Co.		
Craig Co.		
Creek Co.		
Custer Co.	Justin Tharp	
Delaware Co.		
Dewey Co.		
Ellis Co.	Judge Laurie E. Hays	(Ret.) Judge Joe L. Jackson
Garfield Co.	Mandy Schroeder.....	Ben Barker
	J. Brandon Harvey.....	Dustin Conner
	Blake Gibson	Jessica Caruthers
Garvin Co.		

COUNTY	DELEGATE	ALTERNATE
Grady Co.	Jessica Swapp Austin Proctor	Amanda Mullins
Grant Co.	Judge Jack D. Hammontree	Steven A. Young
Greer Co.		
Harmon Co.		
Harper Co.		
Haskell Co.		
Hughes Co.		
Jackson Co.		
Jefferson Co.		
Johnston Co.		
Kay Co.	Brian Hermanson	Michael Vanderburg
Kingfisher Co.	Matthew R. Oppel	Katherine A. Schneider
Kiowa Co.		
Latimer Co.		
LeFlore Co.		
Lincoln Co.		
Logan Co.		
Love Co.		
Major Co.		
Marshall Co.		
Mayes Co.	Chase McBride	Judge Shawn Taylor
McClain Co.		
McCurtain Co.	Judge Michael DeBerry.....	Emily Maxwell Herron
McIntosh Co.	Courtney L. Eagan	
Murray Co.		
Muskogee Co.	Chad Locke Roy Tucker	Andy Hayes Matthew C. Beese
Noble Co.		
Nowata Co.		
Okfuskee Co.		
Oklahoma Co.	Shanda McKenney Judge Richard Ogden Cody J. Cooper Judge Trevor Pemberton.....	R. Bradley Miller Michelle Edstrom Lindsey Andrews J. Matthew Blue

COUNTY**DELEGATE****ALTERNATE**

Judge Heather Coyle.....	Connie Calvert
Judge Susan Stallings.....	Coree Stevenson
Michael W. Brewer	Nicholle Gillett
Amy J. Pierce	Christina Gelona-Hendricks
Monica Ybarra.....	Virginia Cathcart Holleman
Will Hoch	Roe Simmons
Jeff Curran.....	Chad Kelliher
Angela Ailles Bahm	Kristin Meloni
Andrew Mildren	Jason Sansone
Daniel G. Couch	Peter Scimeca
Kelli Stump	Tracey Mullins
Amber Martin.....	W. Todd Blasdel
Lorenzo Banks.....	Gary Wood
Benjamin Grubb	Courtney Warmington
Katherine Mazaheri-Franze	April Kelso
Kenyatta Bethea	Travis Weedn
Bruce Robertson.....	M. Courtney Briggs
Judge Don Andrews.....	Miles Pringle
Judge Barbara Swinton.....	Rachel Morris
Mack Martin	Lateesha Hunter
Judge Richard Kirby.....	Jeff Trevillion
Laura Barghols Hanna.....	Kendall Sykes
Judge Kathryn Savage	Hailey Hopper
Timothy J. Bomhoff	Danielle Fielding
Edward Blau	Kellie Howell
Christine Deason	

Okmulgee Co.

Osage Co.

Ottawa Co. Matthew Whalen

Pawnee Co.

Payne Co.	Scott E. Cordell	Jimmy Oliver
	Michael O'Rear	Robyn Baker
	P.J. Brun	Billy Shepherd

Pittsburg Co. James Bland..... Eli Bland

Pontotoc Co. Eric Cook..... Dale Rex

Law McMeans..... Lacie Lawson

Pottawatomie Co.

Pushmataha Co. Judge Jana K. Wallace

Roger Mills Co.

Rogers Co.

Seminole Co.

Sequoyah Co.

Stephens Co.

Texas Co. Rodrigo Carrilo Taos Smith |Tulsa Co..... Judge Ann Keele Kimberly Schutz |

James C. Milton

Molly Aspan

Kara Pratt

Tamera A. Childers

Julie Evans

COUNTY**DELEGATE****ALTERNATE**

(Ret.) Judge Charles Hogshead
 Kara M. Vincent
 Natalie Sears
 Ken Brune
 Bruce McKenna
 Philip D. Hixon
 David A. Tracy
 Georgenia A. Van Tuyl
 Scott V. Morgan
 (Ret.) Judge Millie Otey
 (Ret.) Judge Linda Morrissey
 James R. Gotwals
 Kimberly K. Moore
 Ashley Webb
 Sabah Khalaf
 Justin B. Munn
 Rhiannon K. Baker
 Michael Esmond
 Pierre D. Robertson
 Barrett L. Powers
 Deborah A. Reed
 Morgan Taylor Lee Smith
 Vivek Kembaiyan
 William Duncan

Wagoner Co.

Washington Co. Cana Mize..... Judge Jared P. Sigler

Kevin Buchanan Ashley Kane

Washita Co. Judge Christopher S. Kelly..... Shane Regier

Woods Co.

Woodward Co.

DELEGATE**ALTERNATE****Oklahoma Judicial**

Conference Dist. Judge Justin P. Eilers Dist. Judge Emmit Tayloe
 Assoc. Dist. Judge Thomas K. Baldwin Assoc. Dist. Judge Russell Vaclaw
 Special Judge Mindy McBee Special Judge Jennifer McBee

PAST PRESIDENTS – DELEGATES AT LARGE

Burck Bailey	Renée DeMoss	David A. Poarch
William J. Baker	Sid Dunagan	Bob W. Rabon
Stephen D. Beam	John Gaberino	Judge Deborah Reheard
Michael Burrage	William Grimm	Doug Sanders
Charles W. Chesnut	Kimberly Hays	Susan Shields
Cathy Christensen	Garvin Isaacs	Allen Smallwood
Gary C. Clark	Charles D. Neal Jr.	James T. Stuart
Andy Coats	Judge Jon Parsley	Judge Linda Thomas
Joe Crosthwait	William G. Paul	Paul Vassar
Melissa DeLacerda	David K. Petty	



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.

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

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

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS

President-Elect

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. Twenty-five of the names thereon are set forth below:

Cathy Christensen, Kendall Sykes, Charles E. Geister III, Elizabeth A. Price, C. Russell Woody, Michael P. Whaley, D. H. Dilbeck, Mark McPhail, Katherine Colclazier, Justin Meek, Benjamin Grubb, Cody Reihs, Lance C. Cook, Shannon S. Bell, Ryan Dean, Kyle Prince, Daniel V. Carsey, Seth A. Day, Lindsay N. Kistler, Ashley Rahill, John Cannon, Hilton Walters, Jamie Bruehl, Neel Natarajan, Andrew Rasbold, Kanton Vaverka and Stephen Rasbold.

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. Twenty-five of the names thereon are set forth below:

Julia Rieman, Edna Mae Holden, Karig P. Culver, John D. White, April M. Davis, Benjamin Barker, Tim DeClerck, Josh Davis, E. W. Bill Shaw, Mara K. Funk, Andrew Ewbank, Clint Claypole, David Trojan, John Hodgden, Michael D. Roberts, Chad N. Davis, Kimberly S. Hall, Jessica Caruthers, G.L. (Gary) Brown, P.J. Outhier, Jeff Crites, Russell Singleton, Clark McKeever, Jennifer Liggett, David Henneke, Chris Trojan, James Harvey, Blake Gibson, Terri Blakley and Michael Kelly.

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. Twenty-five of the names thereon are set forth below:

Kaitlin Magee, Sam Talley, Eugene Bertman, Joshua Turner, R. Ben Houston, Steven L. Stice, Jillian Ramick, Liz Stevens, Debra Loeffelholz, Peggy Stockwell, Cindy Allen, Julia Mills Mettry, Tracy Schumacher, Matthew Jankowski, Justin Conway, Tina Peot, Jama Pecore, Jan Meadows, Andrew Hutter, Todd Kernal, Jonathan Ortwein,

Chris Hammons, Alissa Hutter, Kurt Pfenning, Lucas M. West, Christopher Lind and Riley Mulinix

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. Fifty of the names thereon are set forth below:

Jennifer R. Annis, Vaden F. Bales, Jessica Battson, Eric Begin, John J. Bowling, Jeromy Brown, Jennifer Castillo, Mike Chitwood, Cathy Christensen, Billy M. Croll, Chris Deason, Casper J. den Harder, Roberta Fields, Grant Fitz, Bonner Gonzalez, Andrew Hutter, Ashley A. Janzen, Tayler Lane, Mike Lauderdale, Joe C. Lewallen Jr., Mark W. Maguire, Shanda McKenney, Mark R. McPhail, Mary Elizabeth Nesser, Drew Neville, Patricia Parrish, Ross Plourde, Miles Pringle, Phil R. Richards, John Robertson, Kurt Rupert, James Secrest III, Susan Shields, Margo Shipley, Amy Sine, Sid Smith, Stacey D. Spivey, Jon D. Starr, Coree Stevenson, Kendall Sykes, Joy Tate, Roy D. Tucker, Marc Walls, Matthew Watson, William Wells, Nathan Whatley, Richard D. White, D. Kenyon Williams Jr. and John R. Woodward III

A total of 95 signatures appear on the petitions.



2022 LEADERSHIP & CANDIDATES



2021 President

Michael C. Mordy, Ardmore

Michael “Mike” Mordy is a fourth-generation attorney who practices law in Ardmore with the firm of Mordy, Mordy, Pfrehm & Wilson PC. He graduated with a BBA from OU in 1977 and received his J.D. from the OCU School of Law in 1980. He began his

legal career as an assistant district attorney at the Oklahoma County District Attorney’s Office, and from there, he went to work for an oil and gas firm in Oklahoma City. He has practiced law in Ardmore since 1985, where his current practice focuses on commercial and banking litigation, oil and gas law and *ad valorem* tax litigation. He is a member of the U.S. District Courts for the Eastern, Western and Northern districts of Oklahoma and the U.S. Court of Appeals for the 10th Circuit.

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

He is involved in his community and is an active member of the First United Methodist Church. President Mordy has served or currently serves on the boards of the Ardmore Habitat for Humanity, Dornick Hills Golf & Country Club, Southern Oklahoma Memorial Foundation and Ardmore YMCA. He and his wife, Christy, have two children and one granddaughter. He will serve a one-year term in 2022 as immediate past president.



2022 President

James R. Hicks, Tulsa

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

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

Mr. Hicks participated as a member of Leadership Tulsa, Class XX. He has served as senior warden of St. John’s Episcopal Church in Tulsa since 2013 and continues to volunteer his time to several nonprofit organizations. Married to Nancy Hicks since 1983, he is most proud of his granddaughter. Elected as 2021 president-elect and serving one year in that position, he automatically becomes president Jan. 1, 2022.

2022 NEWLY ELECTED BOARD OF GOVERNORS

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



President-Elect

*Brian T. Hermanson,
Ponca City*

Brian Hermanson is the district attorney for Kay and Noble counties and has served in this position since 2011. He received his bachelor's degree from Carroll College in Wisconsin and his J.D. from the OU College of Law.

He is a member of the Kay and Noble County Bar Associations, having served as president of the Kay County Bar Association in 1989 and the Noble County Bar Association from 2016 to the present.

Mr. Hermanson was vice president of the OBA in 1988, Oklahoma Bar Foundation president in 1993 and chair of the OBA Young Lawyers Division in 1982. He has served as chair of the OBA General Practice/Solo and Small Firm, Law Office Management and Technology, and Criminal Law sections and served three terms as chair of the Litigation Section. He has also served as president of the Oklahoma Chapter of the America Board of Trial Advocates and the Oklahoma Criminal Defense Lawyers Association, on the OBA Board of Editors and as the Oklahoma District Attorneys Association secretary and treasurer. Mr. Hermanson was awarded the David Moss Memorial Award for Outstanding District Attorney in 2016, the Oklahoma Criminal Defense Lawyers Association Clarence Darrow Award in 1986, the OBA Earl Sneed

Award in 1998, the OU Regents Award in 1994 and was named Sole Practitioner of the Year by the Solo, Small Firm and General Practice Division of the ABA.

He has served on the Oklahoma Court of Criminal Appeals Committee for Uniform Criminal Jury Instruction since 1994, chair of the ABA Standing Committee on Gavel Awards, president of the Ponca City Rotary Club, Ponca City YMCA, Ponca Playhouse, an *ex officio* member of the Ponca City Chamber of Commerce Board of Directors and an elder and past chairman of the board of Community Christian Church. Mr. Hermanson lives in Ponca City with his wife, Ruslyn, and is the proud father of two grown daughters.



Vice President

*Miles T. Pringle,
Oklahoma City*

Miles Pringle is general counsel and senior vice-president for the Bankers Bank in Oklahoma City. Originally from Oklahoma City, Mr. Pringle is a third-generation attorney, licensed to practice law in Oklahoma, Missouri

and Texas. He received his J.D. from the University of Missouri – Kansas City School of Law, where he was a member of the National Moot Court Team. He earned his bachelor's degree from the University of Kansas in political science and history. Prior to joining the Bankers Bank, he was a partner with the law firm of Pringle & Pringle PC.

Mr. Pringle has served the OBA and the legal community for many years. He has been a governor on the OBA Board of Governors, chair of the Financial Institutions and Commercial Law Section

and is currently chair of the Legislative Monitoring Committee. He has provided numerous CLE presentations on topics from cannabis banking to attorney mental health at various seminars, including the OBA's Solo & Small Law Conference, Legislative Debrief and the Banking and Commercial Law Update. He has had multiple articles published in the *Oklahoma Bar Journal* and regularly contributes to the Oklahoma County Bar Association *Briefcase*.

He is also very involved in his community. Currently, Mr. Pringle serves as board president for Rainbow Fleet Inc., a nonprofit serving children and childcare professionals in Oklahoma by providing training for childcare providers, referrals and operating a toy library. During his tenure on the board, Rainbow Fleet was enlisted by the Oklahoma City Public School District to repurpose an elementary school into a childcare development center after the school was closed as part of the district's "Pathway to Greatness" program. He is also a member of the Oklahoma City Rotary Club, Oklahoma City's oldest and largest civic organization, where he chairs and contributes to several committees. He and his wife, Andrea, have two sons and attend St. Luke's Methodist Church.



Supreme Court Judicial District Three

S. Shea Bracken, Edmond

Shea Bracken grew up in Stillwater and served in the U.S. Marine Corps as an infantry TOW gunner. He is a decorated war veteran with a combat deployment to Fallujah during Operation Iraqi Freedom II. Mr. Bracken is a 2008 OSU graduate,

and in 2011, he received his J.D. from the OCU School of Law, where he was a member of the *Oklahoma City Law Review* and Phi Alpha Delta fraternity.

Previously, he was an attorney with the law firm of Rodolf & Todd and later with Cathy Christensen & Associates. In 2017, Mr. Bracken joined the Edmond law firm of Maples, Nix & Diesselhorst, where he practices primarily in the areas of personal injury and tort litigation, including medical malpractice and birth injury cases. He is a member of the American Association of Justice, Birth Trauma Litigation Group, Oklahoma County Bar Association and Oklahoma Association of Justice. He also serves on the Young Lawyers Division Board of Directors and the OBA Military Assistance and Bench and Bar committees.

Mr. Bracken is also active in the community. He is a member of the American Legion, Veterans of Foreign Wars, Oklahoma City Young Professionals and Marine Corp League. He is a volunteer with several local organizations, including United Way of Central Oklahoma, Oklahoma Lawyers for American Heroes and Oklahoma Innocence Project. In his spare time, he enjoys spending time with his wife, Lindsay, and daughters, Makenna and Teagan.



Supreme Court Judicial District Four

Dustin E. Conner, Enid

Dustin Conner is a shareholder at the Enid office of Gungoll, Jackson, Box and Devoll PC, where he practices in the areas of banking, agriculture and natural resources law, oil and gas, estate planning, probate, real estate and civil litigation.

He joined the firm in August 2011 after receiving his J.D. with honors from the OCU School of Law. While in law school, he was a member of the Phi Delta Phi honor fraternity. He earned his bachelor's degree from OSU in 2006.

Mr. Conner has previously served on the Young Lawyers Division Board of Directors and has been deeply involved in Oklahoma 4-H since childhood. He currently serves as a Garfield County 4-H Foundation board member and as a coach for the Garfield County 4-H shotgun shooting sports team. In his spare time, he enjoys spending time with his family, hunting, trap-shooting and attending OSU sporting events.



Supreme Court Judicial District Five

Allyson E. Dow, Norman

Allyson Dow is a trial lawyer and partner at Henry + Dow + Masters + Aycock. The firm has offices in Norman, Oklahoma City and Tulsa and primarily focuses on family law but handles other areas of law, including contested probates, personal

injury and criminal matters. Before attending law school, Ms. Dow worked as a public accountant in Texas. She graduated from OU in 2007 with bachelor's degrees in accounting and human resource management. She received her J.D. from the OU College of Law in 2012.

Ms. Dow is the former chair of the OBA Family Law Section and also served as CLE and social committee chair of the section. She is a member of the Cleveland County Bar Association and is the association's former new member chair. She is also a member of the Oklahoma County Bar Association. Ms. Dow and her husband, Mick, have two elementary school-aged boys, Max and Beau.



Member At-Large
Angela Ailles Bahm,
Oklahoma City

Angela Ailles Bahm is the managing attorney of State Farm's in-house office in Oklahoma City. She was born in Berlin, Germany, as her father was in the Air Force. She lived in Germany and several different states before her family moved to

Altus during her sixth-grade year. She has lived in Oklahoma since and is a 1986 graduate of the OU College of Law.

Ms. Ailles Bahm has been actively engaged in state and county bar activities for many years. She is currently the chief master of the Professional Responsibility Tribunal. She served as chair of the Professional Responsibility Commission from 2010 to 2016 and the OBA Legislative Monitoring Committee from 2016 to 2019. She has also been actively engaged in other OBA committees and sections, including the Insurance Law Section, Women in Law Committee, Budget Committee, Civil Procedure and Evidence Code Committee and Bench and Bar Committee. In 2018, Ms. Ailles Bahm was appointed to the Supreme Court's OUJI committee and is still an active participant.

She was the 2015 and 2016 Oklahoma County Bar Association president and is active on the OCBA Lawyers for Learning Committee. She has also served as chair of the Bench and Bar Committee and was engaged with the Law Related Education Committee. She is actively involved in the Oklahoma Association of Defense Counsel and was its 2015 president. Ms. Ailles Bahm's husband, Mark, is a CPA with his own firm. They have one daughter, Isabella, who is a senior at the Savannah College of Art and Design.



OBA YLD Chair

Dylan D. Erwin,
Oklahoma City

Dylan Erwin joined the Oklahoma City law firm of Holladay & Chilton in 2018. Prior to entering private practice, Mr. Erwin was an assistant district attorney for Comanche and Cotton counties. During his time in the DA's office, he was able

to hone his skills as a trial attorney while serving the people in his hometown of Lawton. After leaving the DA's office, he brought his trial experience with him into the private sector with the law firm of Andrews Davis, where he worked primarily in their criminal law and civil litigation practice areas. As a criminal defense attorney, he has represented clients in matters ranging from speeding tickets and misdemeanor DUIs to felony drug charges and multi-defendant racketeering prosecutions. As a civil litigator, he has handled cases ranging from small claims disputes to large-scale construction litigation, complex business litigation and employment and labor claims on behalf of both employers and employees.

A fifth-generation Oklahoman, Mr. Erwin graduated *magna cum laude* from OU in 2011 with a bachelor's degree in English and a minor in classical cultures. He received his J.D. from the OU College of Law in 2014. While in law school, he served as president of the Student Bar Association and vice justice of the Harlan Chapter of Phi Alpha Delta law fraternity. He received the Student Bar Association Prize for his service to the student body, the Public Service Award for his pro bono work in both civil and criminal legal clinics, a Top Ten Speaker Award in moot court and was included on the dean's list for his academic achievements. In his free time, he enjoys reading all the books he didn't have time to read while in law school, writing short fiction, traveling and attempting to live out his high school dream of being the frontman of a garage band.



2021 OBA AWARDS

AWARD OF JUDICIAL EXCELLENCE



**Judge
Allen Welch,
Oklahoma City**

Judge Allen Welch has served Oklahoma County and the state of Oklahoma

honorably, humbly and patiently. He graduated from East Central University with bachelor's degrees in history and political science. In 1984, he received his J.D. from the OU College of Law and began his legal career as a private practitioner. He served as OBA assistant general counsel for 10 years until he was appointed District 7 judge in 2004.

Although his service has been on dockets that do not draw the spotlight and his nature is to not seek recognition or glory, Judge Welch conducts himself and his hearings in a professional manner. He is known for calm deliberation in the face of emotional people who are dealing with deep pain and great loss. He starts his docket consistently on time, and he manages a crowded docket that includes notice dockets and trial dockets as well as walk-ins every week.

LIBERTY BELL AWARD



**Carol A.
Manning,
Oklahoma City**

The Liberty Bell Award is for non-lawyers or lay organizations that promote or publicize

matters regarding the legal system. Carol Manning recently retired as OBA communications director after 26 years of service to the association, presiding over the publication of more than 400 issues of the *Oklahoma Bar Journal* during her era of leadership. She is recognized for her unique and valuable contributions in creating a robust communications team focused on both OBA members and the public.

Ms. Manning is celebrated for her sensitivity and responsiveness to the needs of both urban and rural constituents. She has enthusiastically promoted the work of local county bar associations as well as the statewide organization, particularly during the OBA's annual celebration of Law Day. Her tireless support of the volunteer attorneys who guide the association is recognized as having been instrumental to the OBA's progression into a top-tier bar

association over the last quarter century. Perhaps most importantly, she remains ever cognizant of her responsibility to maintain and project a positive image of the legal profession as well as its role in the administration of justice.

JOE STAMPER DISTINGUISHED SERVICE AWARD



**David K. Petty,
Guymon**

The Joe Stamper Distinguished Service Award honors individuals who volunteer countless

hours to further the goals of the OBA. David K. Petty is a private practitioner at the Guymon law firm of David K. Petty PLLC. He practices primarily in the areas of civil trial practice, oil and gas, estates and trusts, commercial and real property law. He received his J.D. from the OU College of Law in 1964. During law school, he worked for an Oklahoma City private practitioner, served as executive secretary of the OU College of Law Alumni Association and was employed in the OU Law Library at night. Upon graduation, he practiced in McAlester for six years before moving to Guymon.

Mr. Petty is a former member of the OBA Board of Governors, a former Associate Bar Examiner and served as the OBA President in 1987. He is a Fellow of the American Bar Foundation, Oklahoma Association for Justice, American Association for Justice, American Board of Trial Advocates, American College of Trial Lawyers and American College of Trust and Estate Counsel. He has also served as chairman of the OBA Continuing Legal Education Commission and the OBA Bar Survey Committee and on the Board of Directors of the OU College of Law Alumni Association and as a director for the Oklahoma Bar Professional Liability Insurance Corporation. In June 2021, he was elected to the Oklahoma Judicial Nominating Commission, 6th District.

ALMA WILSON AWARD



Mark B. McDaniel,
Oklahoma City

The Alma Wilson Award is given to individuals who have made a significant contribution to improving the lives of Oklahoma children. Mark McDaniel, senior counsel with Devon Energy Corp.,

has a heart for children and a commitment to serving his community. While receiving his J.D. at the OU College of Law, he volunteered as a Big Brothers Big Sisters of Oklahoma mentor and later served as a coach on several youth sports teams. At the OKC Pilot Recreation Center, he organized the annual Christmas party. Over time, the event grew to serve over 200 kids each Christmas. Mr. McDaniel's volunteer experience led him to discover that many kids were unable to play sports because they could not afford athletic shoes and equipment. Out of a desire to level the playing field and give all kids the chance to play sports regardless of their resources and zip code, Cleats for Kids (C4K) was founded by Mark and Stacy McDaniel.

The organization empowers kids to live healthier lifestyles and learn life lessons through sports by providing athletic shoes and safety equipment to kids in need. Since its establishment in 2011, C4K has impacted more than 125,000 Oklahoma kids and has distributed over 175,000 sports items. Under Mr. McDaniel's leadership as chairman of the board, C4K has created collaborations with community partners and schools to serve kids, including 225 school districts and 60 nonprofit organizations across

Oklahoma. C4K has a Varsity Board for high school students and a Junior Varsity Board for middle school students. Each year, these youth boards engage 150 kids from 30 Oklahoma City metro schools in sports-related community service – they work together on equipment drives and volunteer through sports-related philanthropy and awareness events.

NEIL E. BOGAN PROFESSIONALISM AWARD



Justice Noma Gurich,
Oklahoma City

Justice Noma Gurich was appointed to the Oklahoma Supreme Court in 2011 by Gov. Brad Henry.

She is only the third female justice to serve since statehood. Justice Gurich served as chief justice in 2019 and 2020 and vice chief justice in 2017 and 2018. She graduated *magna cum laude* from Indiana State University and received her J.D. from the OU College of Law in 1978, where she was an editor of the *American Indian Law Review* and received the Professional Responsibility Award. In 2011, she was selected by the OU College of Law Chapter

of the Order of the Coif academic society as an honorary member. In 2016, she was inducted into the OU Law Order of the Owl Hall of Fame.

Justice Gurich has been a member of the judiciary for 33 years and was appointed to a judicial office by four Oklahoma governors. Before her appointment to the Supreme Court, she served as an Oklahoma County district judge for 12 and a half years, during which time she presided over nearly 200 jury trials. She also served for 10 years on the Oklahoma Workers' Compensation Court. Prior to her judicial career, Justice Gurich practiced law in Oklahoma City for 10 years. She is a member, past director and delegate of the Oklahoma County Bar Association, a life member of the Oklahoma Judicial Conference, an Oklahoma Bar Foundation Fellow and a member and past president of the William J. Holloway Jr. Inn of Court. She has also served as a trial and appellate division member of the Court on the Judiciary. In 2003, Justice Gurich received a Mona Salyer Lambird Spotlight Award from the OBA Women in Law Committee, she was inducted into the Oklahoma Women's Hall of Fame in 2019 and she was honored with the Holloway Inn Award for service in 2020.

JOHN E. SHIPP AWARD FOR ETHICS



**James R.
Webb, Yukon**

Jim Webb received his J.D. from the Washington University in St. Louis School of Law in 1993,

where he was a member of the Order of the Coif, associate editor

of the *Washington University Law Quarterly* and recipient of multiple awards for written and oral advocacy. Recently, Mr. Webb was named senior vice president, general counsel, chief risk officer and secretary for Continental Resources Inc. in Oklahoma City. He previously served as general counsel and corporate secretary of Chesapeake Energy Corp. from 2012 to 2021. Before joining Chesapeake, he worked at the Oklahoma City office of McAfee & Taft from 1995 until 2012, after practicing for several years in Denver immediately after law school.

He has served as a Judicial Nominating Commission District 5 commissioner since 2015 and as chair of the JNC for the past two years. On behalf of the JNC, Mr. Webb has regularly interfaced with the governor's office and members of the Oklahoma Legislature regarding the work of the JNC, including various legislative efforts to alter Oklahoma's judicial selection process. He is a past president of the Oklahoma County Bar Association and has received several awards, including the 2008 OBA Outstanding Pro Bono Service Award and the Journal Record Leadership in Law Award.

TRAILBLAZER AWARD



**Lee Slater,
Oklahoma City**

Lee Slater is a native of Clinton and a life-long Oklahoman. He received his bachelor's degree

from OU and his MBA from the University of Central Oklahoma. Mr. Slater worked as an editor and reporter for the *Tulsa World* when he was tapped to become the youngest head of

an Oklahoma state agency in 1971, simultaneously filling the chief administrative offices of the Oklahoma State Election Board and Oklahoma Senate. Three years later, he undertook a wholesale revision of the Oklahoma Election Code – the only time it's been done in state history. In 1981, he completely reorganized the Oklahoma Senate staff. He also oversaw the computerization of the election board and organized the Oklahoma Museum of Election History. However, his most noted accomplishment was inventing the "I Voted" sticker in 1976 to increase voter turnout.

Mr. Slater received his J.D. from the OCU School of Law in 1988, where he ranked second academically in his graduating class and was voted outstanding graduate by the faculty. Upon graduation, he practiced at York & Slater for 10 years before opening his own law practice. In addition to his focus on campaign finance and lobbyist regulation, his practice included an emphasis on state constitutional law, administrative law, initiative and referendum, government relations and election law. He represented a host of political and private clients, including multiple governors, Oklahoma senators and representatives, U.S. Congress members and several leading Oklahoma corporations. He also advised many boards and commissions, serving as an administrative law judge for others and as legal counsel for the creation of agencies like the University Hospitals Authority and Trust. In 2013, Mr. Slater was asked to serve as executive director of the Oklahoma Ethics Commission and to undertake a wholesale revision of the Oklahoma Ethics Rules. He held this position until retiring in 2016 and joining Glenn Coffee & Associates as of counsel to mentor young attorneys.

OUTSTANDING COUNTY BAR ASSOCIATION AWARD

Tulsa County Bar Association

The Tulsa County Bar Association, led by President Kimberly Moore, has grown from a 10-member group founded in 1903 to an association of over 2,200 attorneys. This year, despite the restrictions brought on by COVID-19, the TCBA continued its well-known tradition of organizing and executing outstanding educational and service-oriented events and programs designed for the benefit of its members and the greater Tulsa community. In April, the association hosted its first Free Estate Planning Clinic for first responders and teachers. Sixteen volunteer attorneys assisted 96 first responders by providing free estate planning, including simple wills, durable power of attorneys and health care directives. The TCBA plans to make this a permanent annual program.

Many of the association's committees and sections also participated in or hosted several fundraisers and community events, including the Annual Golf Charity Event, where \$18,000 was raised for Disabled American Veterans, Tulsa Lawyer's for Children, South Tulsa Community House and the Food Bank of Eastern Oklahoma. The Pro Bono Committee continued to operate the Court Assistance Program, providing pro bono legal counsel to tenants on the eviction dockets in Tulsa County. This year, the program assisted with 115 cases, 71 CDC declarations and 20 judgement under advisements – volunteer attorneys donated the equivalent of 92.25 billable hours, totaling \$35,525. The Children & the Law Committee continued its fundraising efforts by holding both a very successful holiday drive, where over \$2,070 in cash

donations was raised, as well as a giving drive in the spring.

The TCBA leadership's primary goal this year was to maintain its connection with and serve the needs of its members. The association undertook a six-month interior renovation of the bar center, including new fixtures, paint, flooring, furniture, lighting, updated media equipment and more space for hosting mediations, meetings and CLEs. They also continued to offer free, virtual CLE programs as a membership benefit. During the "Winter CLE," the TCBA offered members 80 sessions, totaling over 100 hours of CLE with 5 hours on lawyer wellness – all available at no additional charge.

Bryan County Bar Association

Over the past few years, the Bryan County Bar Association, led by President Chris D. Jones, has been committed to raising membership and fostering a close relationship between local attorneys. Although COVID-19 disrupted many of the association's usual activities during the past year, long-time bar leader Tom Criswell increased member engagement through great programming that was attended by many of the members. Some of the BCBA's programs included Chief Justice of the Choctaw Nation David Burrage who spoke about the *McGirt* decision, a judge from the Court of Criminal Appeals who discussed the *Sizemore* decision and Choctaw Nation Court Clerk Sandy Stroud who talked about the nation's court system, membership in that bar and aspects of their general legal affairs.

Before COVID, the BCBA was very involved in Law Day. They hosted an awards presentation and sponsored activities for local, school-aged children. The BCBA also participated in the Ask A

Lawyer program and contributed articles to the local newspaper about legal topics in honor of Law Day. The association sponsored a scholarship for pre-law students at Southeastern State University, donating \$50 per person out of the \$100 annual bar dues. Many of the BCBA's 40 members also volunteered with the Durant Chamber of Commerce, the Durant Main Street programs, the city of Durant and several other civic and community programs. The BCBA is looking forward to resuming normal bar activities and will continue to work to support its local communities and the legal community as a whole.

EARL SNEED AWARD



***Chad Kelliher,
Oklahoma City***

The Earl Sneed Award honors those who are outstanding continuing legal education contributors.

Chad Kelliher, a 2011 graduate of the OCU School of Law, is a partner at the Oklahoma City law firm of Fulmer Sill. Mr. Kelliher has devoted his legal career to helping injured Oklahomans with personal injury claims. Some of his most fulfilling experiences have come from helping victims and family members of those who have been injured or killed at the hands of intoxicated motorists.

During the 2020 Annual Meeting, Mr. Kelliher worked with the Professionalism Committee to provide quality continuing legal education programs and an entertaining way to achieve ethics credits. Additionally, this year, he has provided more ethics programs and has taken the lead in coordinating a back-to-basics and advanced motor vehicle accident series with the OBA CLE department.

GOLDEN GAVEL AWARD

Women in Law Committee



The Golden Gavel Award is presented to OBA committees and sections that perform with a high degree of excellence. The Women in Law Committee, led by Co-Chairpersons Shannon Panach and Bevan Stockdell, found creative and safe ways for committee members to remain engaged and make meaningful contributions to the community during the pandemic. The committee hosted well-attended social mixers in Tulsa and Oklahoma City in April and has more events planned for the remainder of the year. Law students are now invited to the mixers in order for the committee to foster relationships with Oklahoma law schools and expand mentoring, networking and professional opportunities for the next generation of female lawyers. In June 2020, the committee organized a statewide blood drive through the Oklahoma Blood Institute. Committee members and other interested donors were able to donate blood at any OBI location across the state and get a free antibody test. The Women in Law committee hosted a second drive in June 2021 with the Bloodmobile parked at the Oklahoma Bar Center. The committee also hosted its annual clothing drive in Sept. 2020 and 2021 that benefited Suited for Success, an Oklahoma City nonprofit.

Every year, the committee hosts the Women in Law Conference and Mona Salyer Lambird Spotlight Awards Luncheon.

The 2020 event was postponed, and although they were unable to offer CLE during the conference or gather to celebrate the 100th anniversary of the 19th Amendment, the committee sponsored a free CLE for members in December: “A Century of Suffrage: Women’s Rights in the Constitution, The Susan B. Anthony (19th) Amendment, and The Equal Rights Amendment.” This year’s annual event was held Oct. 1 at the newly renovated Embassy Suites Northwest Expressway in Oklahoma City. The conference offered a keynote address by Kelli M. Masters, founder, CEO, and chief player agent of KMM Sports and a broad range of CLE topics, including an unconventional ethics presentation on “The Right to Bare Arms: What Your Style Says About You.”

OUTSTANDING YOUNG LAWYER AWARD



Jordan Haygood Coltrane, Oklahoma City
Jordan Haygood Coltrane is a 2005 graduate of Texas Christian

University, where he earned his bachelor’s degree in news-editorial journalism. He received his J.D from the OCU School of Law in 2013 and was awarded the 2013 Dean’s Service Award. He has actively served on the OBA Young Lawyers Division Board of Directors since 2014 as co-chair of the Membership Committee, chair of the Kick-it-Forward Committee, liaison to the OBA Disaster Response and Relief Committee and Law Schools Committee, secretary, treasurer, chair-elect and chair. He also served as American Bar Association YLD district

representative for Oklahoma and Arkansas. He is a member of the OBA Health Law Section and serves as a board member for Rebuilding Together OKC.

Currently, Mr. Haygood is at SSM Health – Oklahoma and serves as the regional director of Managed Care Contracting, where he is the lead negotiator and operator for all insurance contracts for SSM Health St. Anthony Hospital – Oklahoma City, Midwest and Shawnee; SSM Health Medical Group; and six managed rural hospitals. He also assists the regional general counsel in large payor disputes and arbitrations. He is admitted to practice in the United States District Court for the Western District of Oklahoma and is certified to practice in the United States Bankruptcy Court for the Western District of Oklahoma.

OUTSTANDING SERVICE TO THE PUBLIC AWARD



Oklahoma City Association of Black Lawyers
The Oklahoma City Association of

Black Lawyers, led by President Tiece Dempsey, is composed of Black attorneys and judges throughout the Oklahoma City area. This year, the association awarded its inaugural Melvin Combs Jr. Memorial Scholarship to three third-year law students to assist with expenses associated with taking the bar exam.

During the COVID-19 pandemic, members provided free legal assistance and contributed \$5,000 to a bail relief fund for individuals arrested for protesting in 2020. To further help people exercising their right to protest, the association published a “Know

Your Rights” document that was shared on social media. Members also raised and donated \$3,000 to Nappy Roots Books, the first Black-owned bookstore in northeast Oklahoma City. The bookstore, which provides a haven and shelter for some, was in jeopardy of closing due to the financial effects of the pandemic. Association members also served the community through board membership positions with Legal Aid Services of Oklahoma and the Mayor’s Human Rights Commission Committee.

AWARD FOR OUTSTANDING PRO BONO SERVICE



Stephen K. Newcombe, Lawton

Stephen Newcombe received his J.D. from the OU College of Law in 1982 and has been

a partner at the Lawton law firm of Newcombe, Redman, Ross and Newcombe PC for 38 years. He practices primarily in the areas of criminal, domestic relations, business litigation and estate planning. He is married to Terry Baker Newcombe, and they are the proud parents of three adorable fur babies. Mr. Newcombe has been involved in his community for many years, and in his free time enjoys traveling, hiking and reading.

MAURICE MERRILL GOLDEN QUILL AWARD



Justice John G. Browning, Plano, Texas

Justice John Browning is awarded the Maurice Merrill Golden Quill Award for author-

ing “Blazing the Trail: Oklahoma Pioneer African American Attorneys,” which appeared in the May 2021 issue of the *Oklahoma Bar Journal*. Justice Browning is a partner in the Plano, Texas, law firm of Spencer Fane and is a former justice on Texas’ 5th Court of Appeals. He is the author of five law books and numerous articles, including many on African American legal history, and he has received Texas’ top awards for legal writing, legal ethics and contributions to CLE.



Scott B. Goode, Oklahoma City

Scott Goode is awarded the Maurice Merrill Golden Quill Award for authoring “Perceptions, Pills and

Practicing,” which appeared in the December 2020 issue of the *Oklahoma Bar Journal*. Mr. Goode is the co-owner and managing partner of the Military Law Group PLLC in Tulsa and practices primarily in the areas of criminal defense, divorce/paternity and Native American law with an emphasis on active duty, reserve and veterans. He received his J.D. from the TU College of Law in 2005 with a certificate in Native American law.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD



TU College of Law, Matthew Cecconi, Los Angeles

Matthew Cecconi, who is originally from Los Angeles, is a third-year law

student at the TU College of Law. During law school, he served as a director of the Public Interest Board, and he was recently elected president of TU’s Federal Bar Association student chapter. Mr. Cecconi also serves as an Articles Selection Editor for the *Tulsa Law Review*. He has received seven CALI awards, placed third nationally as a member of the National Health Law Moot Court team and has placed first in multiple Board of Advocates competitions.

Mr. Cecconi chose to attend law school because of his volunteer experience as a court-appointed special advocate for children in the foster care system. His volunteer work with CASA taught him about the judicial system’s important role in providing accessibility and justice to all people appearing in court – lessons he will take into practice. Before law school, he worked in higher education as an admission counselor for TU and his *alma mater*, Occidental College. Mr. Cecconi graduated *cum laude* from Occidental College with a bachelor’s degree in sociology.



**OCU School
of Law,
Stephen
Hoch, Fort
Worth, Texas**

Stephen Hoch is a 2015 graduate of OU, where he received three bachelor's degrees. He worked for Devon Energy for four years before enrolling at the OCU School of Law. Mr. Hoch is a Dean's Scholar and was awarded six CALI awards and a Top Ten Speaker Award at the Regional ABA Appellate Advocacy Competition. After graduating in May 2022, he will serve as a law clerk to Judge Timothy D. DeGiusti in the Western District of Oklahoma.



**OU College of
Law, Robert L.
Rembert,
Norman**

Robert Rembert is a Comfort Scholar at the OU College of Law, where he serves as editor in chief of the *Oklahoma Law Review*. Mr. Rembert is a Savage Scholarship recipient, has earned eight American Jurisprudence awards and was a 1L Moot Court Competition finalist and the second overall best speaker. He received the Phillips Murrah Best Brief Award and the Gene H. & Jo Ann Sharp Outstanding Comment Award, as well as the James F. Hawes Memorial Silver Cup Award for the 2020-2021 academic year for outstanding member of the second-year class. While at law school, he served as a judicial extern for Judge Robert E. Bacharach on the U.S. Court of

Appeals for the 10th Circuit, and he was a research assistant for Professor Evelyn Aswad, the Herman G. Kaiser Chair in International Law.

Mr. Rembert graduated *summa cum laude* from the University of Arkansas with a bachelor's degree in history and a minor in anthropology. He was a member of Phi Beta Kappa. Before law school, he worked for a nonprofit organization in China for five years, where he studied Chinese language at Nanjing University – he reads, writes and speaks Mandarin Chinese. Mr. Rembert and his wife, Natalie, live in Norman with their two young daughters, Norah and Eliza. After graduation, Robert will clerk for Judge Patrick Wyrick in the Western District of Oklahoma and then join the Oklahoma City office of Crowe & Dunlevy as an associate attorney.

OBA AWARDS

INDIVIDUALS FOR WHOM AWARDS ARE NAMED

NEIL E. BOGAN — Neil Bogan, an attorney from Tulsa, died unexpectedly on May 5, 1990, while serving his term as OBA president. Mr. Bogan was known for his professional, courteous treatment of everyone he encountered and was also considered to uphold high standards of honesty and integrity in the legal profession. The OBA's Professionalism Award is named for him as a permanent reminder of the example he set.

JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately, his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

EARL SNEED — Earl Sneed served the OU College of Law as a distinguished teacher and dean. Mr. Sneed came to OU as a faculty member in 1945 and was praised for his enthusiastic teaching ability. When Mr. Sneed was appointed in 1950 to lead the law school as dean, he was just 37 years old and one of the youngest deans in the nation. After retiring from academia in 1965, he played a major role in fundraising efforts for the law center. The OBA's Continuing Legal Education Award is named in his honor.

JOE STAMPER — Joe Stamper of Antlers retired in 2003 after 68 years of practicing law. He is credited with being a personal motivating force behind the creation of OUJI and the Oklahoma Civil Uniform Jury Instructions Committee. Mr. Stamper was also instrumental in creating the position of OBA general counsel to handle attorney discipline. He served on both the ABA and OBA Board of Governors and represented Oklahoma at the ABA House of Delegates for 17 years. His eloquent remarks were legendary, and he is credited with giving Oklahoma a voice and a face at the national level. The OBA's Distinguished Service Award is named to honor him.

ALMA WILSON — Alma Wilson was the first woman to be appointed as a justice to the Supreme Court of Oklahoma in 1982 and became its first female chief justice in 1995. She first practiced law in Pauls Valley, where she grew up. Her first judicial appointment was as special judge sitting in Garvin and McClain counties, later district judge for Cleveland County and served for six years on the Court of Tax Review. She was known for her contributions to the educational needs of juveniles and children at risk, and she was a leader in proposing an alternative school project in Oklahoma City, which is now named the Alma Wilson SeeWorth Academy. The OBA's Alma Wilson Award honors a bar member who has made a significant contribution to improving the lives of Oklahoma children.

MAURICE MERRILL — Dr. Maurice Merrill served as a professor at the OU College of Law from 1936 until his retirement in 1968. He was held in high regard by his colleagues, his former students and the bar for his nationally distinguished work as a writer, scholar and teacher. Many words have been used to describe Dr. Merrill over the years, including brilliant, wise, talented and dedicated. Named in his honor is the Golden Quill Award that is given to the author of the best-written article published in the *Oklahoma Bar Journal*. The recipient is selected by the OBA Board of Editors.



WEDNESDAY - FRIDAY, NOVEMBER 10-12, 2021

Downtown OKC Sheraton Hotel
1 N. Broadway Ave.,
Oklahoma City, OK 73102

Stay up-to-date and follow us on



TO REGISTER GO TO WWW.OKBAR.ORG/CLE

WEDNESDAY, NOVEMBER 10, 9 a.m. - 4:50 p.m.

What Every Lawyer Needs to Know About Living and Practicing in Indian Country

The *McGirt v. Oklahoma* case related to tribal sovereignty is generating numerous questions for lawyers across a broad spectrum of practice areas. This program features a slate of experts who will cover several topics, including Indian law basics, tribal jurisdictions, related tax issues, state and tribal compacts, ownership and property rights in Indian country and tips for practicing in tribal courts.

Sponsored by OAMIC.

MCLE 6/1

The Basics of Indian Law

Greg Buzzard, Crowe & Dunlevy

Tribal Courts and Jurisdiction from the Tribal Point of View

Sara Hill, Attorney General, Cherokee Nation

McGirt and Tax Issues

Mike McBride, Crowe & Dunlevy

State and Tribal Compacts

Mithun Mansinghani, Solicitor General, State of Oklahoma

Title, Ownership, and Property Rights in Indian Country

Conor Cleary, Senior Indian Law Attorney, U.S. Department of the Interior

Professional Responsibility and Ethics in Tribal Courts and Indian Country Representation

Stacy Leeds, Foundation Professor of Law & Leadership, Arizona State University;
Dean Emeritus, University of Arkansas School of Law; Judge, Muscogee (Creek) Nation District Court

THURSDAY, NOVEMBER 11, 9 - 11:50 a.m.

Speed Round: Hot Topics for Every Lawyer

Our Thursday morning plenary session will feature quick yet informative discussions on a variety of legal topics including immigration and criminal law, guardianship and power of attorney, issues in state and federal courts, and hot topics in the Oklahoma Legislature.

The cost of this program is included with your Annual Meeting registration fee.

MCLE 3/0

PLENARY:

Immigration Law: T. Douglas Stump, American Immigration Lawyers Associations

Criminal Law: Ed Blau, Blau Law Firm, PLLC

United States Supreme Court: Kieran D. Maye, Founding Partner, Maye Law Firm

Oklahoma Supreme Court and Court of Civil Appeals: Jana L. Knott, Bass Law

Guardianship and Durable Power of Attorney: Shannon D. Taylor, Attorney

Oklahoma Legislature: Senator Kay Floyd (Dist. 46) and Senator Brent Howard (Dist. 38)

THURSDAY, NOVEMBER 11, 2 - 5 p.m.

Wellness Matters: Lawyers Helping Lawyers

Lawyers who take care of their own physical and emotional needs are best equipped to take care of their clients. The focus will be wellness, mental health and substance abuse during this afternoon session. Every lawyer who attends will discover best practices for self-care while earning three hours of Ethics MCLE credit.

The cost of this program is included with your Annual Meeting registration fee.

Sponsored by the OBA Lawyers Helping Lawyers Assistance Program.

MCLE 3/3

Understanding Addiction

The Honorable Kenneth M. Stoner, District Judge, Oklahoma County

Substance Abuse in the Legal Profession

Rhiannon Baker, Partner, Holden Litigation, Tulsa

Perception, Pills and Practicing

Scott Bearskin Goode, Co-Owner/Managing Partner, Military Law Group, PLLC, Tulsa

OKLAHOMA BAR ASSOCIATION



BAR BENEFITS

**You make a difference.
OBA member benefits
make it easier.**

MYOKBAR

DID YOU KNOW?

Members can update their roster information and access Fastcase, HeinOnline, the OBA member directory and get quick links to their committees and sections. Plus, MyOKBar Communities serves as the main communication tool for committees and sections, and it automatically links with members' MyOKBar account so information is synced.

CHECK IT OUT

Log in with the "MyOKBar Login" link at the top of www.okbar.org.

FIND MORE MEMBER BENEFITS AT WWW.OKBAR.ORG/MEMBERBENEFITS



REGISTRATION

Join your colleagues Nov. 10-12 for great CLE, camaraderie, networking and fun in a safe and convenient way. The 2021 OBA Annual Meeting brings together great guest speakers and events with **flexible in-person or virtual attendance options**. Your Annual Meeting registration includes:

- Wednesday evening President's Reception
- Thursday's "Hot Topics for Every Lawyer" plenary session (3-hour CLE credit)
- Thursday's "Wellness Matters" Lawyers Helping Lawyers program (3-hours Ethics CLE credit)
- Discounted Annual Luncheon tickets

HOW TO REGISTER



Online

Register online at www.okbar.org/AnnualMeeting.



Mail

Download registration form at www.okbar.org/AnnualMeeting and mail to
OBA Annual Meeting
P.O. Box 53036
OKC, OK 73152



Phone

Need help with registration? Call Mark Schneidewent at 405-416-7026 or 800-522-8065 or email marks@okbar.org with any questions or concerns.



Fax/Email

Download registration form at www.okbar.org/AnnualMeeting and email to marks@okbar.org or fax to 405-416-7092.

DETAILS

Location

Most activities will take place at the Sheraton Oklahoma City Downtown Hotel, One N. Broadway Ave. in Oklahoma City.

Parking

Parking is available in several lots and garages at or near Annual Meeting activities.

Hotel

Fees do not include hotel accommodations, which must be booked separately. To reserve a room by phone, call the Sheraton at (405) 235-2780 and provide Group Code UU2 to the reservation agent, or visit www.tinyurl.com/OBA2021AM. The deadline to reserve a room under the room block is Oct. 26.

Cancellation Policy

Full refunds will be given through Nov. 4. Partial refunds for in-person events will also be available.

Special Needs and Requests

Please notify the OBA at least one week in advance if you have a special need and require accommodation.

NOTICE OF MEETINGS

CREDENTIALS COMMITTEE

The Oklahoma Bar Association Credentials Committee will meet Thursday, Nov. 11, 2021, from 9-9:30 a.m. in the Executive Boardroom, on the second floor of the Sheraton Oklahoma City Downtown Hotel, 1 N. Broadway Ave., Oklahoma City, Oklahoma, in conjunction with the 117th Annual Meeting. The committee members are: Chairperson Luke Gaither, Henryetta; Kimberly K. Moore, Tulsa; Emma Payne, Oklahoma City; and Jeffery D. Trevillion, Oklahoma City.

RULES & BYLAWS COMMITTEE

The Rules & Bylaws Committee of the Oklahoma Bar Association will meet Thursday, Nov. 11, 2021, from 10-10:30 a.m. in the Executive Boardroom, on the second floor of the Sheraton Oklahoma City Downtown Hotel, 1 N. Broadway Ave., Oklahoma City, Oklahoma, in conjunction with the 117th Annual Meeting. The committee members are: Chairperson Judge Richard A. Woolery, Sapulpa; Roy D. Tucker, Muskogee; Billy Coyle IV, Oklahoma City; Nathan Richter, Mustang; Ron Gore, Tulsa; Javier Ramirez, Okmulgee; and Tiece Dempsey, Oklahoma City.

NOTICE OF MEETINGS

STAY AT THE ANNUAL MEETING

To reserve a room by phone, call the Sheraton Oklahoma City Downtown Hotel at (405) 235-2780 and provide Group Code UU2 to the reservation agent or visit www.tinyurl.com/OBA2021AM.

The deadline to reserve a room under the room block is Oct. 26.



Mona Salyer Lambird Spotlight Award Winners Honored

SINCE 1996, SPOTLIGHT Awards have been given to five women who have distinguished themselves in the legal profession and who have lighted the way for other women. In 1998, the award was named to honor the late Mona Salyer Lambird, the first woman OBA president, and one of the award's first recipients. The award is sponsored by the OBA Women in Law Committee. Each year, all previous winners nominate and select the current year's recipients. A plaque bearing the names of all recipients hangs at the Oklahoma Bar Center in Oklahoma City.

This is the 25th year of award presentations. Recipients were honored during the Women in Law Conference held Oct. 1 in Oklahoma City.



Lyn Entzeroth

Lyn Entzeroth served as dean of the TU College of Law for more than six years before stepping down July 31, 2021, to return to the

classroom. During her time as dean, enrollment of first-year law students rose, tuition revenue increased and scholarship funding grew.

She led the college through improved programming and expanded clinical offerings,

including the creation of the Terry West Civil Legal Clinic, funded through a generous gift from the Sarkeys Foundation; the Buck Colbert Franklin Legal Clinic to aid residents in the Greenwood and north Tulsa communities; and the Public Defender Clinic in partnership with the Tulsa County Public Defender's Office. Impressive new faculty members, who are changing the landscape of legal education, also were added to the college.

Ms. Entzeroth joined the TU College of Law faculty in 2002. Previously, she practiced law in Washington, D.C., and Oklahoma. She also clerked for the Oklahoma Court of Criminal Appeals and the U.S. District Court for the Western District of Oklahoma. Before taking the helm on July 1, 2015, Lyn served as associate dean of academic affairs and associate dean for faculty development at TU Law.

She teaches courses on capital punishment, constitutional law and criminal procedure. Her primary research is in the field of capital punishment and federal *habeas corpus* litigation, and among her works is the co-authored casebook *Capital Punishment and the Judicial Process* (4th ed.). She received her bachelor's degree from the University of Wisconsin and her J.D. from Tulane University School of Law.



Judge Lydia Y. Green

Judge Lydia Y. Green was appointed to the 7th Judicial District, state of Oklahoma, Oklahoma County on

Feb. 13, 2017, as a special judge. She has served as a special judge in the Juvenile Court and has presided over deprived and delinquent dockets as well as the Family Treatment Court since that time. Born and raised in the great state of Texas, Judge Green earned her bachelor's degree in biology with a minor in chemistry from Texas Tech University and her J.D. from the OCU School of Law in 2003. Prior to taking the bench, Judge Green was in private practice where she focused primarily on the areas of family law, juvenile law and criminal defense. Simultaneously, she served as the staff attorney for the Metropolitan Fair Housing Council of Oklahoma Inc., where she worked in the area of civil rights by serving as an advocate for victims of housing discrimination. While there, she worked closely with the U.S. Department of Justice and the U.S. Department of Housing and Urban Development.

Judge Green has served as an OCU School of Law Executive



Board member since 2016 and currently serves on the Metropolitan Fair Housing Council of Oklahoma Inc. Executive Board. She is an active member of the Robert J. Turner Inn of Court and serves on the Oklahoma Judicial Conference Executive Board having the privilege to serve as the Diversity Committee co-chair. From 2014-2017, she served as vice president of the Association of Black Lawyers Inc. and in 2018 was honored to receive the Ada Lois Sipuel Fisher Diversity Award from the OBA Diversity Committee. Having previously volunteered with Oklahoma Lawyers for Children as well as the Habitat for Humanity Selection Committee, Judge Green is a member of the illustrious Delta Sigma Theta Sorority Inc. She is an active member of her church and truly loves her family, fur babies, good food, shoes, shopping and traveling.



Judge Roma M. McElwee

Roma M. McElwee retired in 2017 after 22 years on the bench serving the District Court of Oklahoma

County. She graduated from OU in 1968 with a bachelor's degree in drama. She attended the OCU School of Law and received her J.D. in 1974. During law school, she worked at two different law firms, got married and had a child.

From February 1976 to June 1982, she served Oklahoma County as an assistant district attorney, an assistant public defender, then back to the District Attorney's Office. From 1980 to 1982, she was the chief assistant district attorney in the Juvenile Division. She was a sole practitioner in private practice for over 13 years. Her practice

focused primarily on family law. However, she handled a variety of different types of cases.

She was appointed special judge in Oklahoma County and was sworn in on Sept. 14, 1995. In July 1996, she was appointed district judge by Gov. Frank Keating to fill District Judge Major Wilson's term ending Jan. 10, 1999. Then she was appointed special judge where she remained until she retired Aug. 1, 2017. In the course of her tenure on the bench, she handled criminal, civil, juvenile, family law and basically, at one time or another, every type of docket in the courthouse.

During her legal and judicial career, she taught at seminars for the county and state bar associations. She attended the National Judicial College, in Reno, Nevada, for the first time in the summer of 1996. Several years later, she was asked to be a facilitator during the General Jurisdiction Course that

was held twice a year. She volunteered her time and did that work at the National Judicial College for more than 10 years. She always enjoyed teaching, helping and mentoring new judges and new lawyers.

She was married to a teacher and coach, William M. McElwee, for 40 years before he died in July 2011. She is very proud of their one and only daughter, Michele.



Judge Lori Walkley

Judge Lori Walkley is the mother of three amazing daughters, Lyndsey (32), Faith (26) and Madelyn (19).

In addition, she is blessed by her long-time love, Dave Stockwell, to count his daughters MacKenzie (33) and Madison (31) and their beautiful children Weston (6), Jack (4) and Berkley (1) as family as well. Her passions are her family, her dogs and OU football, generally (but not always) in that order!

Judge Walkley has been a district judge serving the 21st Judicial District since 2003. She has always had a mixed docket with civil, felony and family case assignments, handling well over 40,000 cases thus far. In addition, Judge Walkley was honored to be appointed as a special judge to the Oklahoma Court of Criminal Appeals and a special justice to the Oklahoma Supreme Court. She is currently the chairperson of the Council on the Interstate Compact on Adult Offender Supervision and a member of the Appellate Division of the Oklahoma Court on the Judiciary.

During her tenure on the bench, Judge Walkley has served as president of the Presiding Judges Assembly, president of the

Oklahoma Judicial Conference and served several terms as the chairperson of the conference's Education and Bench Book committees. In addition, she is a former presiding judge of the Oklahoma Court on the Judiciary, Trial Division and vice-presiding judge of the Oklahoma Court on the Judiciary, Appellate Division. Judge Walkley also served for over a decade on the executive board of the Oklahoma Dispute Resolution Advisory Board. She is an avid instructor of continuing legal education in Oklahoma and across the country, and she serves as a faculty member of the National Judicial College in the areas of case management and death penalty law. To date, Judge Walkley has provided court specific case management curriculum to courts in Fulton County, Georgia; Harris County, Texas; Pima County, Arizona; Las Vegas County, Nevada; San Francisco County, California; and Mecklenburg County, North Carolina. Judge Walkley was named the Outstanding Family Law Judge in 2014 by the OBA Family Law Section and 2005 Judge of the Year by the Oklahoma Department of Human Services, Child Support Enforcement Division.

Prior to being appointed to the bench, Judge Walkley practiced family law and civil litigation at the firms of Benedum and Walkley; Bernstein and Walkley; and Durbin, Larimore & Bialick. During her practice of law, she served as Cleveland County Bar Association president, OBA MCLE Commission commissioner, *Oklahoma Bar Journal* associate editor, Norman Children's Rights Commission commissioner and a board member for the Center for Children and Families. She received her J.D. from the OU College of Law in 1994 and a bachelor's degree from OU in 1991.



Monica Amis Wittrock

Monica Wittrock is vice president of Corporate Underwriting for First American Title Insurance

Company. She was formerly regional vice president managing operations in six states. Prior to that, she was in private practice in Oklahoma City, where she practiced in real estate, banking and commercial law. She is a member of the Oklahoma City Real Property Lawyers Group and serves on the Oklahoma Title Examination Standards Committee. She is a director for FNB Community Bank and chairs the Compliance and Audit Committee. Ms. Wittrock was a member of the Oklahoma Abstractors' Board and served as its chairman, the Oklahoma Real Estate Commission and the Oklahoma Board of Licensure for Professional Engineers and Land Surveyors. She serves on the ALTA/NSPS Liaison Committee.

Ms. Wittrock is also a founding member of CREW-OKC. She was named Title Person of the Year by the Oklahoma Land Title Association and is very active in legislative affairs. She is a frequent speaker for many industry organizations. She currently serves as president-elect for the Lyric Theatre of Oklahoma Inc. Board of Directors and on leadership committees for Church of the Servant United Methodist Church, where she also serves as organist and percussionist for Music Ministries. She is married to Kevin, and they have two married children, Dr. Robert Wittrock and Sarah Moore (an OBA member). Her favorite job right now is being "M" to her grandchildren, Kevin, Arthur and Anne.

OKLAHOMA BAR ASSOCIATION 2022 PROPOSED BUDGET

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association, James R. Hicks, president-elect and Budget Committee chairperson, has set a public hearing on the 2022 OBA budget for Friday, Oct. 15, at 9 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, in Oklahoma City.

The purpose of the OBA is to engage in those activities enumerated in the Rules Creating and Controlling the Oklahoma Bar Association ("the Rules") and the OBA Bylaws ("the Bylaws"). The expenditure of funds by the OBA is limited both as set forth in the Rules and Bylaws and by OBA policy in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). If any member feels that any actual or proposed expenditure is not within such purposes of, or limitations on the OBA then such member may object by following the procedures set forth at www.okbar.org/wp-content/uploads/2020/03/OBA_KellerPolicy.pdf.

In accordance with the Keller policy an independent auditor has reviewed and certified the "opt out" amount for legislative activity that will be reflected on the annual dues statement, and the certification and pro rata calculation is available online at MyOKBar.

Proposed budget details can be found at www.okbar.org/2022ProposedBudget.



THE OKLAHOMA BAR Journal Courts & MORE



“

"Love this email format! It's an excellent change!"
– Kimberly Hays,
2018 OBA President

”

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



READ IT ONLINE AT

WWW.OKBAR.ORG/COURTS-AND-MORE

Don't let distance
keep you from getting
involved

It's easy!



Attend section and committee
meetings remotely via BlueJeans. Use
a mobile device, phone or computer.
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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

Sections and Committees Add Value to OBA Membership

By John Morris Williams

DO YOU KNOW ALL THE bills that will take effect Nov. 1? If you belong to the Legislative Monitoring Committee, you have that information at your fingertips in the committee's community library. Are you aware of the changes in guardianship law or the new Uniform Durable Power of Attorney Act? If you're a member of the Estate Planning, Probate and Trust Section, you will be getting detailed information and training relating to both of these new pieces of legislation.

These are a couple of examples of the value you add to your OBA membership when you belong to a committee or a section. Right now, the OBA is enrolling 2022 committee membership. Signing up for a committee is as easy as going to the home page of the OBA website, www.okbar.org, and making your committee selections. Every year, section

membership enrollment is made easy on your annual dues statement.

As most are aware, committee chairs are appointed by the OBA president, and sections are self-governing and set their annual fees. This year, the Women in Law Committee will transition to becoming a section. Committees are traditionally funded through general operating funds, and sections operate off their yearly collected fees. Although the OBA collects and maintains these sections' financial accounts, those accounts are not part of the OBA's general operating fund. Thus, sections have fewer restrictions on expenditures that are governed by the section's individual bylaws.

Often, sections are extremely helpful in funding programs and events that might not otherwise be an allowable expense from general operational funds.

For example, the Family Law Section has traditionally been a cosponsor at the OBA Annual Luncheon during the Annual Meeting. Sections also frequently give scholarships to law students and worthy causes that would not be allowable under the OBA budget rules for general fund expenditures.

Another incredible value provided by OBA sections and committees is free and low-cost continuing legal education programs. During this pandemic, OBA sections alone and in partnership with the OBA Continuing Legal Education Department provided hundreds of hours of free CLE. Of course, none of this could have been possible without the dedicated volunteers from the committees and sections that provided speakers and materials for the high-quality programs. It was especially encouraging to see so many of the committees and sections produce online and virtual programming in a very short period of time.

The value added to OBA membership by belonging to a committee or section is tremendous. Whether it be free committee membership or a nominal fee paid to belong to a section, every OBA member has the ability to gain valuable information,

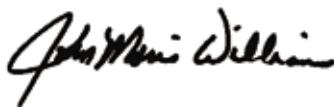
The value added to OBA membership by belonging to a committee or section is tremendous.

engage in peer interaction and enhance the professional lives of other OBA members. The value cannot be beat.

The OBA Lawyers Helping Lawyers Assistance Program oversees not only the free OBA mental health counseling program but also provides peer support and programs that help all of us deal with the issues particular to the stresses of practicing law. Undoubtedly, the OBA Indian Law Section, especially in light of recent federal and state court decisions, is an essential affiliation for those who practice in the area of Native American law. These are just a couple more examples of how OBA sections and committees add value and are relevant to the daily practice of law.

Additionally, the OBA has a vibrant Young Lawyers Division. This membership is free for any lawyer in practice less than 10 years. Guided by its able board of directors, the OBA YLD continually engages in creative and helpful programs for those members newer to the profession. For a new lawyer, there is no better value to enhance your career than being actively involved in the OBA YLD.

If you are not actively engaged in an OBA committee or section or the Young Lawyers Division, you are missing out on an incredible value both personally and professionally. Consistently, OBA section and committee memberships represent the best in public service and individual practice areas. If you are not already a member of an OBA committee or section, now is the time to add value to your membership for free or a nominal fee.



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

CONQUER YOUR MOUNTAIN

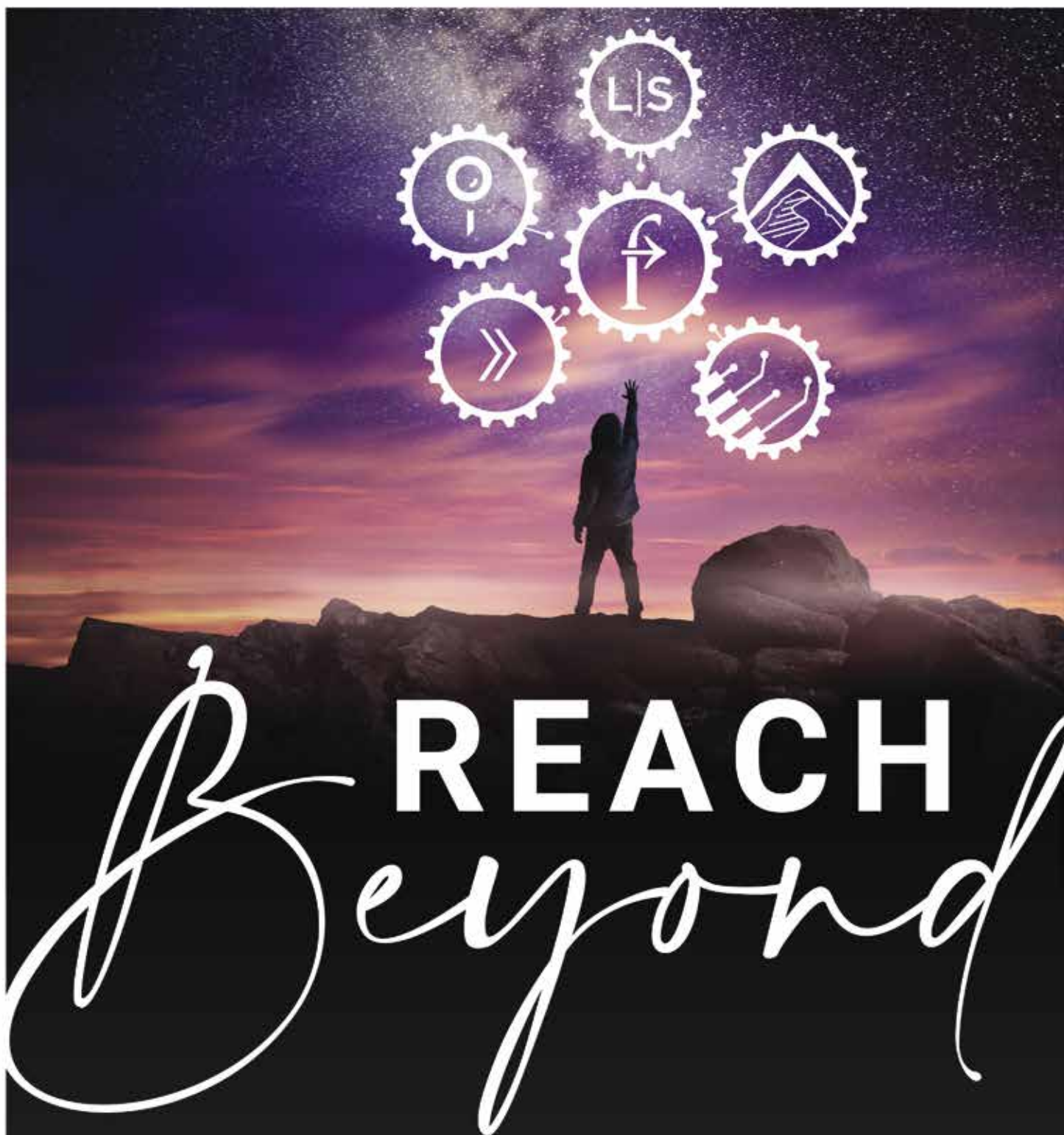


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FROM THE PRESIDENT

(continued from page 4)

Stephen Newcombe of Lawton. He is a passionate attorney and a great role model. There is no one better entitled to this award than Steve Newcombe.

Attorney James Webb of Yukon has been named as the recipient of the John Shipp Award for Ethics. John Shipp was OBA president in 1985 and later became OBA executive director in 1998. Mr. Shipp was known for his integrity, professionalism and high ethical standard, and there is no better attorney to be awarded this honor than Jim Webb, who has most recently served as chairman of the Judicial Nominating Commission.

Oklahoma Supreme Court Justice Noma Gurich of Oklahoma City is this year's Neil E. Bogan Professionalism Award recipient. This is awarded to a member who exhibits high standards of the legal profession through conduct, honesty, integrity and courtesy, and there is no better person to exemplify those standards than Justice Gurich.

Lee Slater of Oklahoma City has been awarded the Trailblazer Award. This is an award annually bestowed upon an attorney who has had a profound impact upon our profession and community, and by virtue thereof has blazed the trail for others to follow.

I wanted to provide this recap of the awards and the recipients to pique the interest of OBA members to get involved in the committees described herein for 2022. You will find, by joining these committees, that you have a fabulous group of colleagues with whom you will be able to share ideas and opinions, and at the same time give back to your association, like the award recipients named herein. You may be unwittingly starting your own legacy, just like this year's award recipients, by signing up for membership in the committees described herein.

The awards are named after great past leaders of the legal community, and the attorneys who have been bestowed these honors have carried their mantle.

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.



A Brief History of Legal Billing

By Jim Calloway

HOW LAWYERS HANDLE their billing has long been a topic of discussion in our field. Traditionally, it was a simple process. Record your time. Prepare invoices by listing all these billing entries multiplied by the lawyers' hourly billing rates and adding expenses clients should pay. Send out the billing on the same day every month. Get paid. But it was often not simple and smooth – and it still isn't today. Recording a lawyer's time by the six-minute increments is not the way legal billing has always been done.

Most readers know of the challenges found between recording time and final billing. A new associate demonstrates their expertise by doing too much research and writing a lengthy, detailed memo, generating billing that needs to be written down. The partner did a lot of work on a project but generated few billing records because things were so busy. One partner is out of state and failed to turn in a week's worth of billing before leaving. And the pre-bills can get stuck in the review process because both emergencies and procrastination can happen.

BILLING HAS NOT ALWAYS BEEN RATE TIMES THE HOURS

As someone who has coauthored two books for the American Bar Association on alternative billing practices, I appreciate that most lawyers believe the hourly



rate is how attorneys have always billed. That is certainly true throughout the lifetimes of most lawyers practicing today, but in earlier American history, lawyers didn't track their time by the tenth of an hour. Retaining a lawyer was similar to buying from a merchant – there was a fee quoted and paid when the lawyer was retained. I'm sure lawyers had some standardized fees, like 50 cents for drafting a deed. More complex legal work was quoted at a custom price. On those larger matters, I am also certain lawyers sometimes had challenges collecting the balance of the fees owed them. In those bygone days, the wealthy and large businesses and financial institutions had capable, good lawyers. But most lawyers were independent,

and the lawyer who represented the bank in the morning might be advising a poor widow in the afternoon. Most lawyers were in general practice at some level, and their clientele and billing practices reflected that reality.

But then somewhere it began. Some business client asked a lawyer why a certain matter that had been handled before had doubled or tripled in price this time. The lawyer responded this matter was more complex and therefore took more time to complete. Then came the question that would prove fateful for the legal profession: "If you are billing me for the time you expended, why aren't you showing me the time you expended on the billing?" Upon reflection, that sounded fair to the lawyer.

After all, it was a repeat client who always paid their bills requesting this change in the firm's practices. Although changes in the legal system often take a fair amount of time to catch on, as larger law firms, banks and insurance companies learned of this method, it became the standard practice. It was objective. Hours times the lawyer's hourly rate equals the bill.

Retainers, an advance of a fee yet to be earned, became a lot less common for long-term, established clients. Business clients no doubt appreciated both holding onto their cash longer and more information being provided via the law firm billing. Lawyers no doubt appreciated that when a matter became unexpectedly complex and time consuming, it was reflected in the billing without having to go renegotiate the fee with the client. Clients were not consulted about completing every step in every assignment. If a client was unhappy with the amount of a legal bill, it was better to have that conversation over an entire month's billing rather than when each item was billed.

There has been criticism of hourly billing throughout its existence. But what is certain is many firms recognized the business potential of hourly billing. Assuming hypothetically, a bounty of clients was waiting and available to hire and pay the lawyer, then one thing was clear –

the more hours you worked, the more money you made. We, lawyers, understand this is not always true. But it is often true. Lawyers appreciate their ethical obligation not to bill a client for any time not necessarily expended representing the client. A proper, ethical approach is important because there is an inherent tension in the system – lawyers get more revenue from more billing, and the client pays less when less time is billed.

By the last few decades of the 20th century, the logical progression of most legal billing being hourly was realized. Many lawyers went from working a few nights and weekends when emergencies or overflow of legal work demanded it to routinely working several nights and weekends each month to increase their income. New associates were hired for desirable jobs in law firms and given hourly billing targets they were expected to meet to advance in their careers.

RE-EXAMINING THE BILLABLE HOUR

The billable hour then came to be identified as the root of many of the profession's challenges, from the increasing cost of legal fees to lawyers experiencing personal problems due to their workaholic lifestyle. There was both truth and hyperbole in these criticisms.

Lawyer and novelist Scott Turow wrote a cover story for the August

2007 *ABA Journal* in proclaiming "The Billable Hour Must Die." An opinion piece by Evan Chesler in the *Forbes* magazine, Jan. 12, 2009, edition, was titled "Kill the Billable Hour."¹ This was particularly noteworthy because Mr. Chesler was then presiding partner at Cravath, Swaine & Moore, one of the most elite of the mega law firms. He compared legal fees to his kitchen remodeling job, where the contractor measured and did other research before giving him a flat fee bid and said lawyers should bill like Joe the contractor does. He wrote: "Clients have long hated the billable hour, and I understand why. The hours seem to pile up to fill the available space. The clients feel they have no control, that there is no correlation between cost and quality."²

Oklahoma City attorney Mark Robertson and I wrote our books on alternative billing methods and served as panelists at ABA meetings and other state bar programs on the subject. But the billable hour had by then become deeply rooted in law firms, particularly large law firms. Associates were often ranked by their billables in reviews because it was a clear, objective measure. This was true even though some other subjective traits and accomplishments might be more meaningful.

Partner compensation was also often tied to billable hours. Every partner in the firm understood

It's a huge marketing advantage if clients are shopping among lawyers, and you can quote a fixed fee while other attorneys in your area are proposing retainer and hourly billing.

how the partnership compensation formula affected them, even if they took little interest in other aspects of firm management. This made any changes or reforms problematic. If a new compensation formula was proposed, every lawyer quietly figured out the impact of the new formula on them and then based their aye or nay vote predominantly on that. Once established, modifications to law firm compensation systems are among the most challenging to enact and the most likely to result in a lawyer or group of lawyers leaving the firm.

Many law firms did vote to change their compensation formula to reflect hours billed and collected rather than just hours billed. Otherwise, the lawyers with the most clients failing to pay their bills were unfairly rewarded at the expense of partners with superb collection rates. This change had the collateral consequence of making contacting delinquent clients part of a year-end routine for lawyers. If their clients' payment didn't arrive until later into the new year, it wouldn't benefit that partner for another year. It is good for law firms to have lawyers focusing on accounts receivable at year's end. Research studies have demonstrated that

once a bill is over 90 days past due, the odds of it ever being paid drop dramatically. One could make the case this should be done quarterly.

A lawyer's hourly rate became more than just a metric of billing. It became a symbol of status. If your rate was X and another lawyer's rate was 2X, it meant that lawyer was twice as good as you or at least thought they were.

BILLING POLICIES IMPACT ATTORNEY BEHAVIOR

The law firm is a business. It would be odd if the revenue procedures didn't have a large impact on all aspects of business operations. The brief history above outlines how law firm billing policies directly influence and impact the lawyers in the law firm. Whether it is intentionally working more hours each week, a year-end push to personally collect delinquent bills or an associate's advancement in a law firm being tied to hours billed, compensation is a strong motivation. Some law firms enacted financial penalties for lawyers not submitting their timesheets and expense records timely.

A law firm that wanted attorneys to be more involved in the community or a major client's favorite charity could decide a limited amount of time donated

that would be treated as if it were billed in their performance reviews.

It is not always true, but if a law firm manager sees periodic problems with attorney behavior, particularly if different lawyers hired for the same position have similar challenges, it may be wise to determine if law firm policies are contributing to the problems.

So that's a brief look at legal billing and its history from the viewpoint of those producing the billing. Now, let's look at the consumer side – the ones receiving and hopefully paying the bills.

WHAT CLIENTS LIKE TO SEE IN LEGAL BILLING

Business clients, as noted, were a primary force in shaping how legal billing operates today. Alternative billing methods have been used more often with consumer clients historically. We all understand there are other legal billing methods besides hourly. Contingency fees on personal injury claims have been called the poor person's keys to the courthouse door. Fixed or flat fees for various types of consumer matters have long existed. Criminal defense is often done under a flat fee, with additional fees required if a jury trial occurs.

What individual consumer clients really want is affordable cost and certainty. The challenge of hourly billing for an individual paying fees from their personal budget is often the lack of predictability.

That's why I have advocated for fixed fees when possible in consumer legal work. It's a huge marketing advantage if clients are shopping among lawyers, and you can quote a fixed fee while other attorneys in your area are proposing retainer and hourly billing.

But today, there's another aspect to this discussion – automation. At our Opening Your Law Practice program that will be held virtually Oct. 19, I will stress the importance of exploring and incorporating automation in a law practice for future success. Automating some back-office processes that are not billed does not affect billing. Automated document assembly will impact billing. And, yet, if some are drafting and finalizing certain routine documents in minutes while others spend hours preparing them, there's a business management question that goes beyond the billing implications. Attorney time is a finite thing, and it should be utilized appropriately. What do consumer clients most care about in legal billing? For most, it is the last line of the bill – the grand total. And just like our personal utility bills we pay, the lower, the better.

A FEW QUICK BILLING TIPS

If you bill by the hour, enter your time in digital format instead of writing by hand. A practice management software solution is best because it is the same tool used to prepare the invoices, but there are free-standing programs like Bill4Time and TimeSolv. One of the biggest delays in preparing

billing is staff trying to decipher a hurriedly written time entry and then the lawyer proofing each entry to make sure it was interpreted correctly. If you bill by the hour, try to record all the time expended on client matters contemporaneously. Studies show that lawyers who record their time when expended capture more time than those who attempt to recreate billing later. But don't hesitate to write down some items with a no charge when warranted. Disclosing the write-downs sends a positive message to clients.

It would be extremely challenging, maybe impossible, to turn on the proverbial dime and switch from hourly to flat-fee billing on all matters. The first target should be matters for which 1) there is a steady consumer demand with 2) significant aspects standardized and 3) aspects where there is room for process improvement by automation, streamlining or delegating a greater share of the work to staff. Once established, you will want to consider marketing your flat fee service more aggressively.

Be familiar with limited-scope representation as that rule may possibly play into designing new processes.³ Flat fee work may require a rather detailed fee agreement, both for disclosure to clients and protection of the attorney. Make sure important details are covered early in the agreement. If someone wants you to do more work than was covered in the flat fee agreement, explain this is a change order and the amount of the additional fees for that work.

CONCLUSION

Michael Kun is a partner at the firm of Hogan Lovells. He was recently quoted in a Law.com Trendspotter piece:

Because we lawyers usually bill by the hour, the perception can develop that the more hours you work, the more valuable you are. I think it's important to remember that although we bill by the hour, we don't sell hours. We're selling thought leadership and problem solving. We shouldn't confuse the way we sell our product with the product we're selling.⁴

Getting paid for helping solve others' most serious problems is what the business of law is all about, isn't it?

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.

ENDNOTES

1. "Kill the Billable Hour," www.forbes.com/forbes/2009/0112/026.html.

2. *Id.*

3. Rules for District Courts of Oklahoma Rule 33 - Limited Scope Representation www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=481023. The OBA Management Assistance Program provides many related resources at www.okbar.org/map/lss.

4. Law.com "Trendspotter: Nobody Wants to Hear You Brag About How Busy You Are Except for the Industry Leaders Who Encourage It." www.law.com/2021/08/24/law-com-trendspotter-nobody-wants-to-hear-about-how-busy-you-are-except-for-the-industry-leaders-who-encourage-it (free registration required).

Fee Division with a Client's Prior Counsel

Making It Come Out Right

By Richard Stevens

A CLIENT HAS THE RIGHT to terminate a lawyer's service at any time. When that client has a contingent fee contract with prior counsel, what are the obligations of successor counsel to both the client and prior counsel? ABA Formal Opinion 487 seeks to make clear successor counsel's obligations under the rules of professional conduct and how to fulfill them.

ADVISE

Counsel who takes over a case where there is a monetary recovery must advise the client, in writing, of a possible claim to the attorney fee of the prior counsel. As in any contingent fee matter,

the "basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client ..."¹ Further, ORPC 1.5 (c) requires:

A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement

must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

While neither 1.5 (b) or 1.5 (c) is specifically geared toward the situation where one lawyer replaces another as counsel, both sections seek to ensure that, "[A]n understanding as to fees ... be promptly established."² To avoid



misunderstanding disclosure in the contingent fee agreement is the best practice although disclosure in a separate document provided at the same time is permissible. As ABA Formal Opinion 487 states:

In many instances, precision on this issue may be difficult as successor counsel may need to review the predecessor counsel's fee agreement and assess its enforceability. Similarly, successor counsel may not be fully familiar with the nature and extent of the prior lawyer's work on the matter. Successor counsel also will not know the amount of the recovery, if any, at the beginning of the representation. Nevertheless, Rules 1.5(b) and (c) mandate that successor counsel provide written notice that a portion of the fee may be claimed by the predecessor counsel.

OTHER CONSIDERATIONS

The requirements of ORPC 1.5 (e) are inapplicable to this situation. That section is intended to apply to cases in which two or more lawyers from different firms are working on one case at the same time. Comment [7] of Rule 1.5

makes this clear by saying, "Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole." Clearly, this contemplates that lawyers are working on a case simultaneously and sequentially.

ORPC 1.5 (a) requires all fees to be reasonable, and all disbursements of funds require the client's consent. A client has the right to challenge the reasonableness of a fee, including the fee of prior counsel, and the client's consent is required before prior counsel may be paid.

Successor counsel may represent the client in any dispute over the prior counsel's fee. Successor counsel's fee for those services should be plainly stated in the original fee agreement or a new fee agreement. The fee must, of course, be reasonable and charged only for work that will increase the client's recovery. The lawyer must also obtain consent for any conflict that appears because the lawyer is both lawyer for the client and a party with an interest in a share of the recovery.

Finally, if a dispute arises as to the fee to be paid to prior counsel, successor counsel must seek to resolve it and hold the disputed portion of the proceeds in accordance with ORPC 1.15 (e).

ABA Formal Opinion 487 gives a great deal more information than is contained in this summary. I encourage you to read the opinion for guidance about issues arising from successor counsel taking over a case where there is a monetary recovery.

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

ENDNOTES

1. ORPC 1.5 (b).
2. 1.5 Comment [2].

Meeting Summaries

The Oklahoma Bar Association Board of Governors met on July 30.

REPORT OF THE PRESIDENT

President Mordy reported he attended meetings related to planning the OBA Annual Meeting, attended and spoke at the Oklahoma Judicial Conference, and attended a Lawyers Helping Lawyers Assistance Program meeting.

REPORT OF THE VICE PRESIDENT

Vice President Geister reported he attended the July 19 Legislative Monitoring Committee meeting and the July 23 Oklahoma County Bar Association's annual awards luncheon, where he presented pins to attorneys completing 50 and 60 years of service to the legal profession.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hicks reported he attended an Oklahoma Bar Foundation meeting and participated in the selection of committee appointments for 2022.

REPORT OF THE PAST PRESIDENT

Past President Shields reported she attended the Oklahoma County Bar Association annual awards luncheon and participated in planning for the past-president's event during the OBA Annual Meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he counted Judicial Nominating Commission votes and certified the election, toured Prairie Surf studios, met with the Estate Planning, Probate and Trust Section members regarding changes in guardianship law and updating "Law for People," participated in a phone conference with a Family Law Section representative regarding Annual Meeting, attended meetings related to the OBA Annual Meeting as well as the new OBA security system, attended meetings of the Lawyers Helping Lawyers Assistance Program, Legislative Monitoring Committee, Young Lawyers Division board meeting and the National Association of Bar Executives Annual Meeting (taking place virtually over several days), met with members regarding special temporary permits,

attended the Oklahoma County Bar Association annual awards luncheon and discussed the September OBA/OBF event with OBF Director Renee DeMoss. He also met with the Women in Law Committee to discuss forming a section.

BOARD MEMBER REPORTS

Governor Davis reported he attended a Bryan County Bar Association meeting. **Governor Edwards** reported he attended a Pontotoc County Bar Association social event. **Governor Garrett** reported she attended the Women in Law Committee meeting in July. **Governor Hilfiger** reported he attended retirement parties for Muskogee County Special District Judge Weldon Stout and Muskogee County Court Clerk Paula Sexton. **Governor Pringle** reported he attended the Oklahoma County Bar Briefcase Committee meeting, wrote an article for the OCBA *Briefcase* and

Director Johnson presented the report and highlighted that OBA CLE has maintained its status as top provider and increased market share by 10%.

chaired a meeting for the Legislative Monitoring Committee. **Governor Rochelle** reported he attended the Comanche County Bar picnic and golf tournament. **Governor Smith** reported she presented at the Oklahoma Judicial Conference, worked with OBA Communications Director Manning to encourage members to submit nominations for OBA Awards, prepared for final consideration of OBA Awards nominations and attended the Oklahoma County Bar Association award luncheon. She also thanked President Mordy for his Member Minute video encouraging members to submit nominations and additionally thanked all board members who encouraged nominations. **Governor Vanderburg** reported he attended the Oklahoma Association of Municipal Attorneys meeting, toured the new Oklahoma City Civic Center and helped plan a six-hour CLE seminar for the OAMA fall conference. **Governor White** reported he attended the July 23 Legal Internship Committee Meeting. **Governor Moaning** reported she attended a committee meeting regarding OBA Annual Meeting, chaired June and July OBA YLD board meetings, prepared an article for the August *Oklahoma Bar Journal* and assisted with OBA YLD election tasks.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Moaning reported she assisted with stuffing 350 bar exam survival kits at the last division

meeting and described the contents of the kits. The YLD is working on the election process as well as a push to recruit board members.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported on the status of pending civil litigation wherein the OBA is a named party. Two pending civil cases have been resolved with nothing currently pending. She noted that the number of bar complaints is down, mirroring a national trend. A written report of PRC actions and OBA disciplinary matters for June was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Rochelle said the **Access to Justice Committee** will hold a summit on Oct. 22 at the bar center and virtually. Law students will be invited, and the event will offer free CLE. Governor Edwards said the **Clients Security Fund Committee** examined 14 claims. President-Elect Hicks said the **Diversity Committee** is planning CLE during Annual Meeting. President Mordy said there has been good utilization of the **Lawyers Helping Lawyers Assistance Program**. Governor White said the **Legal Intern Committee** has created and will be presenting a new award to a legal intern consisting of \$500 and a plaque. Governor Pringle said the **Legislative Monitoring Committee** Legislative Debrief has been set with both in-person and virtual attendance options. He said

speakers are still being confirmed. Governor Garrett said the **Women in Law Committee** is pursuing becoming a section.

ANNUAL REPORT OF THE LICENSED LEGAL INTERNSHIP COMMITTEE

As committee liaison, Governor White reviewed highlights of the report, which includes consideration of extending the waiver of the minimum in-court hour requirements for interns. He also reported the LLI exam dates have been revised to allow testing on any day of the week and reordered to coincide with the school calendar.

CLE ANNUAL REPORT

Director Johnson presented the report and highlighted that OBA CLE has maintained its status as top provider and increased market share by 10%. She said that CLE offerings will continue to include both in-person and virtual attendance options as that is important to OBA members.

RETIREMENT OF EXECUTIVE DIRECTOR

President Mordy announced that Executive Director Williams has provided notification that he will retire effective Dec. 31, 2022.

JNC ELECTION RESULTS

President Mordy said the District 5 winner is Joel C. Hall, Oklahoma City, and the District 6 winner is David K. Petty, Guymon. Their terms will expire Oct. 1, 2027.

The Oklahoma Bar Association Board of Governors met on Aug. 27.

REPORT OF THE PRESIDENT

President Mordy reported he attended the OBA reception at the Jones Assembly, the Legislative Monitoring Committee's Legislative Debrief and an Audit Committee meeting. He also recorded a video message for the OBA's annual *Ask A Lawyer* TV show to air on OETA and participated in discussions with Executive Director Williams concerning the Annual Meeting.

REPORT OF THE VICE PRESIDENT

Vice President Geister reported he attended the OBA reception at the Jones Assembly and the retirement party for OBA Communications Director Carol Manning.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hicks reported he attended the OBA reception at the Jones Assembly, the retirement party for OBA Communications Director Carol Manning, National Conference of Bar Presidents

virtual Annual Meeting, ABA House of Delegates, the Legislative Monitoring Committee's Legislative Debrief and the Tulsa County Bar Association Annual Awards Banquet.

REPORT OF THE PAST PRESIDENT

Past President Shields reported she attended the Legislative Monitoring Committee's Legislative Debrief and praised Committee Chair Miles Pringle.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended National Conference of Bar Presidents virtual annual meeting, OBA Annual Meeting planning meetings, discussions on Law Day logistics, staff budget meetings, Audit Committee meeting, Investment Committee meeting, Legislative Monitoring Committee's Legislative Debrief, the Tulsa County Bar Association Annual Awards Banquet and the monthly Young Lawyers Division meeting.

BOARD MEMBER REPORTS

Governor Davis reported he attended a Bryan County Bar Association meeting. **Governor Edwards** reported he attended a virtual workshop on grading bar exams and graded one question from the July bar exam. He also attended the Audit Committee meeting. **Governor Garrett** reported she chaired the Audit Committee meeting, attended the Tulsa County Bar Association Annual Meeting and luncheon and participated in discussions with Director Williams and Craig Combs regarding the 2020 OBA Audit Report. **Governor Hilfiger** reported he attended a Muskogee County Bar Association meeting as well as a planning committee meeting for the MCBA's April Banquet. **Governor Hutter** reported he attended the Audit Committee meeting. **Governor Pringle** reported he attended the Audit Committee meeting and coordinated and moderated the Legislative Monitoring Committee's Legislative Debrief that included a legislative panel. **Governor Rochelle** reported he attended the Comanche County Bar Association monthly meeting,

Governor Rochelle also reported that the committee is working on a handbook for local courts and bar members in smaller counties that is intended to improve technology capability in those areas.

Access to Justice Committee meeting and the retirement party for OBA Communications Director Carol Manning. **Governor Smith** reported she attended and chaired the OBA Awards Committee meeting. **Governor Vanderburg** reported he attended the Audit Committee meeting, a Kay County Bar Association meeting and an Oklahoma Association of Municipal Attorneys board meeting. **Governor White** reported he attended the OBA reception at the Jones Assembly, the Tulsa County Bar Association annual luncheon and the OBA Legal Internship Committee meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Moaning reported results of this year's officer and director candidate recruitment campaign. She thanked the OBA Communications team for its support in promoting the campaign.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the number of complaints lodged against attorneys continues to decline which is consistent with national trends. The number of open investigations remains consistent with previous years. A written report of PRC actions and OBA disciplinary matters for July was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Rochelle said the **Access to Justice Committee** is holding a summit including CLE on Oct. 22 that will feature a virtual attendance option. He encouraged all governors to attend and help promote the event. He also reported that the committee is working on a handbook for

local courts and bar members in smaller counties that is intended to improve technology capability in those areas. Governor Hilfiger said the annual *Ask A Lawyer* TV show, sponsored by the **Law Day Committee**, will air on OETA Sept. 30 in conjunction with the statewide celebration of Law Day. He encouraged governors to help recruit volunteers to assist with the Ask A Lawyer event aimed at offering answers to legal questions at no cost as a public service. He reminded governors it will soon be time to begin promoting 2022 Law Day art and writing contests for students. Governor White said the **Legal Internship Committee** met and discussed changes to rules for program applicants. Applicants are now required to disclose whether they have had a record expunged in a criminal case. The committee also discussed a plan for new Licensed Legal Intern awards offering winners a \$500 prize. Sources of funding for award money was discussed. He also said the committee has suspended its rule requiring a specified number of hours in court since many hearings are now held virtually due to COVID-19 restrictions. Governor Pringle said the **Legislative Monitoring Committee** Legislative Debrief was a successful event with over 580 attendees.

AUDIT COMMITTEE REPORT

The OBA Audit Committee presented its findings related to the 2020 Audit Report. Auditors noted the association has good controls in place with no adjustments to financial controls needed. The report also noted that association revenue and expenditures declined in 2020 due to the pandemic, and that invoices for legal fees are closely scrutinized.

OBA AWARDS COMMITTEE

The board voted to approve the committee's recommended slate of 2021 OBA Award winners, including the recommendation that the Hicks Epton Law Day Award and Fern Holland Courageous Lawyer Award not be bestowed this year. Awards will be presented to winners during the Annual Meeting in November.

REQUEST FOR CANDIDATE SUGGESTIONS

President Mordy asked for names of possible candidates to complete the unexpired term of Judge Strubhar on the Committee on Judicial Elections, whose term expires Dec. 31, 2023.

LAW SCHOOLS COMMITTEE ANNUAL REPORT

Governor Davis described committee's work statement and read a summary of report recommendations, highlighting that there is an upward trend in the number of law school applicants, requiring schools to be more selective in the admission process.

NEXT MEETING

The Board of Governors met in August, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, Sept. 17, at the Oklahoma Bar Center.

OBF Grant Seeks to Impact Court Reporter Shortage

By Renée DeMoss

CCOURTROOMS ACROSS Oklahoma have a problem – a shortage of qualified court reporters. Particularly in Oklahoma rural courts, the shortage “has been at a crisis level for several years,” according to Oklahoma Supreme Court Justice Noma Gurich. Those in the legal field know that just like judges and attorneys, court reporters are an essential part of legal proceedings. Reporters capture and preserve every word spoken during court hearings, depositions and other legal proceedings. They produce the official transcript that a case starts and ends with and are the “guardians of the record.”

Several factors have worked together to cause the shortage in Oklahoma. The majority of existing reporters are nearing retirement age, and there are not enough new reporters getting into the field. Only a limited number of court reporting courses have been available in Oklahoma, and enrollment numbers have been low. Once students do enroll, they soon learn that acquiring the necessary skills to become a qualified, certified reporter is difficult, and the drop-out rate is high. Those students who successfully complete school and gain good skills are often lured by higher salaries to neighboring states like Texas and Kansas.



Justice Noma Gurich has been supporting new court reporter training programs to fill a staffing shortage in Oklahoma rural district courts. Oklahoma Bar Foundation grants are providing further support for training programs.

Groups across the state are working hard to change this situation. Tulsa Community College recently launched a court reporting program to help fill the curriculum void, and Oklahoma State University – Oklahoma City has started a new program with several enrollment opportunities every year. With the already existing Oklahoma College of Court Reporting, prospective reporters now have three different schools from which to choose.

The Oklahoma Bar Foundation also hopes to make a big dent in the current shortage. With a generous Cy Pres Grant from the settlement of a class-action case in Beaver County, the OBF has

created the Court Reporter Rural Service Grant Program that is intended to address the shortage by making it easier for court reporting students to gain an education and find employment and for current reporters to earn more by working in rural Oklahoma courts. With an initial fund of \$500,000, two new grants were created. The first, the Employment Grant, can be awarded to qualified individuals who, pursuant to written agreements, commit to working as court reporters in rural courts. The second, the Educational Block Grant, can be awarded to qualified Oklahoma educational institutions that teach court reporting classes to be used for scholarship funds, purchasing court reporting equipment for teaching or other related purposes. The first Educational Block Grants were awarded to each of the three Oklahoma schools offering court reporting courses in late 2020 in the total amount of \$135,000.

For more information about this grant program, contact reneed@okbarfoundation.org.

Ms. DeMoss is the OBF executive director.



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Diamonds & Disco Event Postponed

We planned our 75th Anniversary Diamonds & Disco Event scheduled for October 1, 2021 with excitement; however, with the rise of COVID-19 and the Delta Variant, along with concerns for health, safety, and the welfare of our community, we made the tough decision to postpone our event.

We had a great night planned to raise awareness and funds for OBF Grantee Partners and we regret we will not be able to be together. We will monitor the Covid situation carefully and if it is safe to gather, we hope to host the event in the Spring or Summer of 2022.

We remain dedicated to raising funds for OBF Grantee Partners, so we are pivoting our event into a fundraising campaign for 2021. If you would like to contribute, you can do so through our event site: diamondsanddisco.swell.gives. All proceeds from this campaign will go to our Grantee Partners this year as previously planned.

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Jeremy K. Sharpe is an independent arbitrator and practitioner. He previously was a partner in Shearman & Sterling's International Arbitration and Public International Law practices in London and Paris; Chief of Investment Arbitration in the Office of the Legal Adviser at the U.S. Department of State; Legal Adviser to the U.S. Embassy in Baghdad; Attorney-Adviser in the State Department's Office of African and Near Eastern Affairs and Office of International Claims and Investment Disputes; adjunct professor at Georgetown University Law Center; and law clerk to Judge Charles N. Brower at the Iran-United States Claims Tribunal in The Hague. He has published extensively on international dispute resolution. He received his J.D. from NYU Law School and his LL.M. from Harvard Law School.

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Perks of the Legal Profession

By April Moaning

“YOU [I] DO SOLEMNLY swear that you [I] will support, protect and defend the Constitution of the United States, and the Constitution of the State of Oklahoma ...” This excerpt is familiar to us all. It is the very first sentence of the attorney’s oath and a precursor to our journey as licensed attorneys. To uphold the Constitution is a sworn duty and to practice law is an honor.

Just a few weeks ago, we welcomed 244 new attorneys to the practice of law. I can guarantee (I know guarantees are frowned upon in the legal world) that although this career path is challenging, there will be ample opportunities to have a little fun. We may take polarizing positions in order to zealously advocate for our clients, but we do not have to be adversaries. During your legal tenure, you will learn that professional courtesy goes a long way. You will also learn some of your closest friends will start as opposing counsel, and some of the best learning moments will be on the heels of an unfavorable ruling.

Alright! I think I have lectured you enough! I will change gears a bit and discuss the fun and light-hearted side of the legal profession. One of the most phenomenal experiences I have had as a young attorney was attending the OBA Annual Meeting. It was at the

meeting that I had an opportunity to meet many attorneys, both new and seasoned. The attorneys were friendly and welcoming. We all had the opportunity to put on comfortable clothing, let loose and speak to one another candidly. At that moment, we were not required to be adversarial. We were acquaintances with similar goals and experiences.

In addition to the social aspect, I also enjoyed the perks of continuing legal education courses that occurred simultaneously. When I attend CLEs, I always feel as if I have been handed a secret tidbit of information. Of course, the information is shared with all CLE attendees, but I always leave with a little boost of energy and confidence that I can competently represent my client. This year, the OBA Annual Meeting will occur Nov. 10 through Nov. 12. The meeting typically occurs in person, but OBA Executive Director John Morris Williams has worked hard to ensure we have flexible registration options. You may attend either in person or virtually. If you sign up for in-person attendance and later decide you are uncomfortable with that option, you may change your registration to virtual.¹ This year’s meeting is for every lawyer, everywhere.

Attendees will have an opportunity to earn 5-6 hours of free

CLE and can attend any of the six “Hot Topics” sessions. There are also opportunities for the individual OBA sections to conduct their monthly business sessions. When I first joined the OBA, I remember feeling a bit nervous to join various OBA sections because, at the time, I only had experience in family law. However, I would often make sure to peek my head into many of the business sessions so I could decide which sections to join.

I will close this month’s article with an invitation to each lawyer to attend the November YLD board meeting, which will be held at the Annual Meeting. Please refer to the 2021 Annual Meeting Schedule for the date, time and location. I look forward to seeing you very soon!

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.

ENDNOTES

1. Please note all changes to registration must be completed by Nov. 4.

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THREE OBA MEMBERS TO BE INDUCTED INTO THE HALL OF FAME



Stanley Evans



Hannibal Johnson



Justice Yvonne
Kauger

Stanley L. Evans of Oklahoma City, Hannibal B. Johnson of Tulsa and Justice Yvonne Kauger of Colony will be inducted into the Oklahoma Hall of Fame during a Nov. 18 ceremony at the Cox Business Convention Center in Tulsa. Since the

Oklahoma Hall of Fame's inception in 1927, 714 accomplished individuals have received this commendation.

Mr. Evans is a retired army colonel who was named dean of students immediately after graduating from the OU College of Law in 2003. The Vietnam veteran was the first Black man to be appointed to a dean position at an Oklahoma law school. In his first year, incoming minority enrollment nearly doubled.

Mr. Johnson serves as chair of the education committee for the 1921 Tulsa Race Massacre Centennial Commission and as local curator of its new history center, Greenwood Rising. He recently published his 10th book, *Black Wall Street 100: An American City Grapples With Its Historical Racial Trauma*.

Justice Kauger became the second female chief justice of the Oklahoma Supreme Court in 1997. She founded the Gallery of the Plains Indian, co-founded Red Earth, coordinates The Sovereignty Symposium, chaired the Building Committee and Arts Committee for the Oklahoma Judicial Center and is a two-time recipient of the Governor's Arts Award.

The 94th Annual Oklahoma Hall of Fame Induction Ceremony will be hosted by Oklahoma Hall of Fame members Chickasaw Nation Gov. Bill Anoatubby and Choctaw Nation Chief Gary Batton. For more information and to purchase tickets to the ceremony, visit www.oklahomahof.com/induction-ceremony.



SOVEREIGNTY SYMPOSIUM 2021

The 2021 Sovereignty Symposium is scheduled for Oct. 11-12 at the Skirvin Hotel in Oklahoma City. The event, themed "After McGirt?" will coincide with Indigenous People's Day on Oct. 11. Watch for more details at www.sovereigntysymposium.com.

ASK A LAWYER PROGRAM AVAILABLE NOW

Did you miss this year's *Ask A Lawyer* TV show that aired Sept. 30 on OETA? It is available to watch online at www.okbar.org/lawday/tvshow. This year's segments include bankruptcy, divorce and a spotlight on the OU Legal Clinic.



IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Thursday, Nov. 11, in observance of Veterans Day. The bar center will also be closed Thursday and Friday, Nov. 25-26, for Thanksgiving. Remember to register and join us for the OBA Annual Meeting to be held in Oklahoma City Nov. 10-12.

2022 PROPOSED BUDGET

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association, James R. Hicks, president-elect and Budget Committee chairperson, has set a public hearing on the 2022 OBA budget for Friday, Oct. 15, at 9 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, in Oklahoma City.

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.

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

Judge Kaitlyn Allen was appointed by Gov. Stitt to serve as an Oklahoma County district judge, filling the vacancy for District 7, Office 2 created by the appointment of Judge Thomas E. Prince to the Court of Civil Appeals. Judge Allen received her J.D. from the OCU School of Law in 2011. Previously, she was a partner at the Oklahoma City law firm of Henry + Dow PLLC. She served as president of Sharing Tree from 2018 to 2020 and continues to be a member of the board. In 2020, she was named OBA Family Law Section's Citizen Lawyer of the Year. She is also a member of the Ruth Bader Ginsburg Inn of Court.

Michael J. Heron, Chris L. Fox and **Kevin K. Trout** have joined Hall Booth Smith PC as partners, and **Patrick R.B. Sherry** has joined the firm as an associate. Mr. Heron, who will manage the Oklahoma City office, has 30 years of legal experience and focuses his practice on high-exposure medical malpractice litigation as well as professional liability, credentialing and licensing actions and other regulatory and compliance matters. Mr. Fox has over 20 years of

experience defending hospitals and other health care providers in high-exposure medical malpractice litigation. He also represents clients in employment matters, corporate and commercial developments, product liability, general liability and other commercial litigation disputes. Mr. Trout has 25 years of litigation experience and practices in the areas of complex medical malpractice and aging services defense. Mr. Sherry has practiced in the areas of medical malpractice litigation defense, insurance, premises liability and general liability for over two decades.

Tadd J.P. Bogan has been named shareholder and director of Jones, Gotcher & Bogan PC. Mr. Bogan was originally with the firm from 2006 until 2014 when he left to serve as general counsel and later president of a specialized trucking company. He rejoined the firm in June 2020 and practices primarily in the areas of complex commercial litigation, general civil litigation, trucking and transportation, construction, real estate, products liability, labor and employment law, banking, and wills, estate and trust litigation.

Hollye Hunt was appointed to serve as OU's executive director of governmental affairs. In her new, combined role, she will lead the university and academic health system's governmental agendas. Previously, Ms. Hunt served as OU Health's vice president of external affairs, managing legislative advocacy efforts. Prior to joining OU Health in 2018, she served as the vice president of legislative affairs for the Oklahoma Independent Petroleum Association, where she managed the association's outreach efforts and its legislative agenda.

Kyle Cabelka was appointed by Gov. Stitt to serve as district attorney for District 5, which covers Comanche and Cotton counties. Mr. Cabelka has worked in this District Attorney's Office since he was in law school at OCU. He began interning as a licensed legal intern in Comanche and Cotton counties in May 2011. After receiving his J.D. in 2013, he continued his career there as an assistant district attorney through 2016, when he was promoted to serve as first assistant.

HOW TO PLACE AN ANNOUNCEMENT:

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

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

Submit news items to:

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

Articles for the December issue must be received by Nov. 1.

Adria G. Berry has been named executive director of the Oklahoma Medical Marijuana Authority. Ms. Berry will oversee OMMA operations, focusing on policy, regulations and relationship building. Previously, she served as senior vice president of government affairs and public policy for the Petroleum Alliance of Oklahoma. She has also served as vice president of government affairs for the State Chamber of Oklahoma, where she helped interpret the laws and regulations of the OMMA from a business perspective and as a member of Gov. Stitt's senior staff.

Hilary Allen has joined the Litigation and Dispute Resolution Practice Group as a partner in the Oklahoma City office of Spencer Fane LLP. Ms. Allen practices primarily in the areas of civil litigation, insurance, personal injury, products liability, contracts, bad faith, employment, oil and gas, environmental, construction, constitutional, commercial and medical malpractice matters. She has been a presenter for various NBI seminars on damages, insurance law, employment and litigation and has taught numerous insurance and trial techniques seminars for other attorneys and adjusters.

KUDOS

Michael D. Carter has been selected as the 2021 recipient of the Defense Research Institute Kevin Driskill Outstanding State Representative Award. DRI is the leading organization of civil defense attorneys and in-house counsel. Mr. Carter has been a DRI State Representative since 2018 and was DRI's State Membership Chair from 2017 to 2018. He will be presented with the award during the institute's annual meeting in October in Chicago.

Cody J. Cooper was named president-elect of the Oklahoma County Bar Association. **Judge Richard Ogden** was named vice president and **Miguel Garcia** was named law library trustee of the association. **Todd Blasdel, Judge Richard Kirby, Amber Martin, Judge Kathryn Savage, Courtney Warmington and Gary Wood** were elected to the association's Board of Directors.

Trent Shores was confirmed as a tribal supreme court justice for the Kaw Nation. Mr. Shores, a shareholder in the Tulsa office of GableGotwals and a citizen of the Choctaw Nation of Oklahoma, practices in the areas of complex litigation, Native American law and policy, cybersecurity and high-stakes government and corporate investigations. Previously, he served as a U.S. attorney for the Northern District of Oklahoma and as chair of the Native American Issues Subcommittee that was charged with developing and guiding national policy for Indian Country justice and related matters.



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IN MEMORIAM

William A. Bowles of Tulsa died Aug. 2. He was born Oct. 24, 1945, in Tulsa. **Mr. Bowles served four years in the U.S. Air Force in Panama and at Richards-Gabaur Air Force Base near Grandview, Missouri.** He received his J.D. from the TU College of Law in 1979 and was an attorney who cared deeply about helping his clients. He spent many hours serving his community by educating others on the value of recycling, working in community gardens, volunteering for the Alzheimer's Association and participating in events for Veterans Affairs. Memorial contributions may be made to the Oklahoma Chapter of the Alzheimer's Association.

John Earl Butler of Tulsa died Aug. 17. He was born April 1, 1947. Mr. Butler received his J.D. from the TU College of Law in 1992.

Edward E. Campbell of Vancouver, Washington, died Aug. 3. He was born July 29, 1938, in Visalia, California. **Mr. Campbell served in the Oklahoma Army National Guard, where he reached the rank of sergeant, specializing in communications.** He received his J.D. from the OCU School of Law in 1966 and moved to Duncan, where he lived for 25 years. He worked as an attorney for Halliburton Services Co. until retiring from his position as assistant general counsel in 1991. His tenure included working in the London office from 1974 to 1978. Memorial contributions may be made to Clark County Food Bank in Vancouver, First Presbyterian Church of Norman or Disability Rights Oklahoma.

B. D. Eddie Farha of Washington, D.C., died Aug. 8. He was born Feb. 2, 1952, and received his J.D. from the OU College of Law. After working as an attorney at the Food and Drug Administration, Mr. Farha shifted his focus to estate planning, establishing the Washington, D.C., law firm of Clifford, Farha & Sanders and volunteering his legal services at Whitman-Walker Health. He eventually became a private practitioner and continued to offer legal aid to clients regardless of their financial situation or immigration status and supported arts organizations and social justice charities. Memorial contributions may be made to the Palm Springs Animal Shelter.

Robert W. Gaddis of Tulsa died Aug. 19. He was born March 14, 1945. Mr. Gaddis received his J.D. from the OU College of Law and earned his LLM in taxation from Southern Methodist University in 1971. He was a founding partner of the Tulsa law firm of Barrow & Grimm PC, practicing in the areas of taxation, finance, complex business transactions and health care law. He was an active member of the Tulsa County Bar Association, having served on the Board of Directors and chaired the Professionalism Committee for two years.

Ronald L. Howland of Oklahoma City died Aug. 10. He was born March 27, 1934, in Houston. **After earning his bachelor's degree from OU, Judge Howland was an ROTC commission as a U.S. Army second lieutenant. He served in an Artillery Division of the U.S. Army in Korea and in the Army National Guard as a pilot flying over 3000 hours, finally retiring as a colonel and master army aviator with 30 years of service and numerous**

medals of commendation and distinguished service. He received his J.D. from the OCU School of Law in 1964 and was appointed a U.S. magistrate for the Western District of Oklahoma in 1978. In 1999, he transitioned to recalled magistrate judge until finally leaving the bench in 2008 after 30 years of dedicated service. During his time on the bench, Judge Howland presided over the arraignment, preliminary hearing and detention hearing of Timothy McVeigh – for his leadership and stalwart commitment to the court, he received the Reflections of Hope Award from the Oklahoma City National Memorial in 2015. Memorial contributions may be made to the Howland Memorial Scholarship Fund at Crossings Christian School.

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.

Wallace G. Steidley Jr. of McAlester died Aug. 22. He was born Sept. 30, 1944, in Amarillo, Texas. Mr. Steidley received his J.D. from the OU College of Law in 1969 and practiced law in Oklahoma for 51 years. He was a founding partner of Steidley and Neal.

Crawford Woody of Jenks died Aug. 23. He was born Oct. 2, 1932, in Effingham, Illinois, and was raised on his family's farm. **Mr. Woody served in the U.S. Army and earned his bachelor's degree in accounting from the University of Illinois.** He received his J.D. from the TU College of Law and was a private practitioner in Tulsa until his retirement. Memorial contributions may be made to the American Cancer Society.

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

DECEMBER

Elder Law

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

2022 ISSUES

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Meet Your Bar Association

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FEBRUARY

Labor & Employment

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

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Impact of

McGirt v. Oklahoma

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

APRIL

Law Day

Editor: Lori Rasmussen

MAY

Energy

Editor: Tony Morales
antoniomoraless1984@gmail.com
Deadline: Jan. 1, 2022

AUGUST

Gaming

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sjones@piercecouch.com
Deadline: May 1, 2022

SEPTEMBER

Bar Convention

Editor: Lori Rasmussen

OCTOBER

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NOVEMBER

Municipal Law

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DECEMBER

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POSITIONS AVAILABLE

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

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

POSITIONS AVAILABLE



Associate Attorney

Hobbs, Straus, Dean & Walker, LLP, a national law firm with offices in Washington, DC; Portland, OR; Oklahoma City, OK; Sacramento, CA; and Anchorage, AK is seeking an

Associate Attorney for its Oklahoma City, OK office. Hobbs Straus specializes in Federal Indian Law and has worked for almost 40 years to realize positive change in Indian Country. Our attorneys are dedicated to promoting and defending tribal rights, expanding opportunities for tribes, and improving the lives of American Indians and Alaska Natives.

Desired qualifications for candidates include: superior research and writing skills, strong academic performance, strong communication skills, ability to participate in a highly collaborative environment, familiarity with tribal communities and cultures, and a commitment to tribal representation.

Prior experience in the field of Federal Indian Law is strongly preferred.

To apply: Interested candidates should submit a cover letter, resume, law school transcript, and recent writing sample to Cindy Bonewitz at cbonewitz@hobbsstraus.com

Thank you for your interest in Hobbs, Straus, Dean & Walker, LLP. www.hobbsstraus.com

BALL MORSE LOWE is accepting applications for an Associate Attorney to join the ESTATE PLANNING AND PROBATE PRACTICE GROUP in its METRO OFFICE. Qualified candidates will have at least 3 years of experience. Health, vision, dental insurance benefits available. Pay commensurate with experience. Please send resume, law school transcript and writing sample to office@ballmorselow.com.

POSITIONS AVAILABLE

THE DEPARTMENT OF HUMAN SERVICES, Legal Services, is seeking qualified and experienced applicants for an Assistant General Counsel position housed in Oklahoma City. This position provides advice and counsel to DHS staff in the context of governmental benefit application and administration. The position requires a working knowledge of Medicaid law and regulations along with other governmental benefits such as SNAP, TANF, and LIHEAP. A background in estate law is also beneficial. Because of the highly regulatory nature of this work, strong research skills are a must. Further, this position serves in an advisory capacity to the Rules and Policy Unit within DHS Legal Services as it develops and promulgates internal policy and administrative rules on behalf of the Department. Duties also involve assistance in drafting legal documents intended to enable applicants to legally qualify for available benefits. Salary is based on qualifications and experience. Excellent state benefits. Send resume, references, and a recent writing sample (less than 1 year old) to judi.abrams@okdhs.org or mailed to Judi Abrams, Operations Manager, Legal Services, Dept. of Human Services, PO Box 25352, Oklahoma City, OK 73125-0352.

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.

DISTRICT 2 DISTRICT ATTORNEY seeking assistant district attorneys for positions in Beckham and Custer Counties. Primary responsibilities include the criminal prosecution of felony and misdemeanor offenses and other special assignments. Must reside within the district within a reasonable period of time from acceptance of employment. Salary commensurate with experience. State benefits available. Position available immediately. Please send resume with any salary requirements to Duaina.megee@dac.state.ok.us or District Attorney's Office, P.O. Box 36, Arapaho, OK 73620.

POSITIONS AVAILABLE

STAFF ATTORNEY

Salary: \$56,000

The Oklahoma House of Representatives is seeking an entry level, nonpartisan Staff Attorney. The Staff Attorney is a full-time position that includes a comprehensive benefits package.

Duties include:

- Drafting legislation
- Staffing legislative committees
- Preparing legal memoranda
- Other duties as assigned
- Overtime required during legislative session.

Must be a member of the Oklahoma Bar Association.

Please email completed, House Employment Application (www.okhouse.gov/Documents/EmploymentApplication.pdf) and resume, to Jennifer Shockley, Human Resources Manager, HumanResources@okhouse.gov. EOE. Deadline for receipt of resume and application is close of business on Thursday, October 28, 2021.

AN AV RATED OKLAHOMA CITY CIVIL LITIGATION FIRM seeks an associate attorney with 0-5 years experience. Excellent research and writing skills essential. Deposition experience a plus. The attorney will work with partners on insurance defense and products liability cases. Health insurance and other benefits included. Resume, transcript and writing sample are required. Please send submissions to Box E, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE PAYNE & LOGAN COUNTY DISTRICT ATTORNEY'S OFFICE DISTRICT 9 is seeking a prosecutor with 1-10 years of experience to work in the Guthrie office. The Guthrie office is located in the historic courthouse in a quaint and friendly town. This office houses 3 full time attorneys and staff. This office works closely with the Stillwater team as well. This is NOT an entry-level position. A commitment to public service and a desire to represent the people of the State of Oklahoma is required. Jury trial experience in the prosecution of white collar and property crimes is a plus. Please forward resume, with references, to Scott Staley at scott.staley@dac.state.ok.us. Salary is commensurate with experience level.

POSITIONS AVAILABLE

EXPERIENCED FAMILY LAW ATTORNEY needed in the Norman office of an established firm. Candidates should have at least 2 years of family law experience. Compensation will be commensurate with experience; bonuses are available. Must be able to work well with other attorneys and staff. This is a tremendous, long-term career opportunity. Submit a confidential resume and cover letter to Box ZA, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

HALLMAN & ASSOCIATES, a premier Estate & Tax Planning law firm in Norman, is looking to expand our amazing team and add a SENIOR ASSOCIATE ATTORNEY with Trust, Probate and Real Property experience. Our fun, fast-paced and family-focused environment takes the team approach to practicing law, while handling both hourly and flat fee matters. Very competitive base salary, production bonuses, full benefits and time off. 5-30 years' experience, attention to detail, great writing skills, organization and self-motivation a must! Confidential resume submissions: dhallman@hallman-lawoffice.com, or 2230 McKown Drive, Norman, 73072.

THE DEPARTMENT OF HUMAN SERVICES, Legal Services, is seeking qualified and experienced applicants for an Assistant General Counsel position housed in Oklahoma City. The ideal applicant should possess at least five years of broad state and federal civil litigation experience as well as civil rights and tort actions. The duties of this litigation position require effective writing and communication skills to provide legal representation and advice, as well as training in a wide range of matters affecting the largest state governmental agency. The chosen candidate must be highly organized and ready to accept and manage an established caseload in various stages of litigation and involving a variety of legal issues. Salary is based on qualifications and experience. Excellent state benefits. Send resume, references, and a recent writing sample (less than 1 year old) to judi.abrams@okdhs.org or mailed to Judi Abrams, Operations Manager, Legal Services, Dept. of Human Services, PO Box 25352, Oklahoma City, OK 73125-0352.

THE CITY OF BROKEN ARROW is Hiring for an Assistant City Attorney-Litigator. Apply online at brokenarrowok.gov/government/jobs.

POSITIONS AVAILABLE

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.

REGIONAL AV-RATED LAW FIRM SEEKS SEASONED LITIGATION ATTORNEY FOR ITS TULSA OFFICE. Ideal candidate is an Oklahoma licensed attorney in good standing with 3+ years of experience in a complementary practice area, motivated, hardworking, comfortable in a court room, working knowledge of civil procedure, litigation and deposition experience, and good interpersonal skills. Firm offers competitive compensation and benefits. To apply, please send cover letter, resume and references to Box S, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

ESTABLISHED AND GROWING AV RATED MID-SIZE TULSA LAW FIRM with broad practice seeks attorney with 10+ years of experience in the area of civil litigation-defense. The ideal candidate will exhibit the ability to manage case files throughout the litigation process, including trial, and have excellent deposition, writing, and oral argument skills. In addition, the ability to provide quality supervision and guidance to other, less-experienced, attorneys is a must. Competitive compensation and benefits package available. Please submit replies to advertising@okbar.org with the subject line "Position BF."

THE CHOCTAW NATION OF OKLAHOMA IS NOW HIRING AN ASSISTANT PROSECUTING ATTORNEY. The Office of Prosecuting Attorney is responsible for representing the Choctaw Nation of Oklahoma in deprived actions in the Choctaw Nation District Court and for staffing cases with ICW regarding investigation and/or permanency, cases in which the tribe has concurrent jurisdiction and potential transfer cases. For more information see <https://careers.choctawnation.com/durant-ok/assistant-prosecutingattorney/93910E62A05B49C097427950241A931F/job/>.

POSITIONS AVAILABLE

THE CRIMINAL DIVISION OF THE TULSA COUNTY DISTRICT ATTORNEY'S OFFICE is seeking applicants for Assistant District Attorney. ADAs are the State of Oklahoma's prosecuting attorneys. They perform a wide array of functions in the field of criminal prosecution and are one of the central instruments in maintaining safety in the community. Some of the job functions include: reviewing police reports for criminal charges, speaking to and meeting with victims, conducting court proceedings at all stages of the criminal process, researching and writing legal motions and arguing cases in front of a jury. Requirements: Must possess excellent research and writing abilities; must demonstrate strong oral advocacy skills; must be able to thrive in fast paced office where you will be given much discretion in individual situations; must have the ability to effectively interact with victims, family members of victims and witnesses as well as effectively work with a large office of co-workers and outside agencies, such as police department and social service agencies; must possess a strong work ethic coupled with the highest personal integrity; must pass a criminal background check. This is a full-time position; salary based on qualifications and experience. Full State of Oklahoma benefits, including generous monthly allowance for purchasing health coverage; paid sick leave and vacation earned monthly. 12 paid holidays. For consideration, send cover letter, resume, references and recent writing sample to Staci Eldridge at seldridge@tulsacounty.org.

THE CHOCTAW NATION OF OKLAHOMA IS NOW HIRING AN ATTORNEY 1 STAFF. The Attorney 1 Staff is responsible for all legal work as directed by the Executive Director and assigned In-House Counsel II, if applicable. Such responsibilities include providing research and legal advice to the assigned departments of the Choctaw Nation of Oklahoma, case and project management, negotiation of contractual agreements, mitigate legal liability, and working with outside entities on behalf of the Choctaw Nation of Oklahoma. For more information, please visit: <https://careers.choctawnation.com/durant-ok/attorney-1-staff/95C42918A5664255934C330A6694CC08/job/>.

HOUSE COUNSEL – requirements for the candidate for this position – requires business as well as litigation experience. Excellent starting salary with opportunity for advancement. Send resume to hiringmanagerokc1@gmail.com.

POSITIONS AVAILABLE

AV RATED DOWNTOWN OKC LAW FIRM with diverse practice in oil and gas, energy law, tax, and litigation is seeking attorneys with a minimum of three years' experience in oil and gas litigation and/or tax litigation. Excellent working environment with skilled and experienced attorneys and support staff. We offer a competitive salary commensurate with experience and benefits. All inquiries will be held in strict confidence. Please submit cover letter, resume, and writing sample(s) to Box AE, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

TAX POLICY ANALYST IV – The Oklahoma Tax Commission is seeking highly qualified and experienced candidates to be considered for the position of Tax Policy Analyst IV. The ideal candidate should possess a degree in law, accounting, finance, business, or a related field, plus three years of legal or auditing work. Experience in legal or auditing with an emphasis in tax is strongly preferred. This position will prepare revenue analysis of proposed tax legislation and perform other job duties related to tax policy and legislation. This position will be housed in Oklahoma City and has an annual salary of \$60,000 - \$70,000, based upon education and experience. For more details and to apply, visit jobs.ok.gov or email a resume to Applicants@tax.ok.gov.

STAFF ATTORNEY

The Office of Legal Counsel to the OSU/A&M Board of Regents has an opening for an entry-level Staff Attorney. The position will report to and receive assignments from the General Counsel, will render legal advice and serve as a higher education generalist, dealing with a wide variety of legal issues, including, but not limited to, student conduct, faculty discipline, employment law, regulatory compliance, real estate transactions, contracts and litigation. Candidates with experience or aptitude in real estate transactions or employment law will be given special consideration. The position requires a bachelor's degree and J.D./LL.B. degree from an accredited law school, membership in good standing in the Oklahoma Bar, and zero (0) to five (5) years legal experience. The position also requires a demonstrated capability for legal research, analysis and reasoning, superior oral and written communication skills, project management skills, an ability to identify and resolve complicated and sensitive problems creatively and with professional discretion, and an ability to interact and function effectively in an academic community. Salary commensurate with experience.

To receive full consideration, email resume to cindy.pearson@okstate.edu.

The OSU/A&M Board of Regents is an equal opportunity employer and complies with all applicable federal and state laws regarding non-discrimination and affirmative action. The OSU/A&M Board of Regents is committed to a policy of equal opportunity for all individuals and does not discriminate based on race, religion, age, sex, color, national origin, marital status, sexual orientation, gender identity/expression, disability, or veteran status with regard to employment, educational programs and activities, and/or admissions. For more information, visit eeo.okstate.edu.



The G. William Rice Memorial Scholarship

Sponsored by the Oklahoma Bar Association
Indian Law Section

THREE \$2,000.00 scholarships will be awarded to deserving 2nd or 3rd year law school students who intend to practice Indian Law in Oklahoma.

Applications must include:

1. Cover Letter describing commitment to practice Indian Law in Oklahoma;
2. Resume describing Indian Law related activities;
3. Law school transcript; and
4. Academic or professional reference letter of support for your application.

G. William "Bill" Rice was an attorney, University of Tulsa Law School professor, widely hailed expert on American Indian legal matters, and beloved mentor, colleague, and friend to many. A citizen of the United Keetoowah Band of Cherokee Indians, Bill dedicated his life to furthering the rights of Indigenous peoples worldwide. This scholarship is granted in his name and is intended to help law students with the costs of the bar exam.

Submit applications to:

Debra Gee
PO Box 1548
Ada, Oklahoma 74821

Or by email to:
debra.gee@chickasaw.net

Application Period: September 6 – October 31, 2021

Awards will be announced in November during the
OBA Annual Meeting- Indian Law Section

Oklahoma Lawyers: More Than Meets the Eye

By Jim Priest

GOODWILL INDUSTRIES OF Central Oklahoma is celebrating 85 years of helping people overcome challenges to employment, and attorney Bob Burke and I thought it was time to capture that history in a book. So that's what we've done. *More Than a Store* tells the story of how Goodwill overcame obstacles and setbacks to eventually become a thriving non-profit, employing 700 people from Stillwater to Ardmore and assisting homeless veterans, job seekers, the disabled and those with criminal backgrounds trying to get a foot on the ladder of success. You can see why the book is titled *More Than a Store*.

If you're like most people, you probably only knew about Goodwill's retail thrift stores. And that's my point. There is more to Goodwill – and more to all of us – than meets the eye.

Like my good friend Reggie Whitten. Many lawyers only know Reg as a formidable opponent in a civil lawsuit. He's been involved in precedent-setting litigation, and I had the privilege of trying cases with him in his early days. But what many don't know is that Reg has a heart for the forgotten and forsaken. Like orphans in Uganda. Those handcuffed to drug addiction. Native American young people who need inspiration to pursue science. Most of Reg's work is done behind the scenes. When you're across the deposition table or the courtroom from him, all you see is a lawyer who gives you fits because



of his strategies and talents. But Reg is more than a trial lawyer.

The same can be said about my friend Bob Burke. Bob is a remarkably talented attorney with an enviable win-loss record. He, like Reggie, probably gives opponents fits because of his ability to make persuasive arguments. But Bob is so much more. Bob has written more historical nonfiction books than anyone else in history – 130 at last count! He has been an advisor to governors, a member of three halls of fame, and he gets up at 4 a.m. to write books before practicing law. He gives his time and money liberally to nonprofits, and he is a genuinely likable and funny man. A while back Bob told me, "I thought about running for governor, but my wife told me if I did, I'd be runnin' as a single man!"

There's more to all of us than meets the eye. When you're locked

in a legal battle with an opponent, and you're convinced they are the devil himself, remember there is more to them than meets the eye. The client on the other side of your transaction who is unreasonable and demanding? There's more to them than meets the eye too. Those people that drive you crazy (and I've met many!) have a story. They are struggling with issues about which you have no idea. And many are doing good in ways you can't see. So when that person on the other side gives you fits, be kind and remember: There's more to your opponent than meets the eye.

Oklahoma lawyer Jim Priest is president and CEO of Goodwill Industries of Central Oklahoma. He will serve as keynote speaker at the Delegates Breakfast held during the OBA Annual Meeting on Nov. 12.

**TUESDAY,
OCTOBER 26, 2021**
9 A.M. - 3:20 P.M.

**PLEASE NOTE:
ORIGINAL
PROGRAM DATES
HAVE CHANGED**

**WEDNESDAY,
OCTOBER 27, 2021**
9 A.M. - 3:45 P.M.

WORKSHOP LEADERS:

Chad Kelliher,
Andrea Rust, Jacob Rowe
and Matt Wade



Stay up-to-date and follow us on



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TUESDAY PROGRAM:

MOTOR VEHICLE ACCIDENTS: A BACK-TO-BASICS COURSE
MCLE 6/1

Learning Objectives:

- Sample contract
- Sample intake questionnaire
- Letter of representation
- Spoliation letter
- Medical auth; HITECH auth; Medicare forms; Health insurance subrogation requests
- Provider list
- Sample demands
- Reduction requests



WEDNESDAY PROGRAM:

ADVANCED LITIGATION WITH MOTOR VEHICLE ACCIDENT CASES: SO YOU DIDN'T SETTLE, NOW WHAT?
MCLE 6/1

Learning Objectives:

- Experts
- Pre-existing conditions
- UIM/UM
- Bad faith
- Ethics

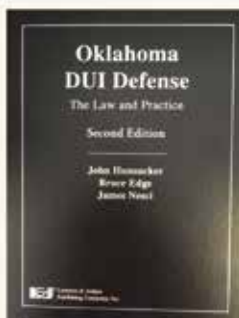
**For public health, location and delivery type may be subject to change.*

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