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# THE OKLAHOMA BAR Journal

Volume 92 — No. 10 — December 2021



## Elder Law

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# THE OKLAHOMA BAR Journal

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# Serving as President Affirms Pride in Legal Profession

By Mike Mordy

**I** APPRECIATE THE OPPORTUNITY TO HAVE served as your president of the Oklahoma Bar Association. Like anything good in life, I believe I received much more than what I gave. I was concerned after I was nominated that I had underestimated the depth of my responsibilities and became concerned as to how I would balance the work of my private practice with my duties as OBA president. My concern was quickly alleviated by the endless number of fellow attorneys who contacted me to let me know they were happy to help in whatever capacity was needed.

The first thing I did after being nominated was to contact my friend and colleague, Charlie Geister, whom I have known since we were 18 years old. I recruited him to serve as vice president, which he

graciously agreed to do without much persuasion. There seemed to have been an endless number of appointments to OBA committees, for which I was responsible to fill. I have never been fond of asking people to volunteer or serve because I hate to be a burden, and I, therefore, dreaded having to ask for volunteers. This actually turned out to be a great experience because I was able to reconnect with old acquaintances, and I was reminded that we have a strong organization of attorneys willing to

help and participate. I don't believe anybody ever turned down my pesky requests to serve on the various boards and committees, which evidenced the depth of our organization and caused me to appreciate what a great group of attorneys we have in the state of Oklahoma. There were some members who not only agreed to serve but told me they were honored to have been asked.

I also benefited by learning about the many services the OBA offers its membership. I felt that many attorneys would be looking at their budgets because of financial constraints imposed due to the COVID pandemic, and I wanted to inform our membership of the services offered by the OBA. I first had to learn for

myself what was offered to the membership, and I was amazed at what is available at no charge. I discovered how fabulous the OBA website is. It provides not just cost-cutting benefits to the membership but also offers incredible time-saving tools, such as the member directory, your CLE account and CLE offerings with quick links of past webcasts and notice of upcoming seminars. The OBA offers Fastcase as a member benefit, which I learned is a legal research tool that is as good as any legal research platform you may subscribe to.

*(continued on page 35)*

This actually turned out to be a great experience because I was able to reconnect with old acquaintances, and I was reminded that we have a strong organization of attorneys willing to help and participate.



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

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# THE OKLAHOMA BAR Journal

Volume 92 — No. 10 — December 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.







# Oklahoma's Recent Guardianship Law Updates Offer Greater Protection to Potential Wards

By Sarah Stewart and Hiba Jameel

**2021 HAS BEEN QUITE THE YEAR FOR ADULT GUARDIANSHIPS.** From the Netflix film, *I Care a Lot*, based on the true story of a professional guardian in Nevada who swindled the courts into giving her charge over numerous peoples' assets and affairs, to the frenzy of questions behind the conservatorship of Brittany Spears, adult guardianships have received a lot of public attention.

An article from *A Reporter At Large*<sup>1</sup> outlines the cases of several people in Nevada who were found incapacitated. The court ruled these people needed guardianship. The court often did not meet the proposed wards and granted guardianship to businesses that received money from the wards' estates to work as their guardians. A family member realized something was off about the cases and began investigating. The family member received no help from local law enforcement. She found hundreds of cases where guardians were granted temporary guardianship without notice to the ward or their family.

By the time the families realized what was happening and got a hearing with the court, the wards were often removed from their homes and placed in long-term care facilities. The guardian would discredit the families who tried to gain guardianship, or if they lived out of state, they were

automatically disqualified from serving. The wards were rarely able to attend court and were often intentionally excluded. But when the wards did make it to court, their testimony was often disregarded because of vague records of "incapacity" that were filed in the court documents.

After family members banded together to get their stories to local media, the Nevada attorney general finally opened an investigation. When the investigation concluded several professional guardians had fraudulently gotten guardianship over hundreds of people and stole their assets, Nevada started a commission to reform their system. That reform began in 2018 with a new law that gave all wards the right to have their own attorney. None of the judges, attorneys or medical professionals appear to have received much punishment.

The mishandling of these guardianship cases begs the questions: What is the best way

to protect wards from potentially harmful guardians? Or to protect the public from those who would use the courts to steal from them?

## OKLAHOMA'S LAWS

Oklahoma's laws on adult guardianship are codified in Title 30, Article III. In addition to the priorities<sup>2</sup> and restrictions on the number of wards a guardian can manage<sup>3</sup> already set forth for the court in choosing a guardian, the Legislature enacted a few changes that took effect Nov. 1, 2021, to help protect Oklahoma's potential wards even more.

### *When Guardians Are Appointed?*

The current statute regarding appointment of guardians got an overhaul effective Nov. 1, 2021.<sup>4</sup> The Legislature added provisions requiring the court to determine the extent of a ward's incapacity and whether "less restrictive alternatives" to guardianship could be an option.<sup>5</sup>

---

## The circumstances surrounding guardianships have always been ripe for abuse.

The change adds provisions allowing the court to 1) dismiss the proceedings if less restrictive alternatives are possible and meet the proposed ward's needs or 2) appoint a limited guardian or guardian. However, to appoint a guardian, the court must include specific findings by clear and convincing evidence that the ward's needs require guardianship and less restrictive alternatives will not meet the ward's needs.<sup>6</sup>

Moreover, the statute adds language stating a guardianship must be 1) "used only as necessary to promote and protect the well-being of the person and his or her property," 2) "designed to encourage the development of maximum self-reliance and independence of the person" and 3) "ordered only to the extent required by the actual mental, physical and adaptive limitations of the person."<sup>7</sup>

Through these changes, the Legislature clarified the intention to use a guardianship as a last resort and made its desire to protect Oklahoma's potential wards' rights clear. Additionally, the Legislature added specific provisions that must be stated in the order for guardianship. First, the Legislature added a requirement to the order that states whether the ward has the capacity to vote.<sup>8</sup> Second, effective Nov. 1, 2021, the guardian must send the guardianship plan to those entitled to notice under 30 O.S. §3-110(A).<sup>9</sup>

The extra requirement allows the ward's family to review the plans for care and management of property for the ward, offering the ward one more level of review and protection over their person and assets.

### CONCLUSION

The circumstances surrounding guardianships have always been ripe for abuse. Those who wish to harm the vulnerable have used these laws to embezzle assets and take away the rights of those who cannot protect themselves. Oklahoma's recent updates to the guardianship laws make abuse of the system harder.

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### ABOUT THE AUTHORS

Sarah C. Stewart graduated from the OCU School of Law and practices in Edmond. She focuses her estate planning practice on helping families understand and plan for their specific goals throughout their lifetimes. She has helped Oklahoma families with guardianship, estate planning and probates since 2009.

Hiba Jameel is a graduate student at the OCU School of Law. She holds a bachelor's degree in translation from her native country, Iraq, and a master's in international relations from the University of Central Oklahoma as a Fulbright scholar. Her diverse career ranges from nonprofit to legal support.

### ENDNOTES

1. *A Reporter at Large*, Oct. 9, 2017.
2. 30 O.S. §3-104.
3. 30 O.S. §4-101.
4. 30 O.S. §3-111.
5. 30 O.S. §3-111(B).
6. 30 O.S. §3-111(B)(1) and (2).
7. 30 O.S. §3-111 (C).
8. 30 O.S. §3-113 (A)(5).
9. 30 O.S. §3-113(D).

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# Immunity from Civil Liability

## How Recent COVID-19-Related Emergency Orders and Laws Intend to Protect Nursing Homes and Staff Against Lawsuits

By F. H. Hamidi

**N**URSING HOMES IN MANY STATES ARE COVERED by immunity laws and executive orders that seek to protect healthcare facilities and staff from negligence claims arising during the COVID-19-induced state of emergency. In a handful of states, including Oklahoma, immunity may only be applied in cases of harm arising from the COVID-19 infection as opposed to *all* harm occurring in the designated time frame.<sup>1</sup> This article sheds light on the reasons for implementing immunity laws, the differences between those laws from state to state and the protections unique to Oklahoma. This piece also looks ahead to lawsuits brought against nursing homes and the likelihood of immunity holding up in court.

### THE BASIS FOR IMMUNITY

In the spring of 2020, hospitals scrambled to find enough beds for their patients across all specialties as COVID-19 patients occupied more time and energy from providers and more space within facilities. This race to find beds led to some states requiring long-term care facilities to accept recovering COVID-19 patients from hospitals once in stable condition. The catch? The patients to be shipped back to long-term care facilities were often still infected with a painfully contagious virus – one to which older residents within nursing homes were particularly susceptible.<sup>2</sup> Nursing home operators in Oklahoma rallied against this idea, pushing for a stand-alone recovery facility that would prevent infected, recovering patients from returning to nursing homes and infecting more of the

otherwise healthy elderly population.<sup>3</sup> Time was of the essence, however, and nursing homes ultimately had to find room for residents who could potentially infect their entire facility's population.

Nearly one-third of COVID-19-related deaths in the United States has been linked to nursing homes.<sup>4</sup> The AARP Policy Institute reported in August 2021 that the pandemic had taken more than 186,000 resident and staff lives from nursing homes and other long-term care facilities.<sup>5</sup> In some states, nursing homes account for more than half of deaths caused by COVID-19.<sup>6</sup>

To healthcare workers and political leaders alike, the problem was clear. The solution was on its way in the form of a vaccination. In the meantime, something needed to be done to protect the people who risked their lives daily to protect

those in their care. Many states acted on this need by introducing temporary immunity executive orders and laws. Among these protections exist subtle differences in scope, as well as different dates of enactment, effectiveness and expiration. By April 2021, the majority of U.S. states had issued executive orders or passed immunity legislation for nursing homes, with many of the later-issued orders and laws taking effect retroactively on a date in 2020.<sup>7</sup> Among the first of these states was Arizona, whose governor, Doug Ducey, was one of the first to sign an executive order granting nursing and assisted living facilities legal immunity on April 7, 2020.<sup>8</sup> This occurred well before Arizona passed a law on April 5, 2021, protecting *all* healthcare staff and facilities from liability for harm resulting from COVID-19, with a retroactive



effective date of March 10, 2020. Arizona, along with Connecticut and Massachusetts, all set effective dates of March 10, 2020 – one day before the World Health Organization declared a state of emergency credited to COVID-19.<sup>9</sup> Not to be outdone, Iowa, North Dakota, South Dakota and West Virginia each enacted an effective date of Jan. 1, 2020, for immunity granted to their respective states' healthcare providers and facilities.<sup>10</sup>

Dave Voepel, CEO of the Arizona Health Care Association, applauded Arizona's law for taking additional pressure off nursing homes, and he noted that allowing providers to focus on keeping COVID-19 out of their facilities is a hard enough task without the added tension of impending lawsuits.<sup>11</sup>

Governors and legislators, much like healthcare workers, acted out of

necessity. Just as different patients require varying levels of care to overcome COVID-19, different states, with their various government makeup and court structures, warrant different levels of protection for their healthcare workers.

### PROTECTIONS ACROSS THE COUNTRY

Though laws providing immunity to healthcare facilities differ from state to state, the goal behind each law is the same: to protect the dedicated healthcare workers and their employers who are doing their best to protect the rest of us from becoming a COVID-19 statistic.

On April 1, 2020, Michigan became the first state to provide immunity to nursing homes for all harm to residents with the exception of harm resulting from gross negligence.<sup>12</sup> "All harm" means

all illnesses or injuries, whether COVID-19 related or not. This measure, of course, provides immunity against claims of general negligence, which has historically made up the majority of all lawsuits against nursing homes. Many states followed suit, and by mid-2021, 28 states had passed legislation providing some level of immunity to long-term care facilities, and with much overlap, 28 states passed legislation providing immunity to assisted living facilities.

Oklahoma provides immunity to both long-term care facilities and assisted living facilities. Immunity legislation in Oklahoma passed May 12, 2020. Though it is not retroactive from the date Gov. Kevin Stitt declared COVID-19 to be an emergency, the protection remained in effect until the governor declared Oklahoma to no longer be in a state of emergency

on May 4, 2021. Along with Idaho and South Carolina, Oklahoma is one of only three states, plus the District of Columbia, with legislation or executive orders that only cover harm resulting from COVID-19 infection or exposure.<sup>13</sup> The other states' laws and executive orders were crafted with broader language that will likely cover most harm experienced during COVID-19, whether related to the virus or not. This means if a nursing home patient develops pressure ulcers or contracts an infection resulting from the staff's alleged negligence, but the patient does not show signs of COVID-19 exposure, the nursing home's allegedly negligent conduct will still be covered by the immunity protections in place. All the executive orders and laws provided exceptions to the immunity provisions where the harm was the result of a facility's gross negligence, willful or reckless conduct or intentional actions. These exceptions place a significantly higher evidentiary burden on residents and their families who believe they have claims against nursing homes but who cannot bring negligence claims because of immunity. The definitions of these terms vary between states, but "gross negligence," "willful or reckless conduct" or "intentional actions" generally require a resident or family member to show that a facility knowingly ignored a significant chance of harm or that it intended to harm the resident. With statutes of limitations still running on tort claims from the COVID-19 era, only time will tell if such broad immunity for long-term care and assisted living facilities will hold up in courts.

Broader still are protections hailing from New Jersey, New York and the District of Columbia, all of which provide immunity from criminal liability.<sup>14</sup> However, after

Governor Andrew Cuomo came under fire for permitting essentially no recourse for those whose family members were dying in New York nursing homes in unprecedented numbers, New York passed subsequent legislation rescinding the provision of immunity from both civil and criminal liability. Other anomalies include Pennsylvania and Wyoming, which were the only states to provide immunity only to staff and not to facilities.<sup>15</sup>

Overall, these immunity protections are more alike than they are different. They each seek to limit the liability of healthcare workers who are attempting to keep up with overcrowded, overly infected facilities.

### **OKLAHOMA'S IMMUNITY LAWS AND ORDERS**

Gov. Stitt issued a third amendment to executive order 2020-13 on April 21, 2020, invoking his constitutional and statutory power to declare COVID-19 a public health and safety emergency.<sup>16</sup> The amendment ordered that for as long as the Legislature agrees with his declared health emergency, all healthcare providers and facilities in

the state were to be covered under 76 O.S. §5.9, known as the Limited Civil Immunity for Rendering Care, Aid, Shelter, or Assistance During a Natural Disaster or Catastrophe statute. The statute, which has been in effect since November 2014, around the time the Ebola virus was of concern in the United States, provides that:

Any individual, business, church or school that renders emergency care, aid, shelter or other assistance during a natural disaster or catastrophic event shall not be liable for damages resulting from the rendering of emergency care, aid, shelter or assistance unless the damage was caused by the gross negligence or willful or wanton misconduct of the individual or entity rendering the emergency care, aid, shelter or assistance.<sup>17</sup>

Only three weeks later, on May 12, 2021, emergency protections specifically relating to COVID-19 went into effect, memorialized as the COVID-19 Public Health Emergency Limited Liability Act.<sup>18</sup>





Within the act, “health care facility” and “health care provider” have the same meaning, as such terms are defined in the Catastrophic Health Emergency Powers Act in 63 O.S. §6104. The list of facilities protected thus includes long-term care facilities, residential treatment facilities, skilled nursing facilities, special care facilities and adult day care centers.<sup>19</sup> “Health care services,” as defined in the act, includes all services provided by a healthcare facility, healthcare provider or by an individual working under the supervision of a healthcare facility or provider that relate to the diagnosis, assessment, prevention, treatment, aid, shelter, assistance or care of illness, disease, injury or condition.<sup>20</sup> The immunity portion of the act provides as follows:

C. A health care facility or health care provider shall be immune from civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission by the facility or provider that occurs during the COVID-19 public health emergency, if:

1. The act or omission occurred in the course of arranging for or providing COVID-19 health care services for the treatment of the person who was impacted by the decisions, activities or staffing of, or the availability or capacity of space or equipment by, the healthcare facility or provider in response to or as a result of the COVID-19 public health emergency; *and*
2. The act or omission was not the result of gross negligence or willful or wanton misconduct of the health care facility or health care provider rendering the health care services.

D. In no event shall this act be construed to grant immunity from civil liability for an act or omission in the provision of health care services to a person who did not have a suspected or confirmed diagnosis of COVID-19 at the time of the services.

E. This act shall apply to any civil action filed on or after the effective date of this act. The provisions of this act shall be in effect until October 31, 2020, or until such time as the Governor affirmatively concludes the emergency declarations specified in paragraph 1 of subsection B of this section, whichever is later.

In lay speak, the Oklahoma Legislature limited the number of instances in which the state’s immunity statute could apply and potentially increased its likelihood of holding up in court by narrowly tailoring its application to patients with suspected or confirmed cases of COVID-19 and for harm resulting from COVID-19-related care.

On May 4, 2021, Gov. Stitt withdrew his executive order, declaring that Oklahoma was no longer in a state of emergency.<sup>21</sup> According to the sunset provision in 63 O.S. §6406 (E), nursing home litigation for claims of negligence returned to normal after nearly one year of the emergency act’s existence.

Though hundreds of Oklahomans are still becoming infected with the virus each day, and although empty beds are either sparse or nonexistent in every Oklahoma hospital as a result of newer viral variants, the protections connected to past emergency orders are gone. As for lawsuits, claims brought for events between April 21, 2020, and May 11, 2020, are subject to the special defense in the Limited Civil Immunity for Rendering Care, Aid, Shelter,

or Assistance During a Natural Disaster or Catastrophe statute. Meanwhile, claims brought for events between May 12, 2020, and May 4, 2021, that are specific to COVID-19-related treatment for patients with a suspected or confirmed diagnosis of COVID-19, are subject to the special defense in the COVID-19 Public Health Emergency Limited Liability Act. Harm arising from alleged negligent nursing home care occurring *after* May 4, 2021, when the state of emergency ended in Oklahoma may proceed in the form of a negligence lawsuit without emergency immunity protection as a defense.

### **LAWSUITS BASED IN NURSING HOME NEGLIGENCE SINCE IMMUNITY BEGAN**

Families whose loved ones died or became ill during the time in which their respective state’s immunity protections for nursing homes were in effect have their hands tied. Normally, a plaintiff could show negligence by proving that the resulting harm was proximately caused by a facility’s negligent staffing or by the staff’s negligent conduct. In the states that have or had immunity protections in place, asserting general negligence is not a viable option. To overcome immunity from liability, plaintiffs have to show any combination of the following depending on the state:

- That the allegedly harmful act resulted from willful and wanton conduct;
- That the allegedly harmful act resulted from recklessness;
- That the alleged harm resulted from care and treatment relating to the patient’s COVID-19 exposure or infection;

- That the alleged harm resulted from providing services in response to a state of emergency.<sup>22</sup>

A plaintiff's battle with immunity in those situations is thus met with a heightened burden. Proving a healthcare worker's intent to harm, for instance, involves proving their state of mind as opposed to proving they simply acted below the standard of care.

Nevertheless, new lawsuits have sprouted up challenging immunity. A May 22, 2021, report published by Politico shows that about 200 wrongful death lawsuits have been filed against nursing homes related to COVID-19, with many more expected to follow.<sup>23</sup> A family suing for the loss of a husband and wife who died in a nursing home two days apart after contracting COVID-19 in April 2020 is thought to be the first lawsuit to challenge this emergency immunity in New York.<sup>24</sup> The family's attorney noted that *reckless* conduct took place in caring for the couple, which is their strategy around the state's immunity shield for negligent conduct. In this and similar cases, families of nursing home residents believe staff and facilities should not be immune to claims of negligence that do not rise to recklessness or willful and wanton conduct. The reality is that plaintiffs will have to wait to see whether negligence claims subject to immunity protections will be heard by courts, or they will have to assert facts to support an exception to immunity – whether grossly negligent or intentional misconduct by staff and facilities.

In Illinois, two families filed two separate wrongful death lawsuits against the same Chicago-area nursing home alleging the patients' deaths resulted from the negligence of nursing home

staff.<sup>25</sup> The first of the two complaints alleges the nursing home failed to adequately test residents and staff and did not isolate infected residents in time to protect others.<sup>26</sup> The governor of Illinois issued an executive order granting emergency immunity to healthcare facilities and staff absent gross negligence or willful misconduct on May 13, 2020. Nothing in the order hints at a retroactive application, which likely means negligence claims against nursing homes for incidents arising from before and after May 13, 2020, will be treated very differently. For instance, the first of these two lawsuits against the Chicago-area facility was filed in April 2020, and it could survive simply by showing all the elements of a general negligence claim because immunity for negligence was not yet in place. Alternatively, parties who filed suit for negligence claims arising after May 13, 2020, during the course of the executive order's applicability, could fall flat, leaving families without recourse.

## CONCLUSION

Kentucky, Louisiana, Ohio and Tennessee, all states that provided civil immunity to nursing homes during the COVID-19 state of emergency, have a personal injury/medical malpractice statute of limitations of one year. Upcoming rulings in these states should be of interest to Oklahoma attorneys waiting for similar claims to trickle onto their state courts' dockets. Those states' immunity provisions protect against "all harm," however, while Oklahoma's statute protects only against harm from COVID-19 exposure and related care. This slight distinction in language could make a huge difference in the number of COVID-19-era negligence suits we see against nursing homes and

in how well the nursing homes are poised to defend against those claims.

## ABOUT THE AUTHOR



Fareshteh Hamidi is an associate at Sweet Law Firm in Oklahoma City, where she practices medical malpractice defense and general insurance defense. She is a proud 2019 graduate of the TU College of Law.

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# Extraordinary Medicaid Lien Reductions

By Tracy Speck Neisent

**CAN YOU REDUCE A MEDICAID LIEN BEYOND THE CUSTOMARY 50% REDUCTION?** What about seeking an 80% or 90% reduction? Federal law requires state Medicaid programs to seek recovery for the amounts Medicaid has paid for medical treatment from any money recovered from a tort claim.<sup>1</sup> The claim that a state Medicaid program has against a tort recovery is known as a “Medicaid lien.”

Typically, negotiations with the Oklahoma Health Care Authority (OHCA) will result in a 50% reduction in the Medicaid lien to account for the plaintiff’s attorney’s fees and costs, which are often around 50%. However, should it end there? What about where the settlement is only a small fraction of the lifetime care estimate?

Cases often settle for significantly less than the actual value of the claim for a variety of reasons, including questionable liability, comparative negligence, difficulty in proving liability, underinsured defendants, etc. Let’s say the settlement is \$500,000, with the net to the plaintiff of \$250,000, and the Medicaid lien is \$120,000 (negotiated at 50% to \$60,000), and the lifetime care estimate is \$25,000,000. Is it fair the plaintiff pays half, or even a quarter, of their net amount for a Medicaid lien when they have significant injuries and have settled for a small fraction of their actual damages? In our example, the plaintiff might be left with \$190,000 after paying

the negotiated Medicaid lien. Is that fair? The U.S. Supreme Court doesn’t think it’s fair.

## ARKANSAS DEPARTMENT OF HUMAN SERVICES V. AHLBORN

In a unanimous decision, the Supreme Court issued the seminal decision on the reduction of Medicaid liens for tort recoveries in *Ark. Dept. of Human Svs. v. Ahlborn*.<sup>2</sup> Ms. Ahlborn was severely injured in a car crash, and Medicaid paid \$215,645 for treatment of her injuries. Her case was settled out of court for \$550,000. The settlement did not specify how much was for past medicals, future medicals, loss of earnings, pain and suffering or mental anguish.<sup>3</sup>

Arkansas law allowed the Arkansas Department of Human Services (ADHS) to recover its entire lien from the settlement.<sup>4</sup> The ADHS thus asserted a lien against the entire amount of settlement proceeds for the \$215,645 Medicaid had paid for past medical expenses.<sup>5</sup> Ms. Ahlborn filed an action in the

United States District Court, seeking a declaration that the lien violated the federal Medicaid laws insofar as its satisfaction would require depletion of compensation for injuries other than past medical expenses. The parties stipulated that Ms. Ahlborn’s entire claim was reasonably valued at around \$3,000,000, the settlement amounted to approximately one-sixth of that sum and that, if Ms. Ahlborn’s construction of federal law was correct, ADHS would be entitled to only the portion of the settlement (\$35,581.47) that constituted reimbursement for medical payments made.<sup>6</sup> Ms. Ahlborn thus asserted the “proportional reduction” method of allocating the amount of recovery to a Medicaid lien was the correct method to use. Under this method, the Medicaid lien is reduced in proportion to the settlement amount compared to the value of the case.

The *Ahlborn* court stated that the issue before it was:

We must decide whether ADHS can lay claim to more than the portion of Ahlborn's settlement that represents medical expenses. The text of the federal third-party liability provisions suggests not; it focuses on recovery of payments for medical care. Medicaid recipients must, as a condition of eligibility, "assign the State any rights ... to payment for medical care from any third party," 42 U. S. C. § 1396k(a)(1)(A) (emphasis added), not rights to payment for, for example, lost wages.

Here, the tortfeasor has accepted liability for only one-sixth of the recipient's overall damages, and ADHS has stipulated that only \$35,581.47 of that sum represents compensation for medical expenses. Under the circumstances, the relevant "liability" extends no further than that amount.<sup>7</sup>

The Supreme Court thus endorsed a calculation in which the Medicaid lien was reduced in proportion to the fraction of the value of the case represented by the settlement amount.<sup>8</sup> By upholding Ms. Ahlborn's calculation, the Supreme Court



found the “proportional reduction method” of valuing a Medicaid lien is correct.

In the wake of *Ahlborn*, in 2007, the Oklahoma Legislature amended our state law regarding Medicaid liens. Section 63 O.S. §5051.1 is titled “Payment for Medical Services by Oklahoma Health Care Authority.” It grants OHCA a lien against the proceeds of a tort case if Oklahoma Medicaid has paid for treatment of injuries resulting from the tort. Section 63 O.S. §5051.1(D)(1) provides:

... The lien authorized by this subsection shall: ... (d) be applied and considered valid as to the entire settlement, after the claim of the attorney or attorneys for fees and costs, unless a more limited allocation of damages to medical expenses is shown by clear and convincing evidence ...

Pursuant to §5051.1(D)(1), it is common practice for OHCA to provide a proportionate reduction of one-half of the Medicaid lien amount because the plaintiff typically has attorney’s fees and costs of approximately one-half of their gross settlement amount. However, §5051.1(D) provides for a plaintiff to present evidence to receive a larger reduction, utilizing the proportional reduction method,

by establishing what portion of the tort recovery applies to medical expenses. Case law establishes that the determination of medical expenses can be made by the court if the parties cannot agree on the amount of the reduction for the Medicaid lien. As a side note, whether or not Oklahoma’s “clear and convincing evidence” standard is constitutional may be an issue to be addressed in a future case. As of now, OHCA has been reasonable about negotiating Medicaid liens, even if it is after the filing of a motion for apportionment and providing evidence of damages through a life care plan, economic damages report and non-economic damages estimate.

#### **PRICE V. WOLFORD AND OKLAHOMA HEALTH CARE AUTHORITY**

In *Price v. Wolford and Oklahoma Health Care Authority*,<sup>9</sup> the 10th Circuit addressed the application of 63 O.S. §5051.1 to a \$1.1 million settlement with a Medicaid lien of approximately \$544,000 and a case value of \$12 million. The district court applied the proportional allocation method, resulting in a Medicaid lien amount of about \$67,000. However, the case was reversed and remanded because there was no evidence in the record regarding the \$12

million case value. The *Price* court endorsed the district court’s use of the proportional allocation method to determine the proper amount of the Medicaid lien and provided additional direction on evidence and facts to meet Oklahoma’s burden of proof:

Aside from a reduction necessary to compensate counsel, a reduction in a Medicaid lien can be justified only by showing a reason why the plaintiff would agree to allow the defendant to pay less than the full amount of the Medicaid lien. The usual reasons would be that the liability of the settling defendant is uncertain or that the defendant lacks the money to pay for his full liability (or both); so the plaintiff would be willing to take a proportionate reduction in each component of the damages that she would expect the jury to award if the defendant were found liable. For example, if the settlement is for 50% of what the jury is likely to award because there is only a 50% chance that the jury will find liability, the Medicaid lien could properly be cut in half. Or if liability is clear and the expected verdict would be \$2 million, but the defendant

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In an ideal world, before negotiating the settlement, the plaintiff’s counsel should discuss the Medicaid lien with counsel for OHCA.



can pay only \$1 million, a 50% reduction would also be in order. A further reduction might also be appropriate if there are doubts about whether the jury would award as damages all the medical expenses paid by Medicaid because, for example, one could question whether the expenses were caused by the negligent acts of the defendant although generally one can be more confident of recovering those expenses in full than in recovering, say, the full claim for pain and suffering.<sup>10</sup>

### **EDWARDS V. ARDENT HEALTH SERVICES, L.L.C.**

There is one reported Oklahoma appellate case from 2010, but it was before the *Price* 10th Circuit case, so the Oklahoma Court of Appeals did not have the guidance provided by the 10th Circuit when it ruled in *Edwards v. Ardent Health Services, L.L.C.*<sup>11</sup> The *Edwards* case addressed a personal injury settlement of \$1,500,000 that did not have allocation for different categories of damages, and OHCA asserted a \$381,917.20 lien. Although plaintiffs sought a proportional reduction to reduce the OHCA lien to \$119,526.35, the court determined that although there was a “hearing of sorts,” there was no showing by clear and convincing evidence that OHCA’s lien should be reduced.<sup>12</sup> Since the 10th Circuit in *Price* issued additional guidance after the *Edwards* decision, Oklahoma district courts should now follow *Price* to review the evidence and determine the proportional reduction of the Medicaid lien.

In an ideal world, before negotiating the settlement, the plaintiff’s counsel should discuss the Medicaid lien with counsel for OHCA. Then, before agreeing to a

settlement amount, the plaintiff’s counsel should seek OHCA’s agreement on the amount of the Medicaid lien, so this is not an issue to be litigated later. If it is impractical to obtain OHCA’s agreement before settling, then the plaintiff’s counsel should include an agreement with the defendants to establish the apportionment of damages as to the settlement amount, particularly as to the amount of settlement attributable to medical expenses and hopefully a stipulation as to the value of the plaintiff’s claim, similar to the stipulations by the parties in *Ahlborn*.

### **WOS V. E.M.A.**

In 2013, in *Wos v. E.M.A.*,<sup>13</sup> the U.S. Supreme Court was faced with determining a proportionate reduction of a \$1.9 million Medicaid lien, with a \$2.8 million settlement and a total case value of \$42 million. The settlement did not allocate the amount among the various medical and non-medical claims. The court held that the North Carolina statute’s irrebuttable statutory Medicaid lien up to one-third of the value of settlement violated federal Medicaid anti-lien statute because it could have granted Medicaid more than the portion of the settlement attributed to medical expenses.<sup>14</sup>

The North Carolina statute’s irrebuttable statutory one-third presumption is unlike Oklahoma’s statute that provides for a lien on the settlement proceeds after reduction for attorney’s fees and costs (in most cases, one-half) “unless a more limited allocation of damages to medical expenses is shown by clear and convincing evidence.”<sup>15</sup> “The *Wos* court emphasized that courts are called upon to separate lump sum settlements or jury awards into categories to satisfy different claims to a part of the moneys

recovered.”<sup>16</sup> Thus, in cases where a settlement or judgment is not categorized in amounts for each type of damages, the plaintiff’s counsel should seek to have a court make such a determination of apportionment of damages in order to determine the proper fraction to apply to the Medicaid lien reduction and, of course, give notice to OHCA. Keep in mind that ideally, the plaintiff’s counsel discusses the lien and settlement with OHCA before the settlement is finalized, or if OHCA has not been part of the settlement negotiation, the plaintiff’s counsel should obtain an agreement from the defendants as to the apportionment of damages, particularly as to the number of damages attributed to medical expenses.

If there is already a settlement and OHCA was not involved, negotiating a Medicaid lien begins with completing the “OHCA TPL Lien Reduction Request Form,” easily located by typing it into your web browser. Include either the agreement between the parties apportioning the settlement or, if that was not done, include a letter showing the proportional reduction methodology with calculations for your case along with an explanation of the reasons for a disproportionate settlement per the reasoning addressed in the *Price* case. Also, enclose a copy of the life care plan along with the estimated value of all aspects of the case, including economic damages and non-economic damages, to provide the basis for how you arrived at the total value of the case. The proportional reduction method calculation is the settlement amount divided by the total value of the case times the OHCA lien. For example, revisiting the original example presented: \$500,000 settlement

divided by \$25,000,000 case value times the \$120,000 Medicaid lien equals \$2,400 for the proportional Medicaid lien amount. Begin your negotiations with OHCA but be realistic because, in all reality, OHCA is probably not going to be willing to drop the lien to where it should be using the proportional reduction method. If you cannot get OHCA to agree to a reasonable amount, file a motion for apportionment with the court, give notice to OHCA and be ready to present your evidence as to the value of the case and ask the court to apportion the settlement amount and reduce the Medicaid lien. Keep in mind that a qualified settlement fund trust under 26 U.S.C. §468B can be utilized to fully settle and release the defendants while still holding the settlement funds pending negotiating the Medicaid lien, as well as providing time to work out other post-settlement issues.

Not addressed by any of the cases reviewed in this article is 63 O.S. §5051.1(G) that requires OHCA to be paid in full when a plaintiff needs continued Medicaid eligibility and plans to establish a Medicaid-exempt trust under 42 U.S.C. §1396p(d)(4)(A). It seems fairness and reasonableness are applied by the current legal team at OHCA when this statute has an obvious inequitable result, given the economics of a case involving both a Medicaid lien and the need for a special needs trust.

Additionally, now that Oklahoma has Medicaid expansion, disabled plaintiffs with low incomes may not need a first-party special needs trust (SNT) to exempt their assets to maintain Medicaid eligibility. However, asset limits for Supplemental Security Income (SSI) may require an SNT to preserve the settlement proceeds and maintain SSI

eligibility for a disabled plaintiff. Fortunately, if the plaintiff is eligible for Social Security Disability (SSD), this is not an asset-tested program, so an SNT would not be necessary unless the plaintiff on SSD also needs a Medicaid program with asset limits like advantage waiver or long-term care in a nursing home.

### GALLARDO V. DUDEK

Currently pending in the U.S. Supreme Court is an appeal from the 11th Circuit *Gallardo v. Dudek*<sup>17</sup> to determine whether or not federal Medicaid law preempts Florida law and requires that the state only seek reimbursement from settlement amounts attributable to past medical expenses. In *Gallardo*, the case settled for \$800,000, of which \$35,367 was allocated to past medical expenses. The Medicaid agency claimed entitlement to \$323,508, which equates to almost the plaintiff's full net recovery after deduction for attorney's fees. The Medicaid agency argues it is entitled to recovery from allocation for both past and future medical expenses. Depending on the outcome of the decision in *Gallardo*, the methodology for calculating reductions in Medicaid liens may change.

### CONCLUSION

As with all issues with Medicaid law, whether it is Medicaid eligibility for medical coverage or nursing home care or special needs trust policy and regulations, Medicaid laws and policy are constantly changing. So, always check for current developments before advising clients on any Medicaid issue.

### ABOUT THE AUTHOR

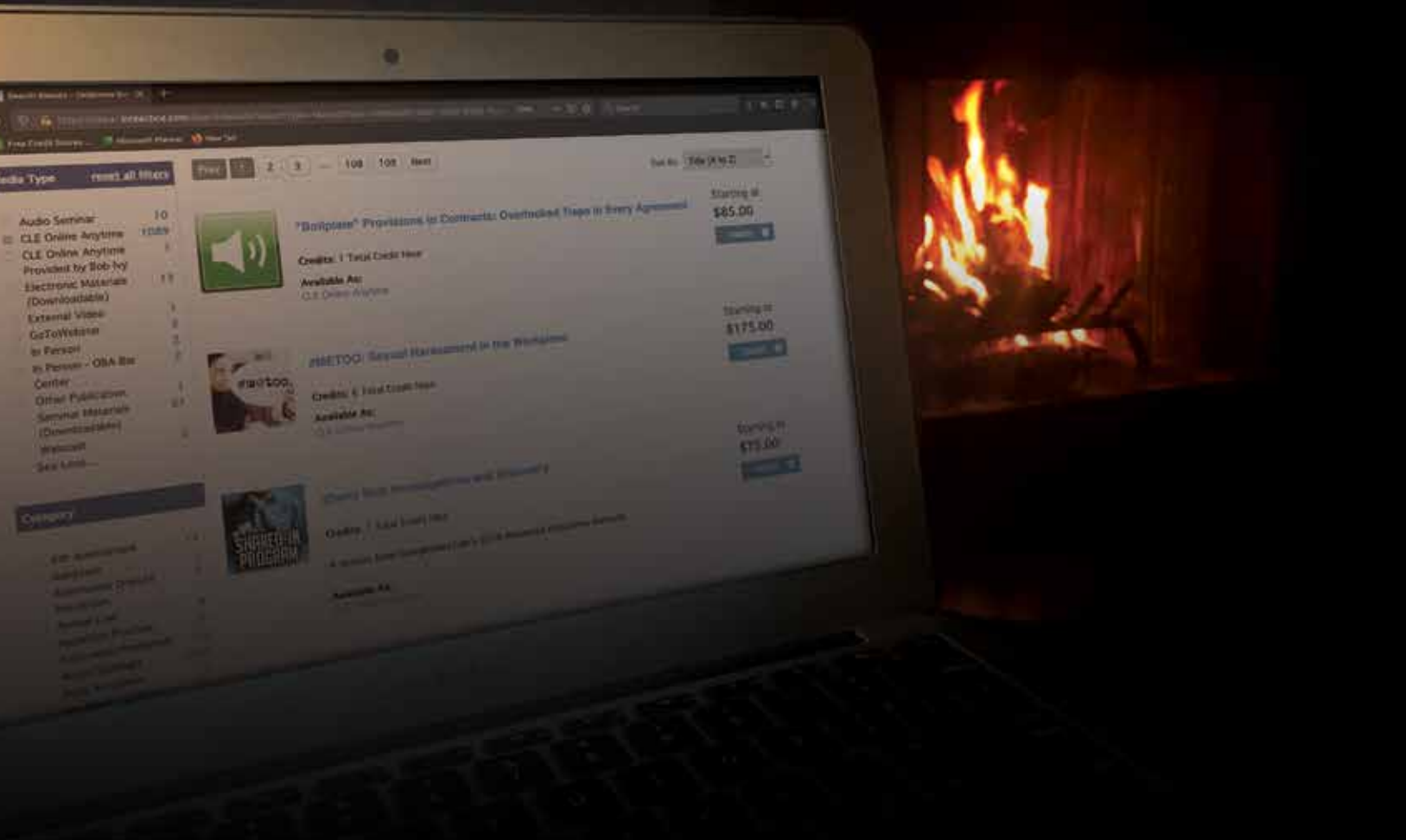


Tracy Speck Neisent is a partner with Holmes, Holmes & Neisent PLLC in Oklahoma City. She received her J.D. from

the OU College of Law in 1993, graduating with honors and Order of the Coif. She is certified as an Elder Law Attorney (CELA) by the National Elder Law Foundation, and her practice is focused on the areas of special needs trusts, Medicaid planning and Medicaid appeals.

### ENDNOTES

1. 42 U.S.C. 1396a(a)(25).
2. 547 U.S. 268 (2006).
3. *Id.* at 272-274.
4. *Id.* at 277-278.
5. *Id.* at 274.
6. *Id.* at 274.
7. *Id.* at 280-281.
8. *Id.* at 274.
9. 608 F.3d 698 (10<sup>th</sup> Cir. 2010).
10. *Id.* at 18. (emphasis added). See also, *Moss v. Wittmer*, 228 P.3d 542, 2009 OK CIV APP 102 (2009) (trial court erred in determining the Medicaid "lien is statutory and therefore not subject to pro rata reduction," remanded for determination of what portion of the settlement represented medical expenses).
11. 2010 OK CIV APP 113, 243 P.3d 25.
12. *Id.* at ¶10.
13. 568 U.S. 627 (2013).
14. *Id.* at 644.
15. 63 O.S. §5051.1(D)(1)(d).
16. *Id.* at 642.
17. 11<sup>th</sup> Cir., No. 17-13693, June 26, 2020.



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# PHOTO HIGHLIGHTS





6.



7.



3.

1. President Mike Mordy welcomes OBA member and author Jim Priest, CEO of Goodwill Industries of Central Oklahoma, as speaker during the Friday morning Delegates Breakfast.

2. President Mordy presents Bryan County Bar Association President Chris D. Jones of Durant (right) with the Outstanding County Bar Association Award during the Friday morning General Assembly.

3. OBA Award winners are recognized during the Annual Luncheon. From left David Petty, Judge Allen Welch, Lee Slater, Mark McDaniel, Jim Webb, Carol Manning, OBA Awards Committee Chair Kara Smith, Justice Noma Gurich and President Mike Mordy.

4. OBA Diversity Committee Chair Telana McCullough (right) presents Justice Shawna S. Baker with an Ada Lois Sipuel Fisher Diversity Award during the Diversity Awards Dinner.

5. President Mordy presents a President's Award to longtime OBA Executive Assistant Debbie Brink, who has announced her retirement in 2022.

6. From left Ben Odom and former Oklahoma Attorney General Drew Edmondson attend the "What Every Lawyer Needs to Know About Living and Practicing in Indian Country" CLE program.

7. The Oklahoma City Association of Black Lawyers receives the OBA Outstanding Service to the Public Award. From left OBA YLD Chair April Moaning, Oklahoma City Association of Black Lawyers President Tiece Dempsey, OBA Awards Committee Chair Kara Smith and Oklahoma Bar Foundation President Jeff Trevillion Jr.





8. The family of Ada Lois Sipuel Fisher congratulates this year's Diversity Award recipients and their guests during the Diversity Awards Dinner. The Ada Lois Sipuel Fisher Diversity Awards are named in Ms. Fisher's honor. This year's winners are Justice Shawna S. Baker, Anthony (Tony) Coleman, Francie Ekwerekwu, Miguel Garcia, Trent Shores and CAIR Oklahoma (Council on American Islamic Relations).

9. From left Jana Knott, Justice Noma Gurich and Gabe Bass attend the meeting.

10. The Kiowa Black Leggings Warrior Society presents the colors Nov. 11 during a ceremony to commemorate and remember all current and past veterans.

11. The Women in Law Section elects officers for 2022 during its first meeting as a section. From left Chair-Elect April Kelso, Treasurer Melissa East, Co-Chair Shannon Panach, Co-Chair Bevan Stockdell, Ashley McCord and Gigi McCormick.





12. OCU School of Law Dean Jim Roth speaks during the school's annual alumni luncheon.

13. OBA Members reunite during the Annual Meeting. From left Retired Supreme Court Justice Joseph Watt, District Judge Mike DeBerry, OBA Past President Charles D. "Buddy" Neal, OBA Past President Douglas Sanders, Brad West and OBA Past President M. Joe Crosthwait.



13.



## HOUSE OF DELEGATES ACTIONS

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Revisions and additions to the Oklahoma Title Examinations Standards published in *Courts & More* Vol. 1 No. 44 (Nov. 3, 2021) and posted online at [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting) were approved and are effective immediately.



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# Oklahoma Lawyers for America's Heroes Program Celebrates Its 10th Anniversary

*By Julie Bays*

**T**HE OKLAHOMA LAWYERS for America's Heroes program is a free legal assistance program for veterans and active-duty personnel who meet certain criteria. They must be an E-6 or lower if on active duty, and they must make no more than 100% of the compensable rate for disabled veterans. This equates to approximately \$42,000 a year in household income.

Over the last 10 years, attorneys have donated over \$7,500,000 in billable hours. That is quite impressive, and we hope we can continue to serve a community worthy of our gratitude. Even more impressive are the changes these volunteers generated in the lives of the heroes they helped.

As reported last year, we continue to lose volunteer attorneys due to retirement, career changes and burnout. The challenges and uncertainty of COVID-19 did not help the situation. In the past, we were able to recruit new volunteers at social events and live programs. Many events in the legal community were scaled back considerably over the last two years. We definitely need new volunteer attorneys who are willing to give some of their time and take at least one case per year to help our heroes.



Our volunteers have continued to step up to help veterans. Many individual attorneys worked tirelessly within their own practice areas to help heroes with their legal needs. To the volunteers, we say thank you for all that you do. We know some of you went well beyond what others might have expected for a "charity" case. But now, these volunteers need reinforcements.

One way we may increase the number of volunteers is for attorneys with prior experience in helping heroes in the program to agree to work with and mentor younger volunteers wanting to do pro bono work. Many recently admitted attorneys want to help but often don't know where to start. Another way may be that law firms designate one attorney

within the firm as their Heroes Program pro bono attorney.

Veterans in civil cases do not have an automatic right to an attorney, and therefore, the resources available to lower-income veterans come from programs like Heroes. They need your help.

Please go to [www.okbarheroes.org](http://www.okbarheroes.org) to sign up and volunteer today!

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Ms. Bays is the OBA Practice Management Advisor.

# Women in Law Now an OBA Section

By Bevan G. Stockdell

**I**N SEPTEMBER, THE BOARD of Governors approved a petition signed by more than 80 OBA members to transition the long-standing Women in Law Committee to the Women in Law Section. Shannon Panach and Bevan Stockdell, who served as the Women in Law Committee co-chairs in 2020 and 2021, were elected as the founding chairs of the Women in Law Section. The purposes of the Women in Law Section are:

- To promote women in the legal profession;
- To educate and engage OBA members and the public about issues affecting women in the legal profession and laws affecting women generally;
- To support the advancement of women through community service;
- To coordinate continuing legal education programs; and
- To provide networking and career development opportunities for Section members.

In many ways, the transition from committee to section will go unnoticed. We will continue to have regular business meetings,

networking events, community service projects and host the annual Women in Law Conference and Mona Salyer Lambird Spotlight Awards Luncheon.

What will change is financial flexibility and governance. Surprising to most, the Women in Law Committee was already self-funded, just like a section. The Women in Law Section will continue to raise revenue through conference sponsorships and

registration fees. But by becoming a section, our activities are no longer part of the OBA budget and general operating fund. This will give the Women in Law Section room to grow its programs and enhance benefits to members. For several years, the women in law have expressed a desire to do more significant community outreach to support other women. As a section, we will be able to offer financial assistance to charitable



2021 Mona Salyer Lambird Spotlight Award recipients Lyn Entzeroth, Judge Lydia Green, Judge Lori Walkley, Judge Roma McElwee and Monica Wittrock.



*Bevan Stockdell and Shannon Panach serve as founding co-chairs of the Women in Law Section.*

organizations, as well as sponsor other bar association activities and legal education programs.

Being a section also means autonomy in leadership. While committee chairs are appointed by the OBA president, sections elect their own officers. During the OBA Annual Meeting, Women in Law Section officers for 2022 were elected: April Kelso, chair; Emily Harrelson, chair-elect; Melissa East, treasurer; Cheryl Jackson, secretary; and Shannon Panach and Bevan Stockdell, immediate past chairs. This officer structure provides greater continuity year to year and will strengthen leadership.

Another important change is that members will need to join the section and pay section dues each year. There are two ways to join. You can check the box for the Women in Law Section when you

pay your 2022 bar dues online or by mail. At any time, you can join by logging in to your MYOKBar account through the OBA website. Women in Law Section annual dues are \$20. Section membership is free for newly admitted first-year attorneys. Additionally, law students, judges and others with an interest in the section's activities are invited to join as associate members.

Everyone is welcome to attend the upcoming social mixers hosted by the Women in Law Section. On Tuesday, Dec. 7, we will gather from 5 p.m. to 7 p.m. at Elote, 514 S. Boston Ave., in Tulsa, and The Study, 701 W. Sheridan Ave., in Oklahoma City. We hope you'll join us!

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Bevan G. Stockdell serves as co-chair of the Women in Law Section.



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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.

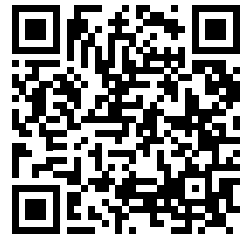
Committees might meet monthly, or just for a few times each year when they are needed. For example, the Awards Committee is busiest in August when OBA Annual Award nominations are under consideration. By contrast, the committee responsible for the Lawyers Helping Lawyers Assistance Program has monthly 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](http://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



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# 2021: The Year That Almost Was, But We Didn't Break It

By John Morris Williams

**A**S I SAT DOWN TO WRITE this article, my first thought was, "Where did this year go?" For the December article, I generally do some sort of a recap and congratulate us for achievements of the year. The article is usually a bit of an opportunity for reflection, where besides the pats on the back, I am also glad to see that we have moved past some things.

2021 was pretty much a total "glad we got past that" rearview-mirror experience for me personally and professionally. I know many of you feel the same. There were several events we planned and canceled because of COVID. I had regrets about each of those. For me, 2021 seemed like the year that almost was. It was almost the year we got back to "normal" before the second wave hit. I am not a half-empty or half-full glass person. I am more of a "grateful we have a glass and didn't break it" person. In 2021, there were seldom times our cup ran over, and there were many times it seemed a bit empty. But we didn't break it.

To President Mike Mordy, a huge thank you. Being president of the OBA during the pandemic has its own set of difficulties. It also deprived our president and Board of Governors of the opportunity to participate in the fun part of the job. President Mordy continued to help us embrace technology and find ways to better communicate digitally. Mike and his wife, Christy, are two of the nicest and most conscientious people I know. Even though

we had challenges because of the pandemic, it was an absolute delight to get the chance to work with him and spend time together. Mike Mordy has been an exceptionally attentive and caring leader of our association. Because of him, 2021 was a much better year than could have been expected. Thank you, 2021 Oklahoma Bar Association President Michael C. Mordy, for making what otherwise would have been a painful year much more tolerable.

I hope I never again have to write about waiting until next year for something to happen. It is with great optimism that I report we did not break the glass, and we are gearing up to fill it in 2022. Start shopping now for that perfect resort wear because we're going to the Choctaw Casino in Durant for the Solo and Small Firm Conference. My guess is it will be one for the books on both content and fun. Be watching for details and registration.

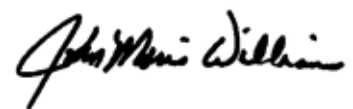
In 2022, we will be opening the building for meetings and continuing legal education programs. Our Director of Educational Programs, Janet Johnson, has not been able to host a full-blown in-person CLE since she started last year. So I want you to sign up and attend all the meetings and CLEs you possibly can in 2022 and come meet Janet in person.

The pandemic, while it did not break our glass, created opportunities for us to better serve our members through the use of technology. While we already had the rule

in place for OBA members to get all their CLE credits online, we had not perfected the total digital production with speakers and participants all in different places. Starting with the 2020 Annual Meeting, we learned much and have advanced greatly in this area. The experience we have gained and the ability to enhance our production of high-quality virtual programs will serve us well in 2022 and beyond.

In the area of communications, we continue to grow and learn. In 2022, we will merge our digital publications, the OBA *Enews* and *Courts & More*, into a weekly publication that will include essential information about OBA activities and opinions and news from the courts. It is our desire to send you more information and fewer emails. We understand communication is more than just hitting send. Our new Director of Communications, Lori Rasmussen, and her team are working hard to develop a strategic plan to send the right information in the right way at the right time.

Lastly, I want to wish you a safe, healthy and happy holiday season. Come join us at the OBA as we refill the glass and make 2022 truly a year to remember.



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To contact Executive Director Williams, email him at [johnw@okbar.org](mailto:johnw@okbar.org).

# FROM THE PRESIDENT

(continued from page 4)

This subscription costs at least \$100 per month to the OBA; however, the OBA pays for your subscription, and it is offered to you at no cost. HeinOnline is another research platform offered at no charge to OBA members. It allows members to research the *Oklahoma Bar Journal* for articles written on various topics.

I personally benefitted from participating in the Lawyers Helping Lawyers Assistance Program meetings and found the committee to be an incredible resource – it is another program that is free to the membership. The Lawyers Helping Lawyers Assistance Program offers six free hours of counseling to all OBA members by a third-party provider, A Chance to Change, which is a private, independent counseling entity. I learned A Chance to Change offers counseling in a wide gamut of areas, including grief, stress, substance abuse and marital discord. All counseling provided by A Chance to Change is strictly confidential and privileged, and no one with the OBA has any knowledge a member has participated.

I learned of another benefit that is provided by the OBA through my friend, Richard Stevens, who is the OBA ethics counsel. His department provides informal advice and interpretation of the rules for attorney conduct, which saves time

in having to research such issues ourselves. Jim Calloway, director of the OBA Management Assistance Program, provides endless practice tips – the best of which are his technology updates. His tips are short, concise and help OBA members in keeping abreast of saving time and money.

These are just a few of the OBA benefits I have come to appreciate, and I hope I have disseminated some bits of information about these tools offered at no charge to the OBA membership that will afford you savings in time and money.

I have also been reminded of the great leadership the OBA has with Executive Director John Morris Williams and his department heads. The OBA staff is “over the top.” John has announced he is retiring from his position as executive director at the end of next year, and it will be difficult to find a replacement of his caliber; however, his quality staff will help with the transition next year.

My tenure as president has confirmed my pride in our profession, my fellow attorneys and the Oklahoma Bar Association. This is not pride in the sense of arrogance but rather pleasure and satisfaction in being associated with a great group of men and women who make up the Oklahoma Bar Association. Thank you for allowing me to serve as your president this past year.

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This is not pride in the sense of arrogance but rather pleasure and satisfaction in being associated with a great group of men and women who make up the Oklahoma Bar Association.

# A Few of My Favorite Things

By Jim Calloway

**THE SOUND OF MUSIC IS** often associated with the holiday season, even though the movie doesn't contain content we would normally think of as relevant to the holidays. One reason is that in the days before streaming, family friendly content was often broadcast by networks during this season. Many people have memories of watching the movie during the holidays with family. Julie Andrews played Maria, and her character's song "My Favorite Things" just seems to fit into the season. For my last Law Practice Tips column of the year, I decided to cover a few of my favorite legal technologies that readers should consider applying to their law practices or their lives.

Maybe you will have some downtime during the remainder of the year to investigate some of these to see if they should become your favorite things as well.

### BUILD YOUR BRAND BY UPLOADING A SINGLE PICTURE

One of my favorite things is seeing pictures of OBA members in the OBA directory, which is accessible to OBA members only. It is such a great benefit for Oklahoma lawyers who have similar names, so lawyers looking up a phone number or email can tell by the picture that they have the right person. In addition, if you are going to be meeting up with another lawyer

in court for the first time, seeing a picture may be helpful. Law firms spend a lot of money on branding and marketing. You probably already have a professional picture on your computer right now. Log in to MyOKBar and upload your picture to your profile. It is free and should only take a moment. If you are the managing partner of your firm, maybe you should send out something encouraging all the lawyers in your firm to do the same.

### QUICK PARTS IN MS WORD AND OUTLOOK

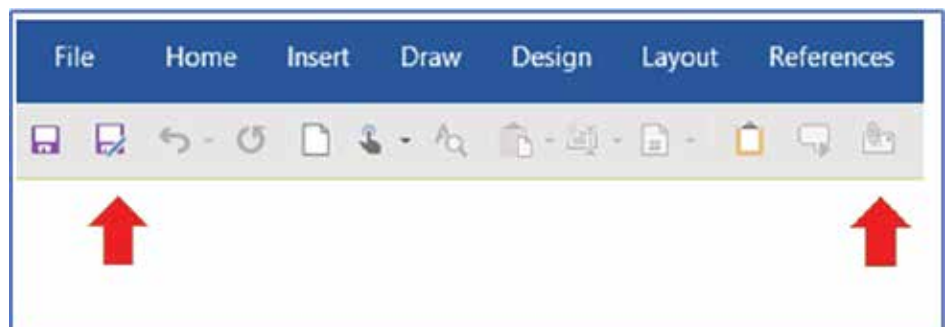
Lawyers should automate routine processes when they can. Quick Parts is the easiest and fastest way to automate placing "prerecorded" blocks of text into Outlook emails and Word documents. For example, if you often close emails with the same paragraph, you can add that to any email with a couple of clicks. Find a sent email that has the paragraph(s) you want to reuse, open a reply to it, highlight the text you want to save and then click Insert,

Quick Parts, Save to Selection to Quick Part Gallery, give it a name and click OK.

To insert the new Quick Part into an email, click Insert, Quick Parts, Auto Text and select it from the list of saved Quick Parts. It works the same way as in Word. See my 2009 video *Fun with Quick Parts* at [www.youtube.com/watch?v=Rl6lIUgo6M](http://www.youtube.com/watch?v=Rl6lIUgo6M). Word has been updated a few times since then, but it functions the same, and the video could be inspiration for your staff to start creating Quick Parts.

### SIMPLIFY YOUR LIFE BY CUSTOMIZING WORD'S QUICK ACCESS TOOLBAR

I recently changed to a new computer. In the hours before I imported my prior Quick Access Toolbar settings, I was reminded just how much time my QAT entries save me every day. They are quick and easy to set up. My most used function is Mail. When I complete a document in Word, clicking on that icon opens a blank





email with the document attached. I also recommend installing Save As on the QAT.

"Time-Saving Microsoft Word Customizations and Tools"<sup>1</sup> is a Law Practice Tips column I wrote in 2018 that was named the BlawgWorld Pick of the Week by *Technolawyer*. It contains detailed instructions, with screen shots, on customizing the QAT and the status bar. Invest a small amount of time doing this customization for Microsoft Word to save yourself time every week afterward.

### APPLE CARPLAY

Droid users can skip this section, but as a longtime iPhone user, one of my very favorite things to use while driving is Apple CarPlay. Various iPhone apps are displayed on the vehicle screen. Text messaging is safer while driving when CarPlay reads the contents of the text messages, asks if you want to reply and lets you dictate your reply – all hands free. The maps display on your vehicle's dash is bigger and in a better position than using the iPhone navigation without CarPlay. Driving directions can be heard over the car's speakers.

Like me, many iPhone users only discover Apple CarPlay when they purchase a car that has it preinstalled in the entertainment system. But after using it for a while now, if I bought a car that didn't have it installed, I'd



Jon Le-Bon - stock.adobe.com

prioritize switching out the radio or entertainment system for one that included CarPlay.

### FUJITSU SCANSNAP SCANNERS

For a very long time now, the Fujitsu ScanSnap scanners have been the office standard for the legal profession, in my opinion. These scanners are easy to use and come with great preinstalled software. The ScanSnap line is also great for home use as they do a good job of scanning receipts and other odd-sized pieces of paper. Since these scanners are so durable, I bet many office scanners were retired to someone's home when a new office scanner was purchased. The model I use, the ScanSnap IX 1500, is no longer available. Most purchasers will

choose between the IX 1400 and IX 1600.

"Fujitsu's ScanSnap iX1400 (\$395) sheetfed document scanner is a pared-down sibling to the Editors' Choice-winning ScanSnap iX1600 (\$495)," according to a *PC Magazine* review.

To save \$100, you'll give up wireless connectivity and an onboard control panel. The iX1400 has no Wi-Fi, Ethernet, or mobile device support; the USB 3.2 interface can only connect to a single desktop or laptop computer. But that's fine for many applications, such as scanning IDs at your facility's front desk or documents for your one-person business. If you need to configure and run scans from more than one

station, from handheld devices, or from the scanner itself, you should investigate the iX1600. Otherwise, the iX1400 is a fine, user-friendly for small office and home office (SOHO) purposes.<sup>2</sup>

Most lawyers should likely opt to spend the extra \$100 for the iX1600 to have the control panel feature.

## ONLINE SCHEDULING FOR CLIENT APPOINTMENTS

For lawyers in private practice, serving mostly individual clients with their personal legal matters, it's time to allow potential clients to schedule an appointment online. Doctors do that. Dentists do that. It's time for more in the legal profession to provide that service. If you are concerned about screening for subject matter, conflicts or which lawyer in the firm should have the appointment, then at least after they have been vetted give potential clients the option with, "Do you want me to schedule you an appointment with attorney Whiteacre, or would you like me to text you a link so you can schedule it yourself?" Many readers will assume few would take the link option, but some clients will so they can check their schedule or rearrange something on their end. I'd suggest keeping track of those folks and contacting the ones who haven't scheduled within a few days by phone to see if they need assistance.

## FASTCASE

I mentioned Fastcase in my September Law Practice Tips column. Since then, some have contacted me and shared that taking the free online training at Fastcase.com really improved their use. I would encourage going to Fastcase.com, registering for the webinar *Introduction*

*to Legal Research* and downloading a copy of the *Fastcase 7 Quick Reference Guide*. This legal research tool, provided to OBA members at no expense, has coverage of state and federal courts and statutes. It is better to get the training on the unique ways Fastcase functions. Remember, you log in to use Fastcase on the OBA website; however, to get the training, go to Fastcase.com and select the Support tab. You can always call Fastcase with legal research questions at 1-866-773-2782, but the webinar will answer many of those questions.

## OBA SOLO & SMALL FIRM CONFERENCE

Finally, after a long, pandemic-fueled hiatus, the OBA Solo & Small Firm Conference will return next summer, June 23-25, at the Choctaw Casino Resort in Durant. Save the dates now so you won't miss out. Conference and hotel reservations will open in the spring.

## TECH TOYS AND LAWYER GIFTS FOR THE HOLIDAYS

Every year about this time, our *Digital Edge: Lawyers and Technology* podcast features tech toys for the holidays, which includes gift-giving ideas from Sharon Nelson and me. Some of these suggested gifts are quite practical, while others are a bit fanciful. Listen to the podcast at <https://legaltalknetwork.com/podcasts/digital-edge/2021/11/tis-the-season-tech-toys-for-the-holidays-2021>. This year, I did

double duty on the holiday gift suggestions. Senior Director of the Association of Immigration Lawyers of America's Practice & Professionalism Center Reid Trautz and I co-authored "Holiday Gifts for Lawyers" for the November/December issue of the American Bar Association's *Law Practice* magazine.<sup>3</sup>

That is it for a few of my favorite things. I hope the holiday season brings you some of your favorite things, along with great times with family and friends.

---

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](mailto:jimc@okbar.org) or find more tips at [www.okbar.org/map](http://www.okbar.org/map). It's a free member benefit.

## ENDNOTES

1. [www.okbar.org/lpt\\_articles/obj8905calloway](http://www.okbar.org/lpt_articles/obj8905calloway)
2. "Fujitsu ScanSnap iX1400 Review," *PC Magazine*, Feb. 20, 2021, [www.pcmag.com/reviews/fujitsu-scansnap-ix1400](http://www.pcmag.com/reviews/fujitsu-scansnap-ix1400).
3. <https://dashboard.mazsystems.com/webreader/76300?page=56>.



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# Communicating With Clients Whose Ability to Receive or Convey Information is Impeded

*By Richard Stevens*

**LAWYERS ARE REQUIRED** by ORPC Rule 1.4 to communicate effectively with clients to carry out the objectives of the representation. That requirement is not diminished or extinguished when the lawyer and the client do not share a common language, or the client's ability to convey or receive information is impaired by a noncognitive physical condition such as hearing, speech or vision disability. Recently released ABA formal opinion 500 provides information to lawyers who represent clients in such circumstances. Lawyers faced with such situations are required to take appropriate action to ensure that the duty of communication under ORPC Rule 1.4 and competence under ORPC Rule 1.1 are fulfilled.

The population of the United States continues to become more diverse. This results in increasing language differences and an increase in the population of people with physical disabilities. One relatively recent study estimated that 25.1 million individuals in the United States had limited proficiency in the English language. Recent census information indicates almost 20% of Americans have a disability of some kind.

The adoption of the Americans with Disabilities Act has led to a growing awareness within the profession that some clients' ability to hear, speak or read may be impaired without some form of accommodation.

The duty of communication under Rule 1.4 requires the lawyer to:

- 1) Promptly inform the client of any decision or circumstance with respect to which the clients informed consent ... is required ...
- 2) Reasonably consult with the client ...

- 3) Keep the client reasonably informed ...
- 4) Promptly comply with reasonable requests for information; and
- 5) Consult with the client about any relevant limitation on the lawyer's conduct ...

This duty is not only necessary for the client to make informed decisions, but it is also a component of the lawyer's obligation of competent representation. A lawyer is therefore required to provide and receive information in a manner that allows both the lawyer and client to comprehend.



### WHEN IS HELP REQUIRED?

When it becomes clear that a language-access issue is present, the lawyer must determine how to satisfy the lawyer's professional obligation of communication and competence. Ordinarily, the method of communication to be used by the lawyer and client is a matter to be decided between the two. When possible, the lawyer should consult with the client to make that decision. The lawyer must act when it becomes apparent there cannot be an understandable exchange of information between the lawyer and the client. The lawyer may not passively leave the decision to the client or put the responsibility to make arrangements for interpretation or translation entirely upon the client. The lawyer has an affirmative responsibility to ensure the client understands a lawyer's communications, and the lawyer understands the client's communications. Doubt should be resolved in favor of engaging an interpreter, translator or appropriate assistive device.

### QUALIFICATIONS

A lawyer should be mindful of the qualifications of the prospective interpreter or translator. A

prospective interpreter or translator should be qualified in the language or mode required but must also have the expertise needed to comprehend legal concepts. This is necessary to assure that the legal advice being provided is communicated accurately. The lawyer must also make sure that the interpreter or translator is free of personal or conflicting interests that would prevent them from providing impartial services to the client. Often a friend or family member may serve as an interpreter or translator. However, a close relationship with the client may create a risk of conflict or bias.

### SUPERVISION

ORPC Rule 5.3 requires that a lawyer adequately supervise nonlawyers with whom they are associated. This rule applies to those employed as interpreters or translators. The lawyer must make reasonable efforts to ensure such services are provided in accordance with the lawyer's professional obligations. Specifically, a lawyer should take reasonable steps to maintain the confidentiality of client information. The lawyer should communicate adequately to gather reasonable assurance that the

interpreter or translator is aware of and agrees to abide by the lawyer's duty of confidentiality.

A lawyer's duties of communication and competence remain the same regardless of a client's diminished ability to receive or convey information. In those circumstances, a lawyer may be obligated to arrange an interpreter, translator or appropriate assistive technology. Further, the lawyer is required to adequately supervise nonlawyers who may be engaged to provide such services and ensure client confidences are protected.

I recommend that any lawyer who is confronted with a language-access issue read ABA formal opinion 500.

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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](mailto:richards@okbar.org) or 405-416-7055. Ethics information is also online at [www.okbar.org/ec](http://www.okbar.org/ec).

## Meeting Summary

*The Oklahoma Bar Association Board of Governors met Oct. 15, 2021*

### REPORT OF THE PRESIDENT

President Mordy reported he attended a meeting of the Carter County Bar Association, the new lawyer swearing-in ceremony, the Oklahoma County Bar Association Law Day Luncheon on Sept. 28 and a joint dinner for the OBA Board of Governors and OBF Trustees. He also met with Executive Director Williams and Administration Director Combs to discuss the OBA Annual Meeting.

### REPORT OF THE VICE PRESIDENT

Vice President Geister reported he attended the Oklahoma County Bar Association Law Day Luncheon on Sept. 28 and participated in the Ask A Lawyer hotline held at OETA on Sept. 30.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Hicks reported he attended an OAMIC board meeting, worked on 2022 OBA committee chair appointments, coordinated with Debbie Brink on annual reports and other matters, prepared for the 2022 budget presentation with Executive Director Williams and Administration Director Combs and planned for the upcoming Southern Conference of Bar Presidents.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the YLD board meeting, the Investment Committee meeting, the new lawyer swearing-in ceremony, the swearing-in ceremony for Justice Dana Kuehn, discussions with the Family Law Section regarding Annual Meeting, several meetings on Annual Meeting planning, a joint dinner for the OBA Board of Governors and OBF Trustees, and the Women in Law Conference luncheon. He met with the OBA Law Day Committee chair and a representative from Metro Technology Centers regarding potential joint training opportunities.

### REPORT OF THE PAST PRESIDENT

Past President Shields reported she attended a Lawyers Helping Lawyers Assistance Program Committee, an Investment Committee meeting, the swearing-in ceremony for Justice Dana Kuehn and participated in planning discussions related to the OBA Past Presidents Dinner at Annual Meeting.

### BOARD MEMBER REPORTS

**Governor Davis** reported he attended a Bryan County Bar Association meeting and has been scheduled to participate as a recorder at the Oklahoma Academy Town Hall in November. **Governor DeClerck** reported he attended the Garfield County

Bar Association October meeting and composed the association's memorial resolution for the loss of longtime Enid attorney Evans Chambers. **Governor Edwards** reported he volunteered during the OBA Ask A Lawyer hotline event. **Governor Garrett** reported she attended the budget meeting, volunteered during the OBA Ask A Lawyer hotline event in Tulsa and served as a panelist for the family law segment in conjunction with the *Ask A Lawyer* TV show that aired on OETA Sept 30. **Governor Hilfiger** reported that District Attorney Orvil Loge was sworn in as a Muskogee County special judge, having taken the bench Oct. 1. He also reported Gov. Stitt appointed Larry Edwards to serve as Muskogee County district attorney, with an election to be held in 2022. **Governor Hutter** reported he virtually attended the new lawyer swearing-in ceremony. **Governor Pringle** reported he volunteered during the OBA Ask A Lawyer hotline event. **Governor Rochelle** reported he met with Judge Kory Kirkland and the Caddo County court clerk to discuss recent tornado damage to the Caddo County Courthouse. **Governor Smith** reported she attended the Women in Law awards luncheon. **Governor Vanderburg** reported he has been admitted to the Cherokee Nation's courts (temporarily under Cherokee Supreme Court Rule 131), joined the Oklahoma Municipal Judges



Association and will attend their upcoming seminar, and was a precinct election inspector for a local election.

#### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Moaning reported she attended the new lawyer swearing-in ceremony, a meeting with OBA staff and Executive Director Williams regarding format changes to the Young Adult Guide, a CLE related to ABL trucking and chaired the September YLD board meeting. She also selected a theme for the YLD's Annual Meeting suite.

#### REPORT OF THE GENERAL COUNSEL

First Assistant General Counsel Farabow reported the General Counsel's Office received nine formal grievances and 48 informal

grievances, which is fewer than the previous year and follows national trends that are likely due to the pandemic. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

#### BOARD LIAISON REPORTS

Governor Hutter reported the **Bench and Bar Committee** will meet during the last week of October after a six-month hiatus. President-Elect Hicks reported the **Diversity Committee** met Oct. 14. He encouraged the Board of Governors to attend the upcoming Diversity Awards dinner to be held Nov. 11 during the Annual Meeting with OBA member and noted author Hannibal Johnson serving as keynote speaker. Past President Shields reported the **Investment Committee** entertained proposals

from investment advisors and is considering four potential advisors from among those proposals. A final recommendation will be presented during the November board meeting. Governor McKenzie and Past President Shields reported the **Lawyers Helping Lawyers Assistance Program Committee** is holding monthly in-person discussion groups that are well attended, and the hotline is receiving numerous calls. National mental health trends would predict a post-pandemic increase in requests for assistance. Discussion took place regarding a campaign to ensure OBA members are aware of the service. Governor Moaning reported the **Solo & Small Firm Conference Planning Committee** will meet in December. Governor Garrett reported the **Women in Law Committee** held its annual conference in early October and it was well attended.

#### PROPOSED BUDGET FOR 2022

The board approved a proposed budget for 2022. A return to a normal, pre-pandemic operations budget is anticipated with cost-of-living salary increases provided to OBA staff. Other budgeting factors are legislative dues opt-out and legal fees, which are expected to remain steady. Also addressed are expenses related to long-range planning, the search for a new executive director and Bar Center building maintenance.

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Governor McKenzie and Past President Shields reported the Lawyers Helping Lawyers Assistance Program Committee is holding monthly in-person discussion groups that are well attended, and the hotline is receiving numerous calls.

## COMMITTEE ON JUDICIAL ELECTIONS

The board approved the nomination of Malcolm M. Savage of Oklahoma City to complete Judge Strubhar's unexpired term that expires Dec. 31, 2023.

## OPIOID OVERDOSE FATALITY REVIEW BOARD

The board approved the submission of three names to submit to the attorney general as suggestions for appointment to a two-year term on the Opioid Overdose Fatality Review Board expiring Nov. 1, 2023: Linda Scoggins of Oklahoma City, Carrie D. Pfrehm of Ardmore and Tim DeClerck of Enid.

## DESTRUCTION OF JUDICIAL NOMINATING COMMISSION BALLOTS

The board approved a motion to destroy OBA members' ballots cast during the June 2021 Judicial Nominating Commission election since the period to contest the election has since passed.

## INFORMATION ITEMS

Executive Director Williams discussed the current number of Annual Meeting registrants. He also discussed partnership with the various OBA sections to provide virtual CLE options and that the health and safety of in-person attendees with regard to the pandemic is a priority.

## UPCOMING COUNTY BAR AND OTHER EVENTS

President Mordy reviewed a number of upcoming bar-related events including the Access to Justice Summit Oct. 22; the OBA Annual Meeting Nov. 10-12; the Oklahoma County Bar Association holiday party Dec. 1; and the Tulsa County Bar Association holiday party Dec. 14.

## NEXT BOARD MEETING

The Board of Governors met Wednesday, Nov. 10, at the Sheraton Downtown Hotel, Oklahoma City, in conjunction with Annual Meeting. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved.



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# OBF Funds Emergency Project at TU Law to Help Family in Afghanistan

By Renée DeMoss

**I**N A 24-HOUR PERIOD starting Aug. 24, the U.S. and other western coalition forces evacuated 19,000 people out of Kabul, Afghanistan, on 90 military cargo aircraft flights, at the rate of one departure every 39 minutes. An additional 87,900 individuals had already been airlifted out since the end of July.

Even so, thousands more remained behind at the Karzai International Airport, hidden in houses and villages across Afghanistan, gathering their courage, hoping and waiting for their turn to escape potential violence and persecution in that country. Those individuals left behind included 19 members of the family of a former Afghan asylum client of the TU College of Law Immigrant Rights Project. A few days after the massive airlift, the former client contacted the clinic at TU, seeking assistance in getting those 19 loved ones safely out of the country.

The Immigrant Rights Project, an OBF Grantee Partner, turned to the OBF with an emergency funding request to assist the family in raising funds to help cover humanitarian parole fees for the family. The OBF funded \$5,000 of the request to help cover the costs.



*Students at the TU College of Law work on the Afghan case.*

The TU College of Law raised the additional \$5,000 needed from individual donors.

Miriam H. Marton, director of clinical programs at the TU College of Law, provided a recent update on the request, stating, "It was so moving how the community came together. All of the petitions for relief for the 19 family members have been filed and are now pending at the USCIS. I want to pass along my, my students', my colleagues' and the family's gratitude to the OBF." Ms. Marton also requested thoughts and prayers for the continuing safety of this family as reports confirm a brutal Taliban response to the evacuations.

The OBF funds the TU College of Law Immigrant Rights Project annually through its IOLTA Grants

process. The program is a one-semester, six-credit clinical education program in which law students represent non-citizens in immigration matters. Clients include persons seeking asylum in the United States as a result of persecution or fear of persecution in their home countries, as well as non-citizen victims of domestic violence and other crimes, unaccompanied non-citizen minors or other non-citizens subject to removal and immigration detention.

For more information about this program, visit <https://law.utulsa.edu/legal-clinics/immigrant-rights-project>.

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Ms. DeMoss is the OBF executive director.



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



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

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

## Special thanks to our Sponsors!

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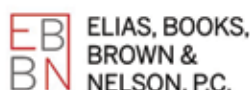
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# Finding Balance in 2021

By April Moaning

**W**HEN I FIRST EMBARKED on this journey, I was not quite sure what to expect. We had grown accustomed to virtual settings and identifying people only by their eyes. Organic meetings were things of the past, and it was difficult to differentiate between family, work and social time as they all bleed into one another. It is an understatement to say I was nervous about leading an organization during a time when it was necessary to balance safety and reinvigorate young lawyers after a very daunting year. However, with the help of the Board of Directors and OBA staff, we were able to find just the right balance.

This year we found a few creative ways to give back, such as participating in panels on the *Ask A Lawyer* TV show for Law Day and updating legal resources that are disseminated to the public. We also had an opportunity to attend our first in-person conference since 2019, which I mentioned in my November article.

The conference served as a board retreat, and a second mention is warranted. Board members were able to strengthen their relationships, participate in team-building activities, learn about neuroscience and the law, explore the Meow Wolf art experience and brainstorm during a diversity, equity and inclusion hackathon. We left feeling inspired and eager to contribute even more of our time and skills to the OBA. We have already started planning a great CLE regarding the interplay between neuroscience, the practice of law and mental health challenges. The board is extremely excited about this new project!

My goal when I first joined the board was to inspire young lawyers, create innovative ways to govern our legal profession and pay it forward to the community. I am honored to be a member of this profession, and I am in awe that I was afforded the opportunity to serve in this capacity. I may have not always performed

perfectly or met every goal, but I always operated from the heart.

It is now time for me to pass the torch to Dylan Erwin, who is enthusiastic, funny and creative. I know he will do an excellent job. I also wish to congratulate Thomas Grossnicklaus, District 3; Ben Barker, District 4; Elizabeth Stevens, District 5; Joel Auringer, District 6; and Phoebe B. Mitchell, At-Large, on winning their elections. Further, I would like to thank those board members who are continuing their service. We will have a large board next year full of new faces. I cannot wait to see what the future holds!

Once again, thank you to my entire board, as you supported me even when I introduced some topics that might have been a bit controversial. A special thank you to my executive board, as we have all watched one another experience the many facets of life. We have watched each other grow in the legal profession and as individuals. I will miss our group chats, but I will not miss the ABA YLD conferences quite yet because I intend to still tag along!



---

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

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## CONTRACT ESSENTIALS: *Tips and Techniques for Better Contracts*

"Good writing" doesn't necessarily translate to "good contract drafting." This "how to" drafting program is relevant for all lawyers who draft contracts in any area of transactional practice, including corporate, mergers and acquisitions, business law, and intellectual property, to name just a few. The program begins with a discussion of the preliminaries of contract drafting, including which contract format to use, which perspective to write from, and key strategies for handling the nine basic parts of a contract. It explains how to draft effective payment terms and warranties. The program will present proven and practical drafting techniques that beginning lawyers and lawyers new to transactional practice can implement immediately to draft contracts more confidently.

### ATTENDEES WILL LEARN:

- Three different contract formats, and when to use each
- When to use first, second, or third person in contracts
- Successful strategies for the nine basic parts of a contract
- Terminology to avoid, limit, and prefer
- 5 things you should know about drafting payment terms
- 5 things you should know about drafting warranties
- How to standardize the language for specific legal consequences

### WHY ATTEND?

Featuring Lenné Espenschied, national drafting expert and author of *Contract Drafting: Powerful Prose in Transactional Practice*

- Understand the strategies for negotiating contract payment terms and warranty provisions
- Learn which words to avoid, limit, and prefer in drafting contracts
- Learn how to eliminate ambiguity by standardizing the language
- Learn the three basic contract formats, and when each works best



# FOR YOUR INFORMATION

## SAVE THE DATE! LEGISLATIVE KICKOFF IS JAN. 29

The Oklahoma Legislature reconvenes in February, and hundreds of bills will be prefiled. Much of the proposed legislation could affect the administration of justice, and some will undoubtedly affect your practice.

Join the OBA Legislative Monitoring Committee at 10 a.m. Saturday, Jan. 29, at the Oklahoma Bar Center as they identify top bills of interest to the OBA and your practice area. Plus, earn two hours of MCLE credit. Lunch will be provided. RSVP to Alisha Davidson at [alishad@okbar.org](mailto:alishad@okbar.org) if you'd like to attend.

## KICK IT FORWARD PROGRAM PAYS DUES FOR MEMBERS WITH DIFFICULTIES

The Kick It Forward Program paid seven members' dues for 2021 totaling \$1,787.50. The program was born out of a desire to help fellow lawyers with financial difficulties.

With the many economic challenges lawyers face today, it can be a struggle to build up and maintain a legal practice. That's why the Young Lawyers Division launched Kick It Forward in 2015, with a mission to assist lawyers of all ages in need by paying their OBA dues while they get on their feet.

The program is funded by donations made through an election on your dues statement. By completing the Kick It Forward line, lawyers agree to pay \$20, or the amount of their choice, to the program in addition to annual dues.



## MEMBER DUES STATEMENTS AVAILABLE ONLINE

In an effort to save money and cut down on the cost of printing and postage, the OBA Membership Department has posted member dues statements online in MyOKBar. As a follow up, a paper statement was mailed around the first of December to members who have not yet paid. Please help the OBA in this effort by paying your dues today!

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

## MCLE DEADLINE APPROACHING

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



## IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Thursday and Friday, Dec. 23-24, in observance of Christmas. The bar center will also be closed Friday, Dec. 31, for New Year's Eve and Monday, Jan. 17, in observance of Martin Luther King Jr. Day.

## 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](mailto: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](http://www.linkedin.com/company/OKBarAssociation) and be sure to check out the OBA on Twitter, Facebook and Instagram.

## ON THE MOVE

**Kelly Offutt** has joined the Oklahoma City office of Hall Estill as an associate. Ms. Offutt practices primarily in the areas of insurance defense and civil litigation. Within her practice, she has defended and prosecuted a variety of matters for clients, including wrongful death, contract disputes, insurance bad faith and coverage disputes, anti-SLAPP litigation and property damage.

**Judge Margaret Nicholson** was appointed by Gov. Kevin Stitt to serve as Latimer County associate district judge. She will fill the vacancy created by the retirement of Judge William Welch on Aug. 1. Judge Nicholson was formerly an assistant district attorney and has been serving as the first assistant district attorney for Latimer and LeFlore counties since 2015. She received her J.D. from the OU College of Law in 1998.

**Sally Griffin** has joined the Oklahoma City office of Crowe & Dunlevy as an associate attorney. Ms. Griffin will join the firm's Bankruptcy & Creditor's Rights, Banking & Financial Institutions and Litigation & Trial practice groups. She previously served as a law clerk to Chief District Judge Kristi K. DuBose of the U.S. District Court for the Southern District of Alabama.

**Steve Johnson, Stan Eigenbrodt, Eric Swenton, Kyden Creekpau, John Gawey and David Leimbach** have become members of the Tulsa law firm of Frederic Dorwart, Lawyers PLLC. Mr. Johnson has been of counsel to the firm for the

past five years and works primarily on mergers and acquisitions and financing transactions. Mr. Eigenbrodt previously served for 16 years as the chief legal officer of Behringer. He has over 30 years of broad-based experience in securities, mergers and acquisitions, corporate governance, compliance and risk management matters. Mr. Swenton has been with the firm for seven years, working on a variety of corporate matters, including mergers and acquisitions, equity and debt financings, entity reorganizations, major oil and gas transactions and federal and state securities law matters. Mr. Creekpau has been a lawyer at the firm for five years, working on international transactions, internal and external investigations and general litigation matters. Mr. Gawey joined the firm in 2018 and has represented lenders, companies and investment funds in connection with a variety of matters, including lending transactions, acquisitions, dispositions and asset-based financings. Mr. Leimbach works on a wide range of commercial and complex litigation matters, including securities, corporate and construction disputes. He joined the firm in 2019.

**Jason Temple** has joined Brown & Fortunato's corporate group. He practices in the area of business matters, including entity formation, corporate governance, financing, reorganization and restructuring, mergers and acquisitions, business transactions, contract drafting and negotiation, taxation, business succession and estate planning. Mr. Temple is a member of the Tulsa

County Bar Association, where he serves as a member of the Business and Corporate Law Section and Young Lawyers Division.

**Andrew B. Morsman** has opened a private practice, Morsman Law PLLC, in Jenks. Mr. Morsman has 37 years of experience in civil litigation and represents individuals and small businesses in civil matters. He is also available for short-term retention by firms needing assistance in litigation, legal research and writing, document review, court appearances and representation in conflicted matters. He may be reached at [andrew@morsmanlaw.com](mailto:andrew@morsmanlaw.com) or 918-992-0245.

**Eric S. Eissenstat** has joined the Oklahoma City law firm of Phillips Murrah PC as a shareholder. He recently served as senior vice president, general counsel, chief risk officer and secretary for Continental Resources. He also served as chair of the Risk Oversight Committee and was responsible for the company's enterprise risk management. Mr. Eissenstat's litigation experience in federal and state courts includes landmark, novel and impact litigation.

**Christian D. Barnard** has rejoined the Tulsa office of Doerner, Saunders, Daniel & Anderson LLP as a partner. He practices in the area of family law, including prenuptial agreements, legal separation, divorce disputes and the related division of personal and business property and debts, alimony and child support

payments, child custody, guardianship matters and adoptions. He also represents clients in mediation and litigation related to the modification of custody, alimony and child support orders.

**Trent Bridges** has joined the Houston office of Sidley Austin LLP as a partner in the Energy and Infrastructure Global Practice Group. He previously served as vice president and assistant general counsel of Magellan Midstream Partners LP, a Tulsa-based company that primarily transports, stores and distributes liquid petroleum products. Prior to that, Mr. Bridges practiced at the law firm of McAfee & Taft, representing NYSE and NASDAQ-listed companies in capital market transactions and Securities Exchange Act of 1934 matters. He also represented public and private companies in mergers, acquisitions, divestitures and financing transactions.

**Tery DeShong** will serve as executive director for the Tulsa Child Protection Coalition, effective Nov. 1. Ms. DeShong will focus on overseeing the CPC programs, strategic planning and advancing the mission to promote protection, justice and healing for abused and neglected children in Tulsa County by optimizing systems collaboration, advocacy, training and practices. She previously served as legal counsel for the Tulsa Health Department, with the state of Oklahoma in child support enforcement and has taught at various higher education institutions.

**Tara Morgan Penick** has joined The Bethany Law Center LLP. Mrs. Penick practices primarily in the areas of wills, trusts, estates and probate matters. She is a member of the Oklahoma County Bar Association, Oklahoma Association for Defense Counsel and OCU Alumni Association. She received her J.D. from the OCU School of Law in 2020.

**Krishan Patel** has joined the Oklahoma City office of Phillips Murrah. Mr. Patel is a transactional attorney representing clients in a wide range of commercial transactions, including entity structuring, business acquisitions and divestitures, mergers and acquisitions, commercial leasing and general real estate matters. He has represented clients ranging from owner-operators, multi-unit owners and investment groups in a wide variety of transactions.

**Alexandra J. Gage** has joined the Tulsa office of Doerner, Saunders, Daniel & Anderson LLP. As a part of the Litigation Practice Group, Ms. Gage will practice primarily in the areas of employment, insurance, contracts and commercial litigation matters. She joins the firm with nearly three years of experience in insurance defense, representing high-profile insurance companies in complex bad faith litigation and breach of contract actions. She also has familiarity with intricate discovery processes involving coordination, analysis, production and maintenance of substantial volumes of e-discovery for clients.

## AT THE PODIUM

**Dana Gish** spoke during the Women's Friendship Dinner hosted by the Hobart Chamber of Commerce on Nov. 4. Ms. Gish practices in the area of workers' compensation defense for employers, insurance companies and third-party administrators. She has served as chair of the OBA Workers' Compensation Section and is a member of the Oklahoma Workers' Compensation Board.



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**Judge George Ramey** was honored for his 47 years of service to Yukon with a proclamation signed by Mayor Shelli Selby declaring Oct. 5 as George Ramey Day. Judge Ramey, a lifelong Yukon resident, served as municipal judge of the town from 1974 to 2021. He was recognized for his contributions to Yukon, Canadian County and Oklahoma. Retired Canadian County District **Judge Gary Miller** will serve as Yukon's interim municipal judge until Judge Ramey's permanent successor is named.

**Nathan Clark** was inducted as a fellow of the American College of Trial Lawyers during a ceremony at the college's annual meeting in Chicago. Lawyers must have a minimum of 15 years of trial experience before they can be considered for fellowship. Membership in the college cannot exceed 1% of the total lawyer population of any state or province. There are currently around 5,800 members in the United States, Canada and Puerto Rico. Mr. Clark is a partner at the Tulsa law firm

of Rhodes, Hieronymus, Jones, Tucker & Gable PLLC.

**Loretta Radford** was appointed to serve as a trustee on the Oklahoma County Jail Trust. She currently serves as the legal director for the Criminal Justice Center at the OCU School of Law, where she assists in teaching the student Bail and Bond Reform Clinic and developing ideas and methods to challenge criminal justice reform in Oklahoma. Professor Radford previously served 26 years as an assistant U.S. attorney for Oklahoma's Northern District.

**Glenn Rawdon** has been named an individual category winner in the second annual American Legal Technology Awards, a competition launched last year to honor exceptional achievements in legal technology. This award is given to an individual who has demonstrated success throughout their career in making a positive difference in the world as it related to legal technology. Mr. Rawdon is program counsel for technology at Legal Services Corp.

**Mark McDaniel** was honored as a 2021 Distinguished Goldbug during a November luncheon at the ACT I Theatre. He was selected for the philanthropy award. This award recognizes notable Alva High School graduates and lets current students see what people from Alva can accomplish. The Distinguished Goldbug program is sponsored by the Alva Goldbug Education Foundation.

## 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 February issue must be received by Jan. 1.*

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## **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](http://www.okmcle.org/mcle-rules).



## IN MEMORIAM

**Joe Dean Adair** of Stilwell died Oct. 26. He was born June 28, 1957, in Stilwell. Mr. Adair received his J.D. with honors from the University of Arkansas School of Law in 1986. He served as municipal court judge for Westville, District 27 assistant district attorney and most recently, attorney for the city of Stilwell from 2005 until 2015. He served on the Stilwell City Council and as president of the Adair County Bar Association since 1986. Mr. Adair was a member of the First Baptist Church, where he was an Awana and Sunday School teacher.

**Gloria Coffin Bates** of Oklahoma City died Nov. 3. She was born Oct. 19, 1934, in Dallas. Ms. Bates received her J.D. from the OU College of Law, where she was a member of the *Oklahoma Law Review*. She served as a judicial law clerk, partner at the law firm of Postic & Bates and in various judicial positions. She was president of the Oklahoma City Chapter of the Federal Bar Association during the 1995 Murrah Federal Building bombing. She led disaster relief efforts and was honored with the 1995 OBA Outstanding Service to the Public Award. Ms. Bates and her daughter founded the Ruth Bader Ginsburg American Inn of Court, and she served as its first president from 1995 until 1997. Under her continued leadership and guidance, the Ginsburg Inn was named the 2006 Outstanding Inn of Court in the nation. Memorial contributions may be made to St. Luke's United Methodist Church-OKC Foundation Fund.

**Chris H. Eulberg** of Meeker died Oct. 14. He was born Oct. 4, 1946, in Upland, California. Mr. Eulberg was raised on a farm in Grant County and graduated from Wakita High School. **He joined the U.S. Army and spent over a year in Korea.** He was then an Oklahoma City Police Officer for nine years. While working, he attended OSU and received his bachelor's degree and master's degree in criminal justice. Mr. Eulberg received his J.D. from the OCU School of Law in 1978 and focused primarily on criminal cases. He retired in 2013. Memorial contributions may be made to a charity that serves your local community.

**Robert W. Gaddis** of Tulsa died Aug. 19. He was born March 14, 1945, in Chicago. A founding partner of the Tulsa law firm of Barrow & Grimm PC, Mr. Gaddis practiced in the areas of taxation, finance, business transactions and health care law. He graduated from OU, received his J.D. from the OU College of Law in 1972 and attended Southern Methodist University, where he earned an LLM in taxation in 1973. He was active in the Tulsa County Bar Association in the 80s and 90s, serving three years on the Board of Directors and two years as chairman of the Professional Responsibility Committee.

**Robert Hamilton Gilliland Jr.** of Oklahoma City died Feb. 24. He was born May 12, 1941. In 1959, Mr. Gilliland attended Texas Christian University. **Following graduation, he received his commission as a second lieutenant in the U.S. Army.** He received

his J.D. from the OU College of Law in 1966, where he served on the *Oklahoma Law Review* Board of Editors. **He served as a captain in the U.S. Army Judge Advocate General's Corps and was later deployed to the Republic of Vietnam, where he was awarded numerous citations, including the Bronze Star for his meritorious achievement against hostile forces. He completed his military service at Fort Sill as a prosecutor.** Mr. Gilliland joined the law firm of McAfee & Taft in 1973 and quickly became one of Oklahoma's leading litigation attorneys. In 2013, he was appointed by Gov. Mary Fallin to the Oklahoma Workers' Compensation Commission, where he served as a commissioner and chairman. He was appointed by Gov. Kevin Stitt in 2019 to serve on the Oklahoma Pardon and Parole Board and was later elected chairman. Memorial contributions may be made to Central Oklahoma Habitat for Humanity.

**Andrea Poteet Johnson** of Del City died Oct. 17. She was born Nov. 18, 1964, in Oklahoma City. Ms. Johnson earned her bachelor's degree in American studies in 1987 from Oklahoma Christian College. In 1991, she received her J.D. from the OU College of Law. During law school, she was an intern at the Oklahoma County District Attorney's office, and after passing her bar exam, she became a prosecutor. Her legal career took her through the Oklahoma Attorney General's Office, where she wrote appellate briefs on behalf of the state of Oklahoma, as well as through the Oklahoma Corporation Commission, where she participated in the regulation



of oil and natural gas transmission and public utility rate increases. She also taught as an adjunct professor at Oklahoma Christian University and in the paralegal program at Rose State College. Ms. Johnson was awarded the Excellence in Teaching Award by her students.

**J**udge Joseph W. Morris of Tulsa died Nov. 11. He was born April 28, 1922, on a farm in Rice County, Kansas. **After receiving his bachelor's degree from Washburn University, Judge Morris entered the U.S. Navy during World War II. He attended officer's training school at Ft. Schuyler, New York, and was commissioned an ensign. He was then assigned to serve on the staff of Admiral O.C. Badger in Honolulu.** He received his J.D. from the Washburn University School of Law in 1947 and his LLM and SJD from the University of Michigan Law School. Judge Morris began his legal career at Shell Oil Company, where he worked in Tulsa and New York City for 12 years. In 1972, he was named dean of the TU College of Law, and two years later, he was appointed U.S. district judge for the Eastern District of Oklahoma. He served as judge and chief judge until being named vice president and general counsel of Shell in 1978. Following his retirement, Judge Morris became a shareholder and member of the GableGotwals board, where he served until his death. Memorial contributions may be made to the TU College of Law or Washburn University Foundation.

**R**onald G. Raynolds of Tulsa died Sept. 26. He was born Sept. 25, 1938, in Tulsa. After graduating from high school as a National Merit Scholar, he enrolled in Harvard College, pursuing bachelor's degrees in political science and government. Mr. Raynolds received his J.D. from the TU College of Law, where he was president of Phi Alpha Delta and was named outstanding law student. He then entered into private practice with his father, establishing Raynolds and Raynolds in 1963. He later became a partner at the law firm of Moyers, Martin, Conway, Santee, Imel and Tetrick. Upon retiring, Mr. Raynolds embarked on a second, uncompensated career with the Tulsa Psychiatric Center, a non-profit charity supporting Parkside Hospital and The Haven. He served as president of the center at the time of his death and was instrumental in the construction of the new Parkside Hospital. Memorial contributions may be made to The Haven or any charity of your choice.

**P**hilip W. Redwine of Oklahoma City died Oct. 17. He was born March 21, 1942, in Dewey. In 1968, he received his J.D. from the OU College of Law, where he was a member of Phi Alpha Delta and was named Distinguished Military Student and Graduate. **Mr. Redwine was commissioned a captain in the U.S. Army. He enrolled in the Judge Advocate General Corps School at the University of Virginia and was assigned to Ft. Ritchie, Maryland, as an assistant to the JAG officer. He was later named post JAG officer and was awarded the Army Commendation Medal for Meritorious Service.** Mr. Redwine then returned to

Norman in 1973 to begin his own law firm. He was a member of the Norman Rotary Club and served as director of the Norman Chamber of Commerce and president of the Norman Athletic Association. He was also selected by Gov. David Boren as a supernumerary Supreme Court judge to assist in the reduction of the Supreme Court's backlog of cases. Memorial contributions may be made to Oklahoma Baptist Homes for Children.

**M**ark Raymond Reents of Tulsa died Aug. 8. He was born July 16, 1953. Mr. Reents received his J.D. from the TU College of Law in 1978.

**K**ay E. Sheffield of Lancaster, California, died Oct. 9. She was born June 5, 1946. Ms. Sheffield received her J.D. from the OU College of Law in 2000.

**R**obert M. Vaughn Jr. of Oklahoma City died Aug. 4. He was born Jan. 27, 1947. Mr. Vaughn received his J.D. from the OCU School of Law in 1977.

**L**aurance Alan Yeagley of Tulsa died Oct. 26. He was born Nov. 18, 1944. Mr. Yeagley was awarded a full basketball scholarship to attend St. Joseph's College in Indiana, where he earned bachelor's degrees in philosophy and sociology. He received his J.D. from the TU College of Law in 1970 and joined the law firm of Houston, Davidson, Jacoby, Sonberg, Main and Nelson. He was appointed a municipal judge in 1973 and was instrumental in the success of Project Misdemeanor, a program that offered young people an opportunity for a more promising future. He counseled and befriended countless

young people and inspired them to redirect the course of their lives. In 1984, he retired from the bench and joined the law firm of Harrold, Gregg and Harrold, where he did legal work for International Chemical Company. He served as general counsel and subsequently vice president of Inter-Chem Inc. After a distinguished career of 31 years, he retired in 2007. Memorial contributions may be made to Friends of Catholic Education or Up With Trees.

**J**oseph Harrison Young of Oklahoma City died Oct. 6. He was born April 18, 1957, in Baltimore. Mr. Young earned his bachelor's degree in government at Dartmouth College. He worked from 1979 to 1981 as a reporter for two Vermont newspapers, covering the legislature and governor's office. In 1984, he received his J.D. from the University of Chicago Law School. He began his legal career as a clerk and then joined the Washington, D.C., law firm of Hogan and Hartson. He left private practice

in 1992 to become an assistant U.S. attorney for Maryland but returned four years later to represent corporate clients and serve as the coordinating partner for the office's pro bono and community service program. He later served as the deputy director of legal services for the Oklahoma Health Care Authority. In 2018, he became an administrative law judge for the health care authority, where he worked until shortly before his death. Memorial contributions may be made to the Oklahoma Innocence Project.

## Burck Bailey

*Aug. 22, 1934 – Nov. 18, 2021*

### OBA President 1988



Burck Bailey was born Aug. 22, 1934, in Vinita to Frank and Frances (Burckhalter) Bailey and died Nov. 18 at the age of 87. Upon graduation in 1952 from Vinita High School, where he was voted the outstanding member of the senior class, Burck was awarded the Oklahoma Honor Scholarship by Westminster College in Fulton, Missouri. After two years, he volunteered to serve in the U.S. Army. After completing two years of Army service stationed near Stuttgart, Germany, Burck returned to Westminster, and in the second semester of his junior year, he was selected to spend a semester at the American University in Washington, D.C. The experience fostered a lifelong interest in government and politics. Upon returning to Westminster, he served as president of his fraternity and graduated with honors in 1958.

Burck was one of 20 men in the United States who received a Root-Tilden Scholarship to the New York University School of Law, where he received his J.D. in 1961. He joined the Kansas City, Missouri, law firm of Morison, Hecker, Cozad, and he began his professional career as a trial lawyer. He then became an Oklahoma assistant attorney general. Three

years later, he joined the Oklahoma City law firm of Fellers, Snider, Blankenship, Bailey and Tippens and practiced as a trial lawyer until his retirement in 2006. In his legal career, Burck represented Oklahoma governors of both political parties as well as the Oklahoma Legislature in various high-profile cases, including the last impeachment to occur in Oklahoma. He was also one of the early inductees of the American Academy of Appellate Lawyers.

He served as the 1988 OBA president and president of the Oklahoma County Bar Association from 1983 until 1984. He also served as a member of the American Bar Association House of Delegates and received the OBA Professionalism Award in 1989. Burck was a Fellow of the American Bar Association, Oklahoma Bar Foundation and American College of Trial Lawyers, where he served as state chairman in 1993 and 1994. He was a Fellow of the International Academy of Trial Lawyers and served as state chairman of that organization as well. Later, Burck was elected by his fellow lawyers to the Oklahoma Judicial Nomination Commission and served as its chairman from 2002 to 2003.

After retiring, Burck and his wife, Sandra, moved to Santa Fe, New Mexico, where they were active in numerous civic organizations and enjoyed a wide circle of friends. They developed a close relationship with the New Mexico School of Law administration and endowed the Burck and Sandra Bailey Scholarship in Law for the benefit of Native American, African American and Hispanic students. He tutored Santa Fe public school students, climbed to the 20,000-foot summit of Mount Kilimanjaro at 60 years old and parachuted from an airplane on his 74th birthday. For many years, Burck was a weekend cowboy and participated in team roping contests in Oklahoma and surrounding states. He hiked, biked, and rode horses in the mountains of New Mexico well into his 80s.

Burck and Sandra led lives of love and devotion to one another. They loved to travel, the outdoors and creatures large and small. He is survived by Sandra, sons Blake and Aaron, daughter Kelli and six grandchildren. He is also survived by his sister, Kay Heiden, of McLean, Virginia.

Burck's unfailing spirit of optimism and goodwill would brighten even the darkest day. His intellect, energy, fair-mindedness, thoughtfulness and exuberant personality were greatly appreciated by his friends and colleagues. Burck was an esteemed teacher and mentor. His was a life well lived.

THE OKLAHOMA BAR  
**Journal  
Courts &  
MORE**



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## OFFICE SPACE

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

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## POSITIONS AVAILABLE

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

RESEARCH AND INSTRUCTIONAL SERVICES LIBRARIAN – The University of Oklahoma Law Library is looking for a Research and Instructional Services Librarian. If interested, you can view a job description and submit an application at: <https://jobs.ou.edu>. See – Staff Positions – Enter Job Number 213217. Applicants must submit an ONLINE application at [www.jobs.ou.edu](http://www.jobs.ou.edu) for the appropriate job requisition number. Computers and personal assistance are available at the Office of Human Resources, 905 Asp, Room 205, Norman, OK 73069. Include job requisition number on all correspondence. Deadlines subject to change with or without notice. For further information on this or other University of Oklahoma job opportunities, please call (405) 325-1826 or access our website at [www.hr.ou.edu](http://www.hr.ou.edu). The University of Oklahoma is an equal opportunity institution ([www.ou.edu/eoo](http://www.ou.edu/eoo)).

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](mailto:Info@TaxHelpOK.com).

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

## POSITIONS AVAILABLE

### Making a Difference

Full-time positions available and their locations:

- Medical Legal – Lawton, OKC (Oklahoma City County Health Dept.)
- Victims of Crime Act (VOCA) – Woodward, McAlester, Bartlesville/Pawhuska, Lawton
- INCA Tribe – Ardmore
- DHS – Tulsa
- Housing Discrimination – Tulsa
- Staff Attorney – Tulsa, Muskogee
- Eviction Prevention – Norman, Muskogee/Tahlequah, Hugo, Enid, Lawton, Weatherford, McAlester
- Department of Corrections – OKC
- Medicaid – OKC
- NHeLP/Robert Wood Johnson – OKC

Part-time positions available and their locations:

- South Tulsa Community House (STCH) - Tulsa
- The Education and Employment Ministry (TEEM) - OKC

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STEIDLEY & NEAL, PLLC, is searching for an associate attorney with 2-4 years' experience in Insurance Defense for its Tulsa office. Competitive salary and other benefits commensurate with level of experience. Looking for a motivated candidate interested in providing assistance to a partner. Applications will be kept in strict confidence. Send resume to Steidley & Neal, located in CityPlex Towers, 53rd Floor, 2448 E. 81st St., Tulsa, OK 74137, attention Dwain Witt, Legal Administrator.



## 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](mailto:heroes@okbar.org).

ESTABLISHED OKC CIVIL LITIGATION LAW FIRM seeks a litigation Legal Assistant or Paralegal with at least five (5) years of experience. Must be dependable, detail oriented, organized and experienced with identifying and docketing litigation deadlines. Firm offers a competitive salary and benefits package. Resumes should be sent to Cheek & Falcone PLLC, Attn: Angela Hladik, 6301 Waterford Blvd., Suite 320, Oklahoma City, OK 73118 or [ahladik@cheekfalcone.com](mailto:ahladik@cheekfalcone.com). All applications will remain confidential.

GROWING AND SUCCESSFUL NORMAN LAW FIRM with strong client base seeks an attorney with 3 to 7 years' experience. Practice is transactional and litigation, primarily in areas of real estate, business, construction, property, estate planning, and litigation. Salary based upon experience. Top 25% of law school class and member of preeminent Law Review highly preferred. Submission of Resume MUST also include Law School class rank and Law School transcript. Please email resume submissions to [jmoon@riegerllc.com](mailto:jmoon@riegerllc.com).

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

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

## POSITIONS AVAILABLE

THE OKLAHOMA OFFICE OF ATTORNEY GENERAL has multiple openings for Assistant Attorney General. Divisions with openings include Solicitor General, Criminal Appeals, Multi-County Grand Jury, Litigation, Utility Regulation and Legal Counsel. Qualified candidates must at least be a licensed attorney. Preference may be given to candidates with related experience. To apply, please send resume and a writing sample to [resumes@oag.ok.gov](mailto:resumes@oag.ok.gov) and indicate which particular position you are applying for in the subject line of the email. The Oklahoma Office of Attorney General is an equal opportunity employer. All individuals are welcome to seek employment with the Oklahoma Office of Attorney General regardless of race, sex, sexual orientation, gender identity, color, age, national origin, genetic information, religion, or disability, so long as the disability does not render the person unable to perform the essential functions of the position for which employed with or without a reasonable accommodation. All employees of the Oklahoma Office of Attorney General are "at will" employees.

ESTABLISHED OKC CIVIL LITIGATION LAW FIRM seeks an associate attorney with at least three (3) years civil litigation experience to assist with business transactions, employment law matters and litigation. Must be self-motivated, organized and able to handle caseload independently. Strong analytical writing and oral advocacy skills are required. Firm offers a competitive salary and benefits package. Resumes should be sent to Cheek & Falcone PLLC, Attn: Angela Hladik, 6301 Waterford Blvd., Suite 320, Oklahoma City, OK 73118 or [ahladik@cheekfalcone.com](mailto:ahladik@cheekfalcone.com). All applications will remain confidential.

ESTABLISHED OKC CIVIL LITIGATION LAW FIRM seeks an Of Counsel or office share arrangement with an attorney or attorneys with a minimum of 5 years of experience. The firm's current practice concentrates primarily on general and business litigation and real estate. Resumes should be sent to Cheek & Falcone PLLC, Attn: Angela Hladik, 6301 Waterford Blvd., Suite 320, Oklahoma City, OK 73118 or [ahladik@cheekfalcone.com](mailto:ahladik@cheekfalcone.com). All applications will remain confidential.

## POSITIONS AVAILABLE

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AS A RESULT OF A RECENT SIGNIFICANT HEARING LOSS, I am seeking an Associate to assist in my practice. I am a sole practitioner litigator in Shawnee, Oklahoma, owning my office, practicing in Family Law, Probate, Estate Planning, Civil litigation, and some Criminal cases. I have been in the same location since 1985. I am seeking a litigator with a couple years' experience interested in assisting with my current cases and taking on new cases. Arrangements are open for discussion with hope for long term. Replies are confidential. Please send a resume or letter of interest. [attorneysutton@yahoo.com](mailto:attorneysutton@yahoo.com).

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

# PARALEGAL

## Essential Functions and Responsibilities

- Review, draft and manage requests, responses, agreements, and correspondence under the supervision of the assigned attorney.
- Work with counsel to develop, implement and maintain department processes.
- Create and maintain internal document management applications, run searches on internal and external document databases and systems, cull relevant information from a variety of online and other resources such as newspapers, magazines, libraries, case documents, and trade associations.
- Assist in investigations, coordinate with investigators, interview clients, employees, or witnesses, conduct public records searches, and review and summarize records for attorney review.
- Collect, analyze, organize and maintain information, documents, and electronically stored information.
- Take initiative and apply critical reading, writing, research, and analytical skills to manage multiple priorities for both collaborative and independent tasks.
- Organize and prioritize numerous tasks and complete them under time constraints.
- Build effective working relationships with clients and colleagues at all levels of the organization to ensure the efficient and cost-effective provision of legal services.
- Maintain a professional demeanor to be able to communicate with all levels of management, clients, attorneys, and staff as well as, at times, patients and their families.
- Perform other functions and responsibilities as assigned by the legal department.

**Job Summary:** This position reports to the Associate General Counsel and also supports the Senior Vice President, General Counsel with all aspects of a full-service legal department and all of the Health Care System's affiliated companies and operations. The overall objective will be to enable the Legal Services Department to promptly and effectively provide or arrange for the provision of legal services. The position will include, managing the organization's contract management processes, preparing contracts based on approved templates, preparing correspondence, coordinating the submission of regulatory agency communication, managing the operations of the Legal Services Department, assisting with and performing some secretarial work, and reviewing and coordinating responses to internal and external requests for information.

**Education:** Associate's Degree in paralegal studies.

**Licensure, Registration, and/or Certification:** Paralegal Oklahoma certification preferred.

**Work Experience:** 5 to 7 years of related experience. Law Firm paralegal (transactional work preferred).

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### Assistant General Counsel

MidFirst Bank, one of the largest privately held financial institutions in the United States, is currently seeking a results oriented professional to join our Legal team. The responsibilities of this position will include advising company's management on a wide array of issues including: human resources, intellectual property, bank operations, deposits, trusts and corporate law; bank regulatory and compliance matters; litigation including oversight of external counsel; reviewing and drafting complex documents including banking forms and agreements and general contracts. This position will also work with other corporate attorneys in all divisions of the Company including retail banking, mortgage servicing and real estate.

The qualified candidate will possess a law degree and must have 1-3 years of legal experience in either banking or general corporate law with a law firm or financial institution. Candidate must be licensed in Oklahoma or be willing to pursue same immediately. The successful candidate will have excellent academic credentials, strong drafting, negotiation and oral communication skills and must possess the ability to manage large numbers of projects simultaneously in a variety of legal areas. The candidate must be able to work under pressure and have good judgment and the ability to identify potential legal issues. Good writing, research and communication skills are required.

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GableGotwals® is a full-service law firm of approximately 100 attorneys representing a diversified client base across the nation. Though Oklahoma-based, our connections and reach are global. Fortune 500 corporations, entrepreneurs, privately-owned companies, foundations, and individuals entrust us every day with the stewardship and strategic management of their legal challenges. GableGotwals is well known for its high-quality legal services provided by a highly experienced group of litigators and transactional attorneys who have been recognized by Benchmark Litigation, Chambers USA, Best Lawyers In America, Oklahoma Super Lawyers, and a number of federal, state, and county bar associations.

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*A festive winter scene: holiday decorations illuminate Boston Avenue in downtown Tulsa. Photographer: OBA member Lynn R. Anderson, who practices in Tulsa.*

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



## DAY ONE: MCLE 6/1

### TOPICS INCLUDE:

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

## DAY TWO: MCLE 6/1

### TOPICS INCLUDE:

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

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## PROPOSED SCHEDULE

<b>January</b>	Orientation and Welcome Dinner	<b>July</b>	Team Practice: Direct Examination
<b>February</b>	Voir Dire Clinic*	<b>August</b>	Cross Examination Clinic*
<b>March</b>	Team Practice: Voir Dire†	<b>September</b>	Team Practice: Cross Examination†
<b>April</b>	Opening Statement Clinic*	<b>October</b>	Expert Witness Clinic*
<b>May</b>	Team Practice: Opening Statement†	<b>November</b>	Mock Trials
<b>June</b>	Direct Examination Clinic*		

\*Clinics will be held in OKC and the †teams will practice in OKC and Tulsa

visit [okforjustice.org](http://okforjustice.org) for more information  
email [oajmentor@gmail.com](mailto:oajmentor@gmail.com) to sign up