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THE OKLAHOMA BAR Journal

Volume 93 — No. 3 — March 2022

Impact of *McGirt v. Oklahoma*

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Historical map of Oklahoma & Indian Territories courtesy of the Oklahoma History Center.

Cover photo by Lori Rasmussen.

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Once in a Lifetime

By Jim Hicks

IN JULY 2020, THE U.S. SUPREME COURT RULED 5-4 that Congress never disestablished the reservation status of the Creek Nation. The case revolved around Jimcy McGirt and resulted in the determination that state courts had no jurisdiction to try him for a crime, as defined under the Major Crimes Act, committed on a reservation. The unfolding practical applications of this historic ruling are expanding exponentially in the state, federal and tribal court systems. This issue of the *Oklahoma Bar Journal* is dedicated to the impact of the *McGirt v. Oklahoma* decision.

I recently read an interesting article by Marc Cenedella arguing that American crises come every 80 years.

The Revolutionary War, the Civil War, World War II and the pandemic are approximately 80 years apart, the lifespan of a human being and the limit of personal memory and experience. Mr. Cenedella argues that each crisis changed our economy and society in deep and fundamental ways. Each was caused by our nation's changing position in the world and contradictions between our long-standing values and emerging facts. The results of each were fundamental changes in our economy, our way of life and our place among the nations of the world.

In 1781, the surrender of Lord Cornwallis to General George Washington at Yorktown, Virginia, ended the Revolutionary War and led to the establishment of an independent nation free from the subjugation of Great Britain. In 1861, the Civil War resulted from a nation

divided by the Declaration of Independence's promise that "all men are created equal" and the Constitution's compromise on the horrific reality of slavery. The result was the emanci-

pation of millions of individuals formerly held in bondage. In 1941, the global conflict of World War II resulted in the emergence of the United States as the preeminent superpower in the world. Each crisis and its resulting effects

changed the lives of so many in profound and unforeseen ways.

In 2021, we again faced a national crisis due to the continuing worldwide COVID-19 pandemic. In Oklahoma, state courts have increasingly switched to videoconferencing in place of in-person court appearances. The federal courts have been swamped with criminal matters previously handled in the state courts. The tribal courts have expanded to handle the wave of new cases. Given these historic changes, every attorney should read this month's Access to Justice article "COVID-19 and Omicron Won't Stop Access to the Courts," authored by Judge Thad Balkman and Judge Richard Ogden on page 34. With the far-reaching implications of the *McGirt* decision and the unprecedented changes to the practice of law arising out of the exigent circumstances of the pandemic, we have become a new association, a different society and an altered people. These events are arguably "once in a lifetime" circumstances, and our profession has risen to the changing tide of values and facts.

I recently read an interesting article by Marc Cenedella arguing that American crises come every 80 years.



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McGirt v. Oklahoma: A Primer

By Conor P. Cleary

IN *MCGIRT V. OKLAHOMA*, THE U.S. SUPREME COURT concluded that the reservation of the Muscogee (Creek) Nation has never been disestablished and remains in existence. The court's holding has been extended to affirm the reservations of the Cherokee, Chickasaw, Choctaw and Seminole nations as well.¹ As a result, the state of Oklahoma does not have jurisdiction to prosecute crimes committed by Indians within the exterior boundaries of these reservations. Instead, such crimes must now be prosecuted in either federal or tribal court depending on the nature of the offense.

This article briefly summarizes the *McGirt* decision and is intended to provide helpful context for the other articles in this issue that discuss the meaning and impact of *McGirt*.² It begins with a historical overview of the Five Tribes of Oklahoma, allotment of their tribal lands and Oklahoma statehood. It then summarizes criminal jurisdiction in Indian country as well as the Supreme Court's reservation disestablishment jurisprudence. Finally, it analyzes the court's majority opinion in *McGirt*, highlighting the key arguments central to the court's ultimate holding.

A BRIEF HISTORY OF THE FIVE TRIBES, ALLOTMENT AND OKLAHOMA STATEHOOD

The Five Tribes of Oklahoma – the Cherokee, Chickasaw, Choctaw, Muscogee (Creek) and Seminole nations – historically resided in the southeastern United States. In the 1830s, they were forced to leave their homelands and journey on the Trail of Tears to the Indian Territory in present-day Oklahoma.³ Each tribe executed

various treaties with the federal government that guaranteed lands in the Indian Territory for use as a permanent homeland. The Creek Nation's treaties, for example, "solemnly guarantied" the land to "secure a country and permanent home to the whole Creek Nation of Indians."⁴ As part of these treaty promises, the tribes each received a fee patent to their lands.⁵ After the Civil War, each of the Five Tribes executed a treaty with the United States that reduced their territories but preserved reservations for them.⁶

In the 1880s, the federal Indian policy of the United States changed from one granting tribes separate reservations to one of assimilation. The principal tool of the federal government was the policy of allotment whereby the collective and communal landholdings of the tribes were broken up, and individual tribal members received separate parcels of land.⁷ Although the Five Tribes were exempted from the first general allotment statute,⁸ within a few years, demographic and economic pressures⁹ in

the Indian Territory led Congress to apply the allotment policy to the lands of the Five Tribes. Congress created the Dawes Commission in 1893,¹⁰ and in 1898, it passed the Curtis Act, which abolished the tribal courts and threatened the forcible allotment of tribal lands.¹¹ To avoid the harshest effects of allotment provided for in the Curtis Act, each tribe negotiated an allotment agreement with the Dawes Commission. The commission created rolls of tribal citizens¹² and proceeded to give each citizen an allotment of tribal lands pursuant to the terms of each tribe's allotment agreement.¹³

In 1906, after most of the allotments had been completed, Congress passed the Five Tribes Act that provided for the final disposition of tribal affairs.¹⁴ It abolished all tribal taxes, closed tribal schools and directed the secretary of the Interior to distribute the tribes' remaining monies to tribal members on a per capita basis.¹⁵ Importantly, however, the Five Tribes Act did not terminate the tribes' existence or governments

but expressly preserved and continued them “in full force and effect for all purposes authorized by law.”¹⁶ The next year, in 1907, Oklahoma was admitted to the Union as the 46th state.

CRIMINAL JURISDICTION IN INDIAN COUNTRY AND THE SUPREME COURT’S DISESTABLISHMENT JURISPRUDENCE

Under the Major Crimes Act, the federal government has jurisdiction exclusive of the states to prosecute a series of enumerated “major” crimes committed by Indians within “the Indian country.”¹⁷ As the statute’s terms make clear, a threshold question that must be answered is whether the crime occurred in “Indian country.” If the location of the major crime is within Indian country, prosecution must occur in federal court.¹⁸ But if an Indian commits a major crime outside Indian country, the state will have jurisdiction.¹⁹

Indian country is a statutory term defined in 18 U.S.C. §1151 as 1) all land within Indian reservations, 2) dependent Indian communities or 3) Indian allotments.²⁰ In determining whether the federal or state government has jurisdiction to prosecute a major crime committed by an Indian, courts must often determine whether the situs of the crime is located within one of the three categories of Indian country.

A common argument made by those resisting federal criminal jurisdiction is that the crime did not occur in Indian country because the Indian reservation has been disestablished. Congress has the power to remove land from Indian country, but its intent to do so must be clearly expressed.²¹ When a court examines whether a statute disestablished a reservation, it considers three factors.²² Most

important is the text of the statute at issue. Congress does not have to use magic words to disestablish a reservation, but it must “clearly express its intent to do so, commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests.”²³ Second, courts may consider the circumstances surrounding the passage of the statute at issue and the contemporaneous understandings of those at the time.²⁴ Finally, courts can examine subsequent developments, particularly demographic statistics in the area.²⁵ Importantly, though, the second and third factors should only be used to clarify the meaning of the statutory text, not as a substitute for it.²⁶

MCGIRT V. OKLAHOMA

Jimcy McGirt, a citizen of the Seminole Nation,²⁷ was charged and convicted in Oklahoma state court for the sexual abuse of a minor.²⁸ The crime occurred in Wagoner County, within the boundaries of the Muscogee

(Creek) Nation’s historic reservation. He challenged the state’s jurisdiction to prosecute him because he is an Indian, and his crime occurred in Indian country, specifically the Creek Nation’s Reservation. He argued, instead, that he should have been prosecuted in federal court pursuant to the Major Crimes Act. After the Oklahoma Court of Criminal Appeals affirmed his state court conviction, the Supreme Court granted *certiorari* and reversed.²⁹

“On the far end of the Trail of Tears was a promise” now famously began Justice Gorsuch’s majority opinion.³⁰ Emphasizing that the nation had been promised a reservation in a series of treaties with the United States, the court concluded that Congress had never clearly disestablished the reservation, and it remains in existence. As a result, McGirt’s crime occurred in Indian country, and the state of Oklahoma did not have jurisdiction to prosecute him.³¹ There are a few key arguments underlying the majority’s

Under the Major Crimes Act, the federal government has jurisdiction exclusive of the states to prosecute a series of enumerated “major” crimes committed by Indians within “the Indian country.”¹⁷ As the statute’s terms make clear, a threshold question that must be answered is whether the crime occurred in “Indian country.”

ultimate holding that the reader should appreciate.

First, the court concluded that the treaties between the nation and the United States granted the nation a reservation.³² Although some of the treaties did not expressly use the word “reservation” to describe the nation’s granted territory, the court concluded the language guaranteeing the nation a permanent homeland was sufficient to constitute a grant of a reservation.³³ By affirming that the Five Tribes were granted reservations, the court dispensed with conventional wisdom that “Oklahoma is different,” and tribes in Oklahoma, particularly the Five Tribes, never had reservations.³⁴

The court also rejected an argument advanced by the state that rather than having a reservation, the nation’s lands were instead a dependent Indian community, another category of Indian country enumerated in the statutory definition.³⁵ The state’s argument was premised on the fact that the Five Tribes had received fee patents to their lands rather than the traditional arrangement where the United States holds title to reservation lands in trust for the benefit of the Indian tribe.³⁶ The court found this argument unpersuasive for two reasons. One, the court reasoned that the nation’s fee title to its lands, if anything, strengthened its claim to a reservation.³⁷ It would be a perverse result if the Five Tribes’ fee title to their lands somehow resulted in less protection. Two, because dependent Indian communities are also Indian country, it was unclear what Oklahoma would gain by demonstrating that the nation’s lands were dependent Indian communities instead of reservations. The subtext of the state’s argument seemed to be that dependent Indian communities are easier to

disestablish than reservations, a proposition the court rejected.³⁸

Second, the court refined its disestablishment analysis, singularly focusing on whether any statutory text clearly expressed an intent to disestablish the reservation.³⁹ Rather than being a discrete, three-part analysis, the court reasoned that because only Congress may disestablish a reservation, examination of the statutory text was the only “step.”⁴⁰ To be sure, the court noted it could “consult contemporaneous usages, customs, and practices” but only if the statute is ambiguous.⁴¹ The court emphasized, however, it could not “favor contemporaneous or later practices *instead of* the laws Congress passed.”⁴²

Although there was no single statute the state of Oklahoma could point to disestablishing the reservation, it argued that a series of statutes that eroded tribal sovereignty and institutions in effect resulted in disestablishment.⁴³ Similarly, Chief Justice Roberts’s dissent argued the majority failed to appreciate that the court’s disestablishment inquiry is a “highly contextual” one that considers not just the relevant acts passed by Congress but “the contemporaneous understanding of those Acts as well as the subsequent understanding of the status of the reservation and the pattern of settlement there.”⁴⁴ The majority was unpersuaded and rejected the state and dissent’s evidence not as contextual but as “extratextual.”⁴⁵ Emphasizing that “Oklahoma does not point to any ambiguous language in any of the relevant statutes,” the majority concluded consideration of contemporaneous understandings and subsequent developments was improper.⁴⁶

Finally, the court found warnings of potential consequences of its decision unpersuasive. Principally, the court felt that “dire warnings are

just that, and not a license for us to disregard the law.”⁴⁷ It also pointed to compacts the state and tribes have previously entered addressing a variety of issues and emphasized that Congress is free to alter the allocation of criminal jurisdiction. The court did leave open the possibility of “reliance interests” and similar legal doctrines being a barrier to future assertions of federal or tribal jurisdiction but left those questions “for later proceedings crafted to account for them.”⁴⁸

CONCLUSION

In light of *McGirt* and its progeny, the state of Oklahoma lacks jurisdiction to prosecute crimes committed by Indians within the reservations of the Five Tribes. Major crimes committed by Indians must be prosecuted in federal court, while lower-level offenses committed by Indians will be prosecuted in tribal court.

Author’s Note: The views expressed are those of Mr. Cleary and do not necessarily represent the views of the Department of the Interior or the United States government.

ABOUT THE AUTHOR



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ENDNOTES

1. See *Hogner v. State*, __ P.3d __, 2021 WL 58412 (Mar. 11, 2021) (Cherokee Reservation); *Bosse v. State*, __ P.3d __, 2021 WL 4704316 (Okla. Crim. App. Oct. 7, 2021) (Chickasaw Reservation); *Sizemore v. State*, 485 P.3d 867 (Okla. Crim. App. 2021) (Choctaw Reservation); *Grayson v. State*, 485 P.3d 250 (Okla. Crim. App. 2021) (Seminole Nation); The Muscogee (Creek) Nation, Cherokee Nation, Chickasaw Nation, Choctaw Nation and Seminole Nation are often referred to as the Five Civilized Tribes. This article will refer to them as the Five Tribes.

2. The opinions about the meaning and impact of *McGirt* expressed in other articles in this issue do not necessarily represent the views of the Department of the Interior or the United States Government.

3. See *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020).

4. Treaty With the Creeks, Art. XIV, Mar. 24, 1832, 7 Stat. 366, 368; Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418.

5. *McGirt*, 140 S. Ct. at 2463.

6. See, e.g., Treaty with Choctaw and Chickasaw, Apr. 28, 1866, 14 Stat. 769; Treaty with the Creek Indians, Jun. 14, 1866, 14 Stat. 785.

7. *McGirt*, 140 S. Ct. at 2463.

8. The first general allotment statute was the General Allotment Act (sometimes known as the Dawes Act) in 1887. See 24 Stat. 388. The exception of the Five Tribes from the General Allotment Act stemmed from a belief that because the tribes owned their lands in fee, the federal government did not have the power to forcibly allot their lands. See *McGirt*, 140 S. Ct. at 2463.

9. In 1887, for example, a report from the commissioner of Indian Affairs estimated the population of the Indian Territory was approximately 100,000, two-thirds of who were Indian. Just three years later, the proportions had reversed, and the same report estimated the population of Indian Territory to be over 200,000, two-thirds of who were white. These demographic changes were precipitated by rapid economic and industrial developments – principally, the construction of railroads and the discovery of coal – that attracted whites to the Indian Territory. See H. Craig Miner, *The Corporation and the Indian* (1989).

10. See Act of March 3, 1893, chap. 209, §16, 27 Stat. 612, 645.

11. Ch. 517, 30 Stat. 495 (June 28, 1898).

12. There were separate roles for Indians by blood, intermarried white citizens and freedmen (descendants of African Americans enslaved by the tribes).

13. See, e.g., Cherokee Allotment Agreement, chap. 1375, 32 Stat. 716 (July 1, 1902); Seminole Allotment Agreement, ch. 542, 30 Stat. 567 (July 1, 1898).

14. Five Tribes Act, chap. 1876, 34 Stat. 137 (April 26, 1906).

15. *Id.*, §11, 17, 34 Stat. at 141, 143-44.

16. *Id.*, §28, 34 Stat. at 148.

17. See 18 U.S.C. §1153. The Major Crimes Act applies only where the alleged perpetrator of the major crime is Indian. But it is not the only statute pertaining to criminal jurisdiction in Indian country. Jurisdiction to prosecute non-major crimes committed by Indians, for example, as well as crimes committed by non-Indians against Indian victims is addressed by other statutes. See, e.g., Indian Country Crimes Act, 18 U.S.C. §1152. On the other hand, states have jurisdiction to prosecute crimes committed by non-Indians against non-Indians, including in Indian country. See *U.S. v. McBratney*, 104 U.S. 621, 624 (1882). The court also recently granted a petition for a writ of *certiorari* to consider whether states have jurisdiction to prosecute non-Indians for crimes committed against Indians within Indian country. See *Oklahoma v. Castro-Huerta*, cert. granted, No. 21-429 (Jan. 21, 2022). Determining whether the federal, state or tribal government has jurisdiction in any given case is a complicated inquiry that depends on the identities of the perpetrator and victim and the nature of the offense. A complete discussion of criminal jurisdiction in Indian country is beyond the scope of this article. For a summary of the allocation of criminal jurisdiction in Indian country, the U.S.

Department of Justice has assembled a helpful chart. See <https://bit.ly/3gYlx9e> (last accessed Oct. 27, 2021).

18. One exception to this rule is in so-called “Public Law 280” states where a federal statute has given certain states jurisdiction over crimes committed by or against Indians within Indian country. See 18 U.S.C. §1162. Oklahoma is not a Public Law 280 state. Additionally, although this article characterizes federal jurisdiction under the Major Crimes Act as exclusive, the Supreme Court has not definitively decided whether tribes have concurrent jurisdiction to prosecute the Indian offender. See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 203 n.14 (1978). In practice, however, prosecutions under the Major Crimes Act almost exclusively occur in federal court because the Indian Civil Rights Act limits the power of tribal courts to sentence offenders to no more than three years imprisonment per offense and in no event more than nine years total. See 25 U.S.C. §1302(a)(7)(C)-(D).

19. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973). This principle is not limited only to major crimes. States have exclusive jurisdiction over crimes committed by or against Indians outside of Indian country unless there is some other basis for federal jurisdiction, such as a statute making the conduct at issue a federal crime.

20. The complete definition of Indian country is “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. §1151(a)-(c).

21. See *McGirt*, 140 S. Ct. at 2463.

22. See *Solem v. Bartlett*, 465 U.S. 463, 470-72 (1984).

23. *McGirt*, 140 S. Ct. at 2463 (cleaned up).

24. *Id.* at 2468.

25. *Id.*

26. *Id.* at 2468-69.

27. *Id.* at 2459. Although *McGirt* was not a member of the tribe on whose reservation he committed his crime, that factor is irrelevant. Under the Major Crimes Act, the federal government has criminal jurisdiction over any Indian committing a major crime within Indian country. For non-major crimes committed by Indians within Indian country, the tribal court will most often have jurisdiction. Although the U.S. Supreme Court initially ruled that tribal courts do not have jurisdiction over nonmember Indians, *Duro v. Reina*, 495 U.S. 676, 679 (1990), Congress overruled that holding via an amendment to the Indian Civil Rights Act, and the court subsequently upheld Congress’ power to restore tribal courts’ power to adjudicate crimes committed by tribal members and nonmembers alike. See *U.S. v. Lara*, 541 U.S. 193, 210 (2004).

28. *McGirt*, 140 S. Ct. at 2459.

29. *Id.* at 2459-60, 2482. In an earlier case, the 10th Circuit Court of Appeals ruled the Muscogee (Creek) Reservation had never been disestablished. *Murphy v. Royal*, 875 F.3d 896, 907-909, 966 (2017). The Supreme Court originally granted *certiorari* to review the 10th Circuit’s decision. However, Justice Gorsuch was recused from that case, and the court was unable to reach a decision, likely because it deadlocked 4-4. After the Oklahoma Court of

Criminal Appeals’ decision in *McGirt*’s appeal, the Supreme Court again granted *certiorari* to resolve the contrary results reached by the 10th Circuit and Oklahoma court.

30. *Id.* at 2459.

31. *McGirt* was subsequently prosecuted and convicted in federal court and sentenced to life in prison.

32. *Id.* at 2460, “Start with what should be obvious: Congress established a reservation for the Creeks.”

33. *Id.* at 2461, “These early treaties did not refer to the Creek lands as a ‘reservation’ ... [b]ut we have found similar language in treaties from the same era sufficient to create a reservation.” (citation omitted).

34. None other than the great Indian law historian Father Francis Paul Prucha declared “[t]here are no Indian reservations in Oklahoma” and “the reservation experience that was fundamental for most Indian groups in the twentieth century was not part of Oklahoma Indian history.” Prucha, *The Great Father* 262 (abridged ed., 1986).

35. *McGirt*, 140 S. Ct. at 2474. Although the United States also argued the Muscogee (Creek) Reservation had been disestablished, it did not endorse the state’s argument that the Creek Nation lands were a dependent Indian community rather than a reservation. See *id.*, “The Solicitor General, who supports Oklahoma’s disestablishment argument, refuses to endorse this alternative effort.”

36. *Id.* at 2475.

37. *Id.*

38. *Id.* at 2474.

39. *Id.* at 2468. Also underscoring the need for a clear expression of congressional intent was the fact that the reservations were guaranteed by treaty. See *id.* at 2473 n.14 (characterizing extratextual evidence as “thin gruel to set against treaty promises”).

40. *Id.*

41. *Id.*

42. *Id.* (emphasis in original).

43. *Id.* at 2465-68. Typically, the court examines a single statute’s text and determines whether the statute disestablished the reservation. Statutes disestablishing a reservation must use unequivocal language. For example, a statute whereby a tribe agrees to “cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation” is sufficient to disestablish a reservation. See *DeCoteau v. District Court*, 420 U.S. 425, 439 n.22 (1975) (also collecting examples of other statutes). In *McGirt*, the state argued that multiple statutes in their totality resulted in disestablishment.

44. *Id.* at 2485 (Roberts, C.J., dissenting).

45. *Id.* at 2469.

46. *Id.* at 2468; see also *id.* at 2469, “To avoid further confusion, we restate the point. There is no need to consult extratextual sources when the meaning of a statute’s terms is clear. Nor may extratextual sources overcome those terms.”

47. *Id.* at 2481.

48. *Id.*

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Oklahoma Cities and Towns in Indian Country are not Immune From the U.S. Supreme Court's Holding in *McGirt*

By Chrissi Ross Nimmo

SINCE THE UNITED STATES SUPREME COURT'S decision in *McGirt*¹ that the state of Oklahoma lacks jurisdiction over crimes committed by or against Indians² in Indian country, several towns and cities have taken the position they still have jurisdiction over such crimes under the Curtis Act,³ a federal law passed in 1898 to facilitate the transition of the Oklahoma and Indian territories to statehood. As will be discussed below, the position taken by these municipalities is not only contrary to arguments made by the state of Oklahoma and the city of Tulsa in *McGirt*⁴ but is also based on a fundamental misunderstanding of the purpose and history of the Curtis Act.

THE IMPACT OF *MCGIRT* AND ITS PROGENY ON CRIMINAL JURISDICTION IN OKLAHOMA

When the United States Supreme Court issued its opinion in *McGirt v. Oklahoma*,⁵ most attorneys following the case generally understood it to mean that the state of Oklahoma lacks criminal jurisdiction over crimes committed by Indians on the Muscogee (Creek) Reservation. While it is true the decision specifically addressed sexual abuse of a minor child under the Major Crimes Act⁶ (which establishes exclusive federal jurisdiction over certain listed major crimes committed by Indians against Indians or non-Indians), attorneys with a basic understanding of criminal jurisdiction in Indian country

knew the decision in *McGirt* would have a broader impact: The state of Oklahoma lacks criminal jurisdiction over all crimes committed by or against Indians in the Muscogee (Creek) Reservation.⁷ They also understood the *McGirt* analysis would inevitably lead to the same outcome regarding the other four of the "Five Civilized Tribes" (Five Tribes).⁸

That was the eventual outcome. Months after the *McGirt* decision and following several remands for evidentiary hearings to determine individual Indian status, location of the crime and reservation disestablishment, the Oklahoma Court of Criminal Appeals (OCCA) extended the reasoning in *McGirt* and held that

the Cherokee Nation, Chickasaw Nation, Choctaw Nation and Seminole Nation had pre-statehood reservations that Congress had never diminished or disestablished.⁹ This meant the reservations of all Five Tribes, including fee lands therein, were "Indian country" for the purpose of criminal jurisdiction. Additionally, the OCCA issued opinions that held, as many predicted, that under the General Crimes Act,¹⁰ the state of Oklahoma also lacks criminal jurisdiction over all crimes in Indian country when committed by non-Indians against Indians or by Indians against non-Indians. The result of these decisions is that the state of Oklahoma lacks criminal jurisdiction over all



crimes committed by or against Indians on the reservations of the Five Tribes.¹¹ The state continues to exercise jurisdiction over offenses by non-Indians against non-Indians in Indian country.

Following the *McGirt* decision and its progeny from the OCCA, the Five Tribes began exercising criminal jurisdiction over crimes by Indians (and in certain limited circumstances, by non-Indians against Indians when authorized by federal law) across their reservations. To date, the Five Tribes combined have filed in excess of 10,000 criminal cases. Additionally, federal prosecutions of crimes committed by or against Indians on the tribes' reservations have increased significantly post-*McGirt*, consistent with the federal government's responsibility to address these crimes.¹²

The work the tribes did to expand their criminal justice systems has been widely covered in the media.¹³ Tribal police forces, prosecutors' offices, courts and

juvenile justice programs have grown at an exponential pace. The Cherokee Nation went from filing less than 100 criminal cases a year pre-*McGirt*, to almost 3,000 cases in the nine months following its reservation decision in the *Hogner* case. The Cherokee Nation Office of the Attorney General has gone from one full-time prosecutor to eight, and it is still expanding.

The changes following *McGirt* were many, but one that likely had the most notable impact on Indians within the reservations of the Five Tribes was the effect the decision had on simple traffic citations. After *McGirt*, traffic citations issued to Indian defendants on the reservations of the Five Tribes by state officers (namely county sheriff deputies and the Oklahoma Highway Patrol) could, arguably, now only address violations of the law of the tribe on whose reservation the offense took place if the law enforcement agency has a cross-deputization agreement with the tribe allowing the state

officers to enforce tribal law.¹⁴ This is also true for traffic citations and misdemeanor ordinance violations issued by cities and towns, which are now also unenforceable against Indian defendants unless a city or town has entered into a cross-deputization agreement with the applicable tribe.

DESPITE THE HOLDING IN *MCGIRT*, SOME MUNICIPALITIES HAVE ASSERTED THEY HAVE JURISDICTION OVER CRIMES COMMITTED BY AND AGAINST INDIANS UNDER THE CURTIS ACT

The city of Tulsa and other municipalities have argued a cross-deputization agreement is not required to enforce criminal laws within municipalities (including some that already have cross-deputization agreements in place).¹⁵ Contrary to the position the city of Tulsa took in its amicus brief supporting Oklahoma in *McGirt*, Tulsa and other cities have

asserted they have jurisdiction over crimes committed by and against Indians in Indian country based on an archaic provision in §14 of the 1898 Curtis Act that states, “All inhabitants of such cities and towns [organized under authority of §14], *without regard to race*, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein.”¹⁶ Based on this provision, a few cities and towns located within the reservations of the Five Tribes have maintained the position that the municipality still has criminal jurisdiction over offenses committed by or against Indians.

On Feb. 2, 2021, a Tulsa municipal judge, without the benefit of any briefing by Oklahoma’s tribal nations, issued an order holding, “Section 14 of the Curtis Act provides the City of Tulsa subject matter jurisdiction over all persons, without regard to race, including Native Americans, alleged to have committed ordinance violations within the corporate city limits of the City of Tulsa and within the boundaries of the Muscogee (Creek) Nation Reservation.”¹⁷ In so holding, the municipal judge denied the defendant’s motion to dismiss a shoplifting charge for lack of subject matter jurisdiction.¹⁸ This decision was not appealed to the OCCA. The municipal judge found the state appellate court would not have jurisdiction and suggested the appeal rested in federal district court. It is unknown whether there are other pending cases raising similar jurisdictional arguments.¹⁹

Although the only known court cases to date raising this argument involve municipal offenses in the Muscogee (Creek) Reservation, the Cherokee Nation has prepared a response to the argument adopted by the Tulsa municipal judge,

including an emphasis on the history of the Curtis Act and the city of Tulsa, which is located in portions of the Muscogee (Creek) and Cherokee reservations. This detailed 20-page analysis is available on the Cherokee Nation’s website.²⁰

The arguments relied upon by municipalities and the Tulsa municipal judge rest on the assertion that Section 14 of the Curtis Act was neither expressly nor impliedly repealed and still controls in the reservations of the Five Tribes within the state of Oklahoma. It is widely accepted that the Curtis Act was meant to force the Five Tribes to agree to allotment. The cities’ position ignores this historical underpinning and rests on incorrect assumptions that 1) municipalities, as subdivisions of the state, can possess powers the state cannot, 2) all the criminal laws that applied to Indian Territory before statehood continue to apply within the state of Oklahoma and 3) despite statehood and the subsequent adoption of the Constitution and laws of Oklahoma, municipalities have retained powers greater than the state’s powers. Their position also ignores the fact that appeals from municipal courts go to state courts, either to the OCCA for courts of record, such as Tulsa, or to state district courts for all other municipalities.²¹ Stretched to its conclusion, these arguments may result in a situation where state court judges are asked to hear appeals in a criminal matter over which the state has no subject matter jurisdiction as determined by the *McGirt* and OCCA rulings over crimes committed by or against Indians in Indian country. This is an absurd conclusion that cannot be correct.

The Curtis Act was meant to be temporary federal legislation used as a stopgap until Oklahoma

Territory and Indian Territory were combined by Oklahoma statehood. The act provided provisional local law for towns that had been settled primarily by non-Indian settlers who did not own the land but had made improvements to it. The admission of the state of Oklahoma to the Union and the laws and Constitution of the state divested municipalities of any pre-statehood jurisdiction they may have had in their pre-statehood limited geographical jurisdiction. For example, the city of Tulsa had been incorporated by a federal court sitting in Vinita a few months before the Curtis Act was even passed. At that time, Tulsa was only a few blocks and did not even include any land within the Cherokee Nation.²² Additionally, because municipalities are creatures of state law, they can never possess powers, authority or jurisdiction the state does not. The city of Tulsa, as well as other former Indian Territory towns, are clearly subdivisions of the state. For instance, soon after statehood, Oklahoma’s first governor declared Tulsa to have “all the powers, duties, and privileges of a city of the first class *under the laws of the state of Oklahoma*.”²³ On July 3, 1908, Tulsa adopted a charter under provisions of the Oklahoma Constitution. Its charter was approved by Gov. C. N. Haskell on Jan. 5, 1909. Tulsa has been operating as a subdivision of the state ever since.

The Tulsa Municipal Court cited *City of Tacoma v. Taxpayers of Tacoma*²⁴ for the proposition that “the Supremacy Clause ... empowers Congress to grant powers and/or funds to municipalities, even when such a grant is contrary to the wishes of the state, who created the municipality.”²⁵ However, *Tacoma* involved a license granted to a municipality by Congress, contrary to a state’s

wishes and without its authorization. In the case of criminal jurisdiction over crimes by and against Indians in Indian country, we are talking about a power the state of Oklahoma does not possess and cannot grant to or withhold from its municipalities.

ALTERNATIVES AND COOPERATION

Although the issue of municipal jurisdiction will ultimately be decided by an appellate court sooner rather than later, a ruling that municipalities do not have criminal jurisdiction over offenses by or against Indians in Indian country will not leave towns and cities in eastern Oklahoma unprotected or unfunded.

Even before the *McGirt* decision, the Cherokee Nation had robust partnerships with local law enforcement, including dozens of cross-deputization agreements with state and local law enforcement agencies, partnerships for training and interdisciplinary teams and donations of hundreds of thousands of dollars to local law enforcement in both money and equipment. Additionally, for years,

the nation has maintained specialized police units, including SWAT, water dive and rescue teams, bomb squads, special operations and narcotics and has provided these services free of charge to local law enforcement for years.

Post *McGirt*, all the Five Tribes have sought various ways to work with state and local law enforcement to ensure all communities are safe. Probably the largest and most visible undertaking was the expansion of cross-deputization agreements.²⁶ These agreements allow tribal and state/local police to “wear whatever hat” is needed at the time of arrest, booking, investigations and other stages in the proceedings to ensure successful investigations, arrests and prosecutions by the proper jurisdiction. Absent these agreements, state/local police in Indian country do not have jurisdiction to arrest Indian suspects or non-Indian suspects whose victims are Indian. Likewise, tribes do not have jurisdiction to arrest and prosecute non-Indians, with the exception of the special domestic violence jurisdiction acknowledged by Congress in the Violence Against Women Act.²⁷ However,

when tribes and state or local entities enter cross-deputization agreements, each is empowered to enforce the other’s law when necessary. The Cherokee Nation has 90 such agreements, ranging from the largest city and county in its reservation (Tulsa), to some of the very smallest towns. As of the writing of this article, in addition to cross-deputization agreements with numerous state and county law enforcement agencies, the Cherokee Nation has cross-deputization agreements with 55 cities and towns within the Cherokee Reservation.²⁸ This means that in those towns and cities, both local and tribal law enforcement can respond to emergency calls, make arrests and investigate crimes.²⁹ Cross-deputization and law enforcement cooperation have been the norm for years in the Cherokee Nation; *McGirt* simply expanded the scope of those operations.

Soon after *McGirt*, the Cherokee Nation addressed concerns regarding potential lost revenue from municipal criminal fines that could impact many of the small towns the nation partners with for efficient community policing. Many small towns support their law enforcement with revenue from traffic and misdemeanor citations. The Cherokee Nation began to explore ways in which it could share traffic and misdemeanor citation fines with towns and cities. In May 2021, after discussions with several different towns and cities diverse in size, location and government structure, the Cherokee Nation Tribal Council approved a resolution³⁰ authorizing the nation to enter into municipal ticketing memorandums of agreement (MOAs) with towns and cities. These MOAs allow towns and cities to retain,



Although the Curtis Act argument and alternatively the cross-deputization agreements and MOAs are focused on addressing criminal jurisdiction, many questions remain regarding civil regulatory jurisdiction of municipalities on Indian reservations.

in the form of a donation from the Cherokee Nation, all fees and fines associated with citations issued pursuant to Cherokee Nation law, subject to a \$30 fee paid to the nation.³¹ On June 29, 2021, the Cherokee Nation and the town of Vian executed the first such MOA. Since then, 15 cities and towns have entered the agreements – the largest being the city of Owasso.³²

The MOAs allow local law enforcement officers who are commissioned by the Cherokee Nation Marshal Service under a cross-deputization agreement to issue a Cherokee Nation traffic or misdemeanor citation but use the municipal court location and date to process the ticket. Defendants can pay the citation as they normally would: online (if the town or city has that capacity), by phone or in person before or on their court date. The town or city can also arrange payment plans under a standing order from the Cherokee Nation District Court. Once the fine and fees are paid in full, the town or city forwards the citations, guilty plea document and fee to the nation. The town or city retains the remainder as a donation to their

general fund to use as their laws allow or require. The nation then opens a case in the defendant's name, and the nation's permanent records³³ reflect that the individual was cited, plead guilty (or no contest) to a violation of the nation's laws and paid a fee and fine to the nation. In the event a defendant wishes to challenge the citation, the town or city will refer the citation to the Cherokee Nation District Court for prosecution. This unique arrangement allows the nation to continue to rely on local police to ensure public safety throughout the reservation and allows towns and cities to avoid revenue interruptions. These MOAs are new and unique, and the nation and the towns and cities that have entered the MOAs continue to work through the practical matters and logistics associated with them. The MOAs are also a great example of collaboration and cooperation between the nation and the political subdivisions of the state.

Another area in which the nation is working with towns and cities is through detention agreements. The Cherokee Nation does not own or operate any adult or

juvenile detention facilities. The nation has contracted with several county jails and juvenile detention facilities for both pre-trial and post-conviction incarceration of the nation's arrestees and inmates. Recently, the nation has also partnered with towns and cities for detention agreements. To date, the nation has entered detention agreements with the city of Tahlequah and the town of Muldrow. These agreements allow the town or city to house individuals who are being held on the nation's charges or have been convicted and sentenced to incarceration in the nation's courts. In exchange, the nation pays a daily rate per detainee to the town or city. These agreements allow the towns and cities to use underutilized bed space, raise revenue and allow the nation to safely house detainees without the need to build additional jails.

WHAT DOES THE FUTURE HOLD?

Although the Curtis Act argument and alternatively the cross-deputization agreements and MOAs are focused on addressing criminal jurisdiction, many questions remain regarding civil regulatory jurisdiction of municipalities on Indian reservations. The nation has received inquiries from municipalities with questions about taxes, dog ordinances, fire codes, nuisance and abatement, vagrancy, building codes, etc. While some of these questions may have easy answers, others are more complicated. However, as shown by the cross-deputization agreements and the municipal ticketing MOAs, if towns and cities within the Cherokee Nation are willing to come to the table and have a discussion, there are not many problems that cannot be solved together.

ABOUT THE AUTHOR



Chrissi Ross Nimmo is a citizen of and deputy attorney general for the Cherokee Nation. She has practiced with the nation for 13 years and supervises a staff of 15 attorneys. She resides in Tahlequah on the Cherokee Nation Reservation with her husband, Jim, seven-year-old twins, Mattie and James, and four-year-old Emmy.

ENDNOTES

1. *McGirt v. Oklahoma*, 140 S. Ct. 2452.
2. There is not a statutory definition of "Indian" in the federal statutes addressing Indian country criminal jurisdiction, but the leading test, recently reaffirmed by the Oklahoma Court of Criminal Appeals in *Parker v. State* 2021 OK CR 17, is that the individual must have "some Indian blood" and be "recognized as an Indian by a tribe or the federal government."
3. Act of June 28, 1898, ch. 517, 30 Stat. 495 (Curtis Act).
4. Interestingly, both the state of Oklahoma and the city of Tulsa in their briefing in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), agreed with the position taken by the tribes today that if the Creek Reservation was never disestablished, then municipalities did not have criminal jurisdiction over Indians. The state argued, "Rendering Indians subject to municipal law but immune from state law would be irrational, as municipalities are creatures of state law." Brief of Appellee, *McGirt v. Oklahoma*, Case No. 18-952, at 28-29 (March 13, 2020); Likewise, the city of Tulsa argued, "At present, Tulsa's Police Department has full jurisdiction to protect Tulsans and enforce city and state law in all but a few scattered plots of land. But if the entire City is 'Indian country,' state criminal jurisdiction would be stripped in any crime involving an Indian perpetrator or victim." *McGirt* Tulsa Amicus at 29. 65 U.S. 463, 465 n.2 (1984).
5. *McGirt v. Oklahoma*, 140 S. Ct. 2452.
6. Major Crimes Act, 18 U.S.C. §1153.
7. See Indian Country Criminal Jurisdiction Chart by Arvo Q. Mikkonen, assistant U.S. attorney and tribal liaison, U.S. Attorney's Office, Western District of Oklahoma: <https://bit.ly/3h7BvPr>.
8. The "Five Civilized Tribes" refers to Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, Muscogee Creek Nation and Seminole Nation.
9. *Hogner v. State*, 2021 OK CR 4 (Cherokee Reservation); *Sizemore v. State*, 2021 OK CR 6 (Choctaw Reservation); *Bosse v. State*, 2021 OK CR 3 (Chickasaw Reservation) (withdrawn and vacated regarding retroactivity of *McGirt* by *State ex rel. Matloff v. Wallace*, 2021 OK CR 21); *Grayson v. State*, 2021 OK CR 8. And the OCCA has recently extended the *McGirt* analysis to the Quapaw Nation, finding the tribe's reservation was never disestablished in *State v. Lawhorn*, 2021 OK CR 37.
10. General Crimes Act, 18 U.S.C. §1152.
11. The state of Oklahoma continues to challenge the existence of the reservations of the Five Tribes as well as alleging it retains concurrent jurisdiction (with the federal government) over

crimes committed by non-Indians against Indians in Indian country. Oklahoma has filed dozens of petitions for writ of certiorari before the United States Supreme Court, with the leading case involving the Cherokee Nation Reservation. See *Oklahoma v. Castro-Huerta*, No. 21-429, Sept. 21, 2021. Most of those cases were set for conference on the Supreme Court's docket on Jan. 7, 2021.

12. Tribes also have jurisdiction over crimes that are typically classified as felonies under federal or state law, but tribes' sentencing authority is limited by the Indian Civil Rights Act, 25 U.S.C. §1302.

13. <https://bit.ly/TulsaWorldMcGirt>; <https://bit.ly/OklahomanMcGirt>.

14. Tribal cross-deputization agreements for all tribes and law enforcement in the state can be found here: www.sos.ok.gov/gov/tribal.aspx.

15. For a detailed analysis of that position, see paper by Oklahoma Municipal Assurance Group General Counsel Matt Love, available here: www2.omag.org/2020-OAMA-McGirt.pdf. Mr. Love drafted this article for the Dec. 10, 2020, Virtual Seminar and Business Meeting of the Oklahoma Municipal League and the Oklahoma Association of Municipal Attorneys. Mr. Love gave permission to share his paper. I do not agree with the position but want to provide the opposing view. Mr. Love asked I note there have been many additional *McGirt* related court decisions in the year since the paper was presented, including decisions on the reservations of the other four tribes and retroactive application.

16. 30 Stat. 495. The author would also point out that the same section of the Curtis Act also says that only male inhabitants can vote, the law of the state of Arkansas applies and intoxicating liquors cannot be sold.

17. See *City of Tulsa v. Shaffer*, Case No. 6108204, Memorandum and Order (Tulsa Municipal Court Feb. 2, 2021).

18. *Id.*

19. There are two pending suits where those with prior convictions are challenging the collection of fees by counties and municipalities: *Pickup v. District Court of Nowata County*, Civ. No. 20-346 (N.D. Okla.); *Nicholson v. Stitt*, No. 119,270 (Okla.) (In *Nicholson*, the district court mentioned §14 of the Curtis Act, without discussion, in the order granting the defendant's motion to dismiss. That case is now on appeal).

20. The legal analysis was co-authored by Patti Ghezzi and Susan Work and is located at <https://bit.ly/3LLbfIG>. Ms. Work is an outstanding Indian legal scholar with specific expertise on the history of the Five Tribes and the state of Oklahoma. Patti Ghezzi is a retired federal public defender who was involved in the defense of Patrick Murphy – the case that initially raised the "Indian country" jurisdictional issue and paved the way for *McGirt*. The Cherokee Nation and I, particularly, are indebted for the work they have done prior to and following the *McGirt* and *Hogner* decisions.

21. 11 O.S. §27-129 and 11 O.S. §28-128.

22. See Curtis Act Memo, *supra*, n. 19.

23. See Proclamation by C. N. Haskell, governor of Oklahoma.

24. 357 U.S. 320 (1958).

25. *Shaffer*, Case No. 6108204, p. 8, quoting *Tacoma*, 357 U.S. 320.

26. The law enforcement cross-deputization agreements (and other tribal-state agreements and compacts) are all available on the Oklahoma Secretary of State website: www.sos.ok.gov/gov/tribal.aspx.

27. Violence Against Women Act, VAWA, Pub. L. No. 113-4, Title IX, §904(a)(3), 127 Stat. 121 (March 7, 2013) (codified at 25 U.S.C. §1304(a)(3)).

28. In fact, the Cherokee Nation marshal is not aware of a single city or town that is wholly or

partially within the Cherokee Nation Reservation that does not have a cross-deputization agreement with the nation.

29. If a crime other than domestic violence is committed by a non-Indian against an Indian, only the federal government has jurisdiction. In those cases, the arresting state or tribal officer must also hold a federal commission. All Cherokee Nation law enforcement offices hold the federal commission and now many state and local officers do as well.

30. This resolution was required because the Cherokee Nation Constitution requires all donations be approved by the Cherokee Nation Tribal Council, Article X, Section 7.

31. The \$30 fee matches what state law requires to be paid for municipal citations issued. 10 O.S. §§1313.2-1313.3. (This fee required by state law on municipal tickets further underscores the lack of municipal jurisdiction over Indians.)

32. All municipal agreements available here: www.sos.ok.gov/gov/tribal.aspx. Any town or city in the Cherokee Nation Reservation interested in entering the MOA can email me at Chrissi-nimmo@cherokee.org.

33. The nation continues to work with the Oklahoma Department of Public Safety to try to ensure the nation's traffic citations will be recorded by the state for driver's license suspension and revocation purposes and insurance purposes, but that likely requires a change to state law 10 O.S. 6-203 because the law only refers to convictions from other "states." However, the automatic administrative suspension of a driver's license for a DUI under 47 O.S. 754 is valid against Indians because that license suspension is based on officer affidavit, not a conviction.

‘This Land Is Whose Land?’: An Update on *McGirt* and the Energy Sector in Oklahoma

By Drew Rader

MORE THAN A YEAR HAS PASSED SINCE THE LANDMARK case of *McGirt v. Oklahoma* was decided by the United States Supreme Court. In that span of time, the Oklahoma Court of Criminal Appeals has determined the reservations of the remaining Five Tribes were also never disestablished by Congress.¹ As a result, questions about *McGirt*’s impact have become more prevalent and more important. Over 19 million acres in the state of Oklahoma are now “Indian country” under federal law.²

According to Justice Neil Gorsuch, the author of the majority opinion, the holding in *McGirt* was limited to the criminal context and, more specifically, the Major Crimes Act.³ The case in no way involved civil jurisdiction, whether exercised by the Muscogee Nation, the state or the federal government. But, surely, a significant change in land status must have *some* effect outside the narrow context outlined by the court. How much of an effect, however, remains to be seen, and the landscape is just beginning to set.

REGULATORY JURISDICTION

The Oklahoma Corporation Commission (OCC) is vested by Oklahoma law with exclusive jurisdiction over many areas of oil and gas regulation within the state.⁴ Almost immediately following the *McGirt* decision, however, the OCC’s jurisdiction

was expressly challenged. In April 2020, Calyx Energy applied to the OCC for approval to drill multi-unit horizontal wells in Hughes County.⁵ In early May, Canaan Resources X filed a protest to each of Calyx’s applications with the OCC.⁶ After the OCC consolidated the protests, but before any hearings on the merits, the U.S. Supreme Court issued its decision in *McGirt*, in a sense reestablishing the Muscogee Nation Reservation.⁷ Because the land at issue located in Hughes County is situated within the boundaries of the Muscogee Reservation, Canaan filed a motion to dismiss for lack of jurisdiction, arguing the OCC now lacked the authority to hear the case.⁸ Following oral argument on the motion, the OCC concluded *McGirt* had no effect on its jurisdiction within “Indian country” and denied Canaan’s motion to dismiss.⁹

In its order, the OCC distinguished the many Indian law cases cited by Canaan to support its position. According to the commission, cases like *Solem v. Bartlett*¹⁰ and *Montana v. United States*¹¹ – both Indian law staples – had no ultimate effect on the OCC’s ability to regulate oil and gas within the state. Most of the commission’s analysis concerned the differences between the types of lands at issue in *McGirt* and the types involved in the cited cases.

SIDE NOTE ON FEE LAND, RESTRICTED FEE LAND AND TRUST LAND

These three land types are prevalent in Indian law, but what are the differences? Fee land is land owned outright with no restriction on alienation whatsoever. Such title is “without bounds, limitations, or condition”¹² and



includes land owned by Indians and non-Indians alike. Restricted fee land is different. Restricted fee land is “owned by an individual Native American or Indian tribe which has a restriction on alienation, requiring the consent of the U.S. government (the Secretary of the Interior) before the land can be sold or alienated.”¹³ Lastly, and most commonly involved in Indian law cases, is trust land. With trust land, the United States government holds legal title as trustee for the benefit of an Indian tribe or individual Native American.¹⁴ Due to the fact trust land is owned by the federal government, the Supremacy Clause precludes any state or local regulation on land use.¹⁵ To summarize, while fee land can be alienated and is subject to state and local land-use regulations, both restricted fee land and trust land have barriers to alienation and are not subject to such regulations.

THE CALYX V. CANAAN CASE

So, what type of land was at issue in *Calyx Energy v. Canaan Resources*? Although the lands in question are located within the exterior boundaries of the Muscogee Reservation, most of

the lands are held in fee simple with no ties to any tribe or individual Native American. According to the commission, within the disputed area, “Only one restricted Indian lease is held in trust by the United States Government.”¹⁶ In other words, because no restricted fee land or trust land is involved in the multi-unit horizontal well applications, any challenge of the commission’s jurisdiction is misplaced.

The Oklahoma Supreme Court decided to take matters into its own hands and retained the matter for disposition in December 2020.¹⁷ Since then, the case was tied up and stayed two separate times due to receivership proceedings involving Canaan and only recently was dismissed by the court after the parties settled out of court.¹⁸ With this case off the docket and no definitive answer from the Oklahoma Supreme Court, the question of the OCC’s jurisdiction in light of *McGirt* remains an open one – at least for now.

GOV. STITT AND THE DEPARTMENT OF THE INTERIOR

Congress enacted the Surface Mining Control and Reclamation Act of 1977 (SMCRA)¹⁹ to address the environmental impacts of coal mining in the United States.²⁰ Under the act, the Office of Surface Mining Reclamation and Enforcement (OSMRE), a branch of the U.S. Department of the Interior (DOI), serves in the federal oversight role while the states retain jurisdiction to enforce it, subject to a few exceptions.²¹ Section 1253 of the SMCRA gives states exclusive jurisdiction to regulate “surface coal mining operations on non-Federal lands” unless otherwise provided for, so long as each state can demonstrate its capability to do so.²² In May 2021, the OSMRE announced the *McGirt*



decision “necessarily forecloses the State of Oklahoma’s authority to implement the [SMCRA] on Indian Lands within the exterior boundaries of the Muscogee (Creek) Nation Reservation.”²³ More recently, in October 2021, the OSMRE similarly disclaimed Oklahoma’s jurisdiction over lands within the exterior boundaries of the Cherokee and Choctaw reservations as well.²⁴ In both notices, the OSMRE stated it now serves as “the sole regulatory authority over surface coal mining and reclamation operations on Indian lands where a tribe has not obtained primacy.”²⁵

In response to the initial notice in May, Mike Hunter, Oklahoma’s attorney general at the time, notified the state agencies affected by these decisions not to “comply with it without further discussion.”²⁶ In a letter to the OSMRE, the attorney general outlined his thoughts on the notice and gave the reasons he believed the OSMRE was in the wrong. “On review,” he states, “it appears OSMRE’s assertion of sole and exclusive jurisdiction is not well-supported by the legal

citations offered in your letters.”²⁷ The theme of his response was that Oklahoma as a state retains “inherent authority” over the lands involved in *McGirt* “regardless of the actions of [the OSMRE].”²⁸

Oklahoma Gov. Kevin Stitt, in his official capacity and on behalf of the state of Oklahoma, joined the Oklahoma Department of Mines and the Oklahoma Conservation Commission and sued the OSMRE, the newly appointed secretary of the DOI, Deb Haaland, and the DOI itself.²⁹ In its complaint, the state claims the OSMRE stripped Oklahoma of its jurisdiction “[w]ithout any process whatsoever and virtually no legal analysis[.]” in violation of both the SMCRA and the Administrative Procedures Act.³⁰

The case is currently before Judge Stephen P. Friot in the Western District of Oklahoma and could potentially lead to an extension of *McGirt* outside the criminal context and into the regulatory world.³¹ Until then, both the state and the federal government remain at odds on this point.

A JUDGE'S CHALLENGE TO JURISDICTION FROM THE BENCH

Lastly, a district judge in Love County issued an order for additional briefing in April 2021, asking the parties “to brief and be prepared to argue the issues related to jurisdiction, specifically addressing the effect of *Bosse v. State* on the case at bar.”³² As mentioned above, in the *Bosse* case, the Oklahoma Court of Criminal Appeals held, that like the Muscogee Reservation in *McGirt*, Congress never disestablished the reservation of the Chickasaw Nation – encompassing present-day Love County. The case involves an alleged oil spill in the area but does not involve any restricted fee or trust lands according to the record. Following full briefing on the issue by the parties, Judge Todd Hicks issued a court minute, stating the district court did, in fact, have jurisdiction over the case regardless of *Bosse* because no party is a member of a tribe, the land is not owned in whole or in part by any tribe or tribal member and no tribe had exercised jurisdiction over the case.³³ The *McGirt*-related questions have been taken care of in *Hull*, but the case gives us a picture of the judicial limbo Oklahoma courts must navigate for the time being.

TOWARDS THE FUTURE

Even though *McGirt* was expressly cabined to criminal jurisdiction and the Major Crimes Act, significant changes in land status have legal implications that affect more fields than one. Jurisdictional battles are happening at the state regulatory level of the OCC, the federal oversight of the DOI and everywhere in between. These few examples in Oklahoma show us that the sea change from the Supreme Court is most likely coming – even if it’s not here just yet.

ABOUT THE AUTHOR



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ENDNOTES

1. See *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (Choctaw Reservation); *Spears v. State*, 2021 OK CR 7, 485 P.3d 873 (Cherokee Reservation); *Grayson v. State*, 2021 OK CR 8, 485 P.3d 250 (Seminole Reservation); *Bosse v. State*, 2021 OK CR 30, ___ P.3d ___ (Chickasaw Reservation).
2. “Indian country” is defined by statute in 18 U.S.C. §1151 under three categories, including, “All land within the limits of any Indian reservation under the jurisdiction of the United States Government ...” 18 U.S.C. §1151(a).
3. Codified at 18 U.S.C. §1153.
4. See 52 O.S. §139(B) “[T]he Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating [various listed oil and gas activities].”
5. See Order Denying Protestant’s Motion to Dismiss for Lack of Jurisdiction and Oral Motion to Stay, Cause CD Nos. 202001032-T – 1042-T at 4 (Okla. Corp. Comm’n, Nov. 25, 2020) “OCC Order.”
6. *Id.*
7. *Id.*; see also *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (2020).
8. OCC Order, *supra* note 5, at 4.
9. See *id.* at 8–9.
10. 465 U.S. 463 (1984).
11. 450 U.S. 544 (1981).
12. See *In re O’Brien’s Trust Estate*, 1946 OK 225, 172 P.2d 607, 609.
13. Thomas M. Fitzpatrick, *Land Use Regulation on Reservation Fee Lands: Where Do We Go from Here?*, Wash. Ass’n of Prosecuting Att’ys, June 2003, at 4.
14. *Id.*
15. *Id.*
16. OCC Order, *supra* note 5, at 8.
17. See Order dated Dec. 9, 2020, *Canaan Resources X v. Calyx Energy III, LLC*, Case No. 119,245 (Okla.).
18. See Order dated Dec. 30, 2021, *Canaan Resources X v. Calyx Energy III, LLC*, Case No. 119,245 (Okla.).
19. Pub. L. No. 95-87, 91 Stat. 445 (codified at 30 U.S.C. §§1201–1328 (1988)).
20. See Robert E. Beck, *The Federal Role under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) on Nonfederal Lands after State Primacy*, 31 Tulsa L.J. 677, 678 (2013).
21. See 30 U.S.C. §1211 (1994).
22. *Id.* §1253.
23. Loss of State Jurisdiction to Administer the Surface Mining Control and Reclamation Act of 1977 Within the Exterior Boundaries of the Muscogee (Creek) Nation Reservation in the State of Oklahoma, 86 Fed. Reg. 26941-01 (May 18, 2021) “OSMRE’s May Notice.”
24. OSMRE Jurisdiction to Administer the Surface Mining Control and Reclamation Act of 1977 Within the Exterior Boundaries of the Cherokee Nation Reservation and the Choctaw Nation Reservation in the State of Oklahoma, 86 Fed. Reg. 57854-01 (Oct. 19, 2021) “OSMRE’s October Notice.”
25. Compare OSMRE’s May Notice (citing 30 U.S.C. §1300) with OSMRE’s October Notice.
26. See Letter to Department of Interior, Office of Attorney General of Oklahoma, Apr. 16, 2021, <https://bit.ly/3hc3VHS>, “Letter to OSMRE.”
27. Letter to OSMRE, *supra* note 22, at 1.
28. *Id.*
29. Press Release, Office of the Governor of Oklahoma, Governor Stitt Sues U.S. Department of Interior for Unlawful Overreach, Press Release (July 19, 2021) <https://bit.ly/3uVz6PT>.
30. Complaint for Declaratory and Injunctive Relief and Petition for Judicial Review, *State of Oklahoma et al. v. U.S. Dept. of the Interior et al.*, Case No. 5:2021cv00719 (W.D. Okla.) “Complaint.”
31. *State of Oklahoma et al. v. U.S. Dep’t of the Interior et al.*, Case No. 5:2021cv00719 (W.D. Okla.).
32. Order for Additional Briefing, *Hull, et al. v. JP Energy Marketing, LLC, et al.*, Case No. CJ-2017-17 (Love Cnty. April 30, 2021); see also *Bosse*, 2021 OK CR 3, ¶12.
33. See Minute, *Hull, et al. v. JP Energy Marketing, LLC, et al.*, Case No. CJ-2017-17 (Love Cnty. June 30, 2021).



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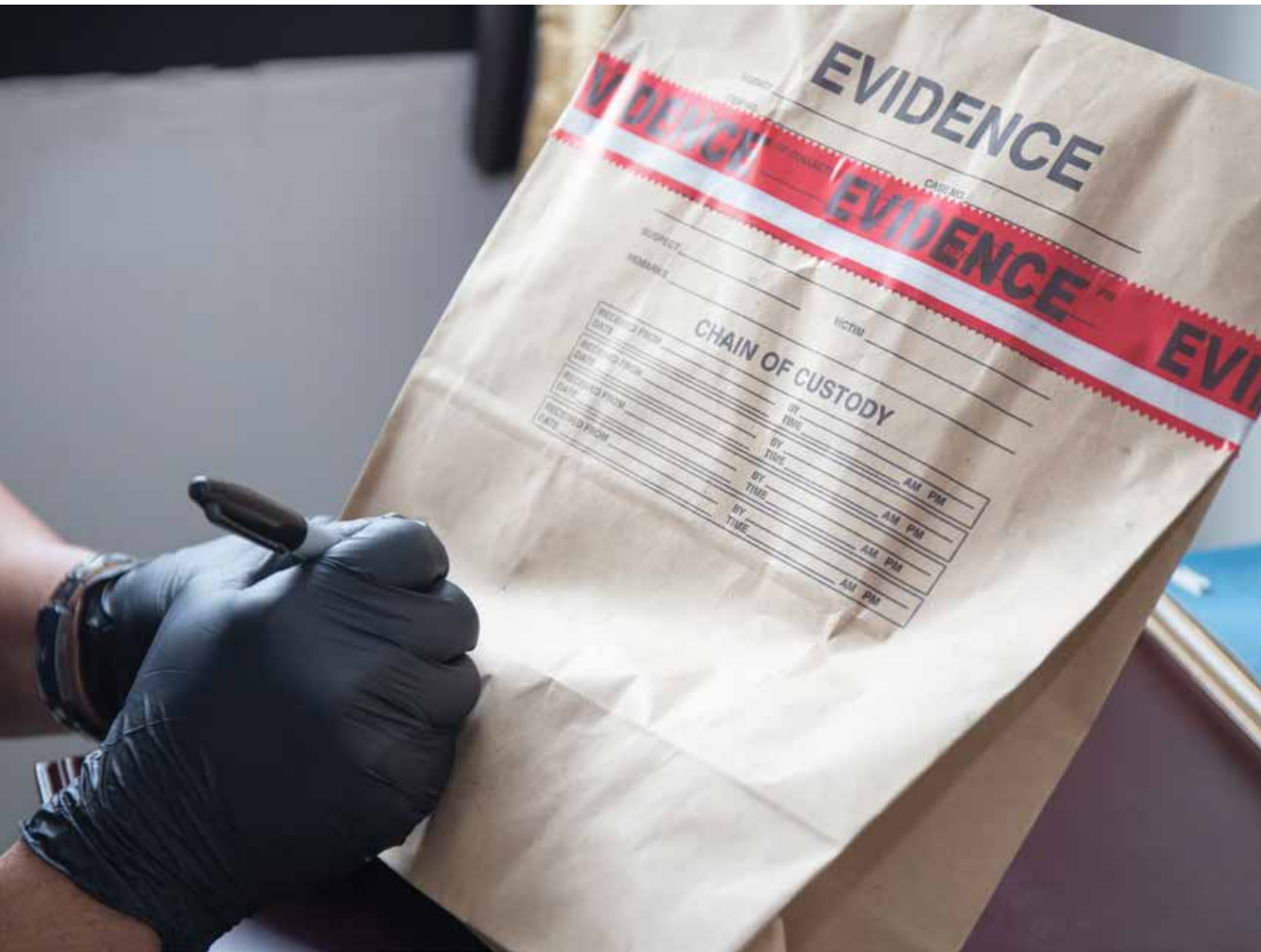
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The Forensic Implications of *McGirt*

New Challenges Associated With Evaluating Old Evidence

By Brian J. Gestring



MOST CRIMES ARE TRIED SOON AFTER THEY ARE COMMITTED when the case, evidence and witnesses are still fresh. On rare occasions, a conviction would be overturned, and the case would be retried years or even decades after the crime itself was committed. What once was a legal rarity is now the new normal in Oklahoma's post-*McGirt* world. Oklahoma attorneys find themselves in the unique position of trying old cases as if they were new and, in so doing, having to reevaluate the old evidence associated with the case based on today's standards. This presents both challenges and opportunities for the Oklahoma lawyers picking up post-*McGirt* cases as the value of the evidence may have changed in the time since the initial conviction.

Unlike cold cases, where new techniques are routinely applied to old evidence, attorneys with these "new-old" cases need to also examine the techniques that were originally performed on the evidence. In some cases, more discerning forensic techniques are now available that might not have been around when the case was first litigated. In others, the validity of the science that may have led to the initial conviction may have changed in the intervening years.

The majority of the post-*McGirt* cases being charged federally fall under the Major Crimes Act.¹ As the name implies, this act limits federal jurisdiction to serious crimes like murder, manslaughter, kidnapping, sexual abuse, arson, assault and similar violent criminal offenses. Not surprisingly,

these types of cases are usually the ones with the highest probability of having forensic evidence, and this evidence may play a more prominent role as witnesses' memories fade or may simply no longer be available.

While not comprehensive, this article describes how to preserve the evidence in your case and outlines some of the most significant changes that have occurred with the most commonly encountered evidence. Not all cases will need or benefit from a forensic expert. Understanding how the value of the evidence has changed and what new potential exists within the old evidence will allow attorneys to formulate a successful litigation strategy.

PRESERVE THE EVIDENCE

The first challenge in dealing with an overturned state conviction is preservation of the evidence. Ironically, while there are practices for the retention of court records about convictions, there is no uniform guidance on preserving the evidence that led to the initial conviction.

A formal notice should be sent to all criminal justice agencies involved in the initial investigation and prosecution requesting that all associated physical evidence and related documents (notes, diagrams, photographs, video, reports and chain of custody records) be preserved. Oklahoma implemented legislation requiring the retention of biological evidence from violent felonies for the duration of time

anyone convicted of that crime remains incarcerated in 2001,² but as these cases get dismissed and defendants are released, there is no longer an affirmative obligation to retain this evidence.

While Oklahoma was ahead of many states in implementing a biological evidence retention policy, there is no consistent policy that applies to other types of evidence. As a result, it is critical to try and preserve any evidence as soon as you become involved in one of these cases.

CHANGES TO COMMONLY ENCOUNTERED FORENSIC EVIDENCE

Blood

Blood is one of the most common byproducts of violent crime. The most notable change that has occurred in the forensic world is the increased information potential that is now associated with blood and other biological evidence (semen, saliva, etc.). Techniques have become much more sensitive and refined. Samples that were either too small to previously test or deemed inconclusive can now potentially yield valuable information that can change case outcomes.

Sometimes how a bloodstain was created holds as much value as the source of the blood itself. For example, a suspect may claim that blood found on their clothing was the result of trying to help the victim *after* an assault and was not deposited on their clothing *during* the assault. These two mechanisms are distinctly different, and a trained examiner can easily differentiate them. While the science behind bloodstain pattern analysis has not changed, there has been increased scrutiny over the qualifications of the people who perform this work. If

the analysis of bloodstain patterns played a role in the initial conviction, there is value in having this work reviewed.

Fingerprints, Firearms, Footwear and Tire Treads

Fingerprint, firearm, and footwear and tire tread evidence are frequently encountered in these types of investigations. While the tools



that capture the evidence or make comparisons may have improved, the science behind the comparisons has remained unchanged for over a century. Since these determinations can be subjective, if the analysis played a role in the initial convictions, there is value to having this work reviewed.

Gunshot Residue

Assessing the distribution of gunshot residue particles on a target remains a viable method of estimating how far the barrel of a firearm was from the target at the time of discharge. However, any methods to evaluate gunshot residue on the hands of suspected shooters have largely fallen out of favor, and the validity of any conclusions regarding who fired a weapon would be challenged in court today.

Bullet Lead Analysis

A technique known as bullet lead analysis has also been discontinued. In cases where a weapon was not recovered and the evidence bullet was too deformed for comparison, the FBI would compare the elemental composition of the evidence bullet with ammunition found in the suspect's possession. The FBI ceased performing

bullet lead analysis in 2005 after the National Research Council questioned the FBI's statistical interpretation of the results.³ It is highly unlikely that results from bullet lead analysis would be admitted in court today.

Bitemark and Hair Analysis

No forensic techniques have fallen out of favor as much as those of bitemark analysis and the microscopic analysis of human hair. While the validity of hair comparisons has not been questioned, problems were identified with the strength of the associations that FBI examiners were representing in court. The concern soon migrated to state and local examiners who had received training from the FBI. Reviews of cases that have involved microscopic hair comparisons have been ongoing across the county, and virtually

all jurisdictions have abandoned the microscopic analysis of hair in favor of DNA testing.

Recently the Oklahoma State Bureau of Investigations (OSBI) received federal funding to reevaluate hair examinations the agency performed from 1975 until 2000.⁴ From the 986 cases identified where microscopic hair comparisons were performed, the OSBI narrowed their review to 81 cases where this evidence was used in court.⁵ Both the initial prosecutors and the OSBI should be aware of these cases and should be contacted if you see that hair evidence was utilized or played a prominent evidentiary role during the initial prosecution. If hair played a prominent role in the initial conviction but the defendant took a plea instead of going to trial, you should have the evidence reviewed.

The problems surrounding bitemark analysis are more profound. Studies have demonstrated that examiners have trouble identifying if a pattern injury is even a bitemark.⁶ Many question the underlying validity of the methodology used by examiners, and studies have demonstrated inconsistency in both the opinions of different examiners and even among the same examiner over time.⁷ Cases involving bitemark analysis definitely warrant another review.

DNA Mixtures

Everyone understands the importance of DNA as proof of guilt or innocence. However, historically, cases with complex DNA mixtures were deemed inconclusive and had no value. That may no longer be the case anymore thanks to probabilistic genotyping. This process involves special computer software that runs statistical algorithms that allow

the components of DNA mixtures to be separated out. Since the software is validated on the DNA instrumentation used to run the sample, it cannot be retroactively applied to old analytical data from previous laboratory work. Old DNA mixture samples would need to be retested to take advantage of probabilistic genotyping software. The increases in sensitivity of new DNA testing methods combined with probabilistic genotyping's ability to resolve complex mixtures can have a transformative effect on your evidence and should be considered whenever possible.

Scientific Databases

The direct comparison of DNA or fingerprint evidence has always been powerful at trial. But more than that, the successful use of scientific databases has also made them a formidable investigative tool that can sometimes be beneficial when reevaluating these older cases.

New DNA evidence can develop in these old cases when the original evidence is reevaluated. Either new samples are found and analyzed or old samples are reexamined applying probabilistic genotyping to resolve previously uninterpretable DNA mixtures. Any newly generated DNA profiles that could not have come from known members of your case should be searched against the DNA database.

Likewise, any fingerprint evidence that was unknown or unattributable at the last conviction should be searched through the fingerprint databases again. The fingerprint databases continue to grow over time, and newer versions of the software utilize better search algorithms.

CONCLUSION

Oklahoma lawyers face unique challenges and opportunities when dealing with post-*McGirt* prosecutions. The entire landscape of a case may have changed since the initial conviction. This article has highlighted areas where the science has changed enough that a forensic expert can influence the outcome of a case. Expert review can also help where forensic testing was not completed or might not even have been performed because the case was resolved by a plea. It is incumbent on the attorneys who take these "new-old" cases to really know their cases and understand the significance of changes that have occurred.

ABOUT THE AUTHOR



Brian Gestring is a consultant with 4n6Services LLC who has over 30 years of public and private sector experience. He has worked in nearly every role in the forensic field from scene investigator to director. He has also held full-time faculty positions and served as a university forensic program director.

ENDNOTES

1. Title 18, United States Code, Section 1153.
2. 22 OK Stat §22-1372 (2020).
3. <https://bit.ly/FBIPressRelease> (accessed Feb. 1, 2022).
4. Bureau of Justice Assistance, Award #2018-DY-BX-0005, <https://bit.ly/3HoD3iV> (accessed Feb. 1, 2022).
5. <https://bit.ly/KGOUcRiminalJustice> (accessed Feb. 1, 2022).
6. Page, M., Taylor, J., and Blenkin, M., "Expert Interpretation of Bitemark Injuries—A Contemporary Qualitative Study," *J Forensic Sci*, 2013;58, No. 3:664-672.
7. Reesu, G.V., Brown, N.L., "Inconsistency in opinions of forensic odontologists when considering bite mark evidence," *Forensic Science International*, Vol. 266, 2016, Pages 263-270.

Tribal Courts: What About Victim's Rights?

By Jacintha Webster

IN THE WAKE OF THE *MCGIRT V. OKLAHOMA* DECISION that resulted in an influx of cases to tribal courts, one question that arose was, “How would victim’s rights be protected in tribal courts?” As Oklahoma recently passed Marsy’s Law in 2018, adding a number of victim’s rights into the Oklahoma Constitution,¹ those who work with victims wanted to know whether similar rights would still be enforced. For tribal court practitioners, the intuitive answer seemed to be that tribal court systems do a fantastic job of looking out for victims. Additionally, several tribes have updated and added to their existing victim’s rights provisions following the *McGirt* decision. This article will provide an overview of the various ways in which tribes have codified victim’s rights as well as offer insight into tribal court practice and victim’s advocacy.

TRIBAL CODES

The majority of tribes in Oklahoma that operate courts have at least some victim’s rights provisions in their tribal codes. The tribes with the most extensive, standalone victim’s rights codes are the Cherokee Nation, the Chickasaw Nation and the Choctaw Nation of Oklahoma. These are also three of the Five Tribes that have had their reservations recognized following the decision in *McGirt*.² In 2021, the Cherokee Nation enacted the Wilma P. Mankiller Victim’s Rights Act³ that contains substantially similar provisions to that included in the Oklahoma Constitution, including “[u]pon request, to be notified and to be present at all proceedings involving the criminal or delinquent conduct” and “to be heard in any proceeding involving release,

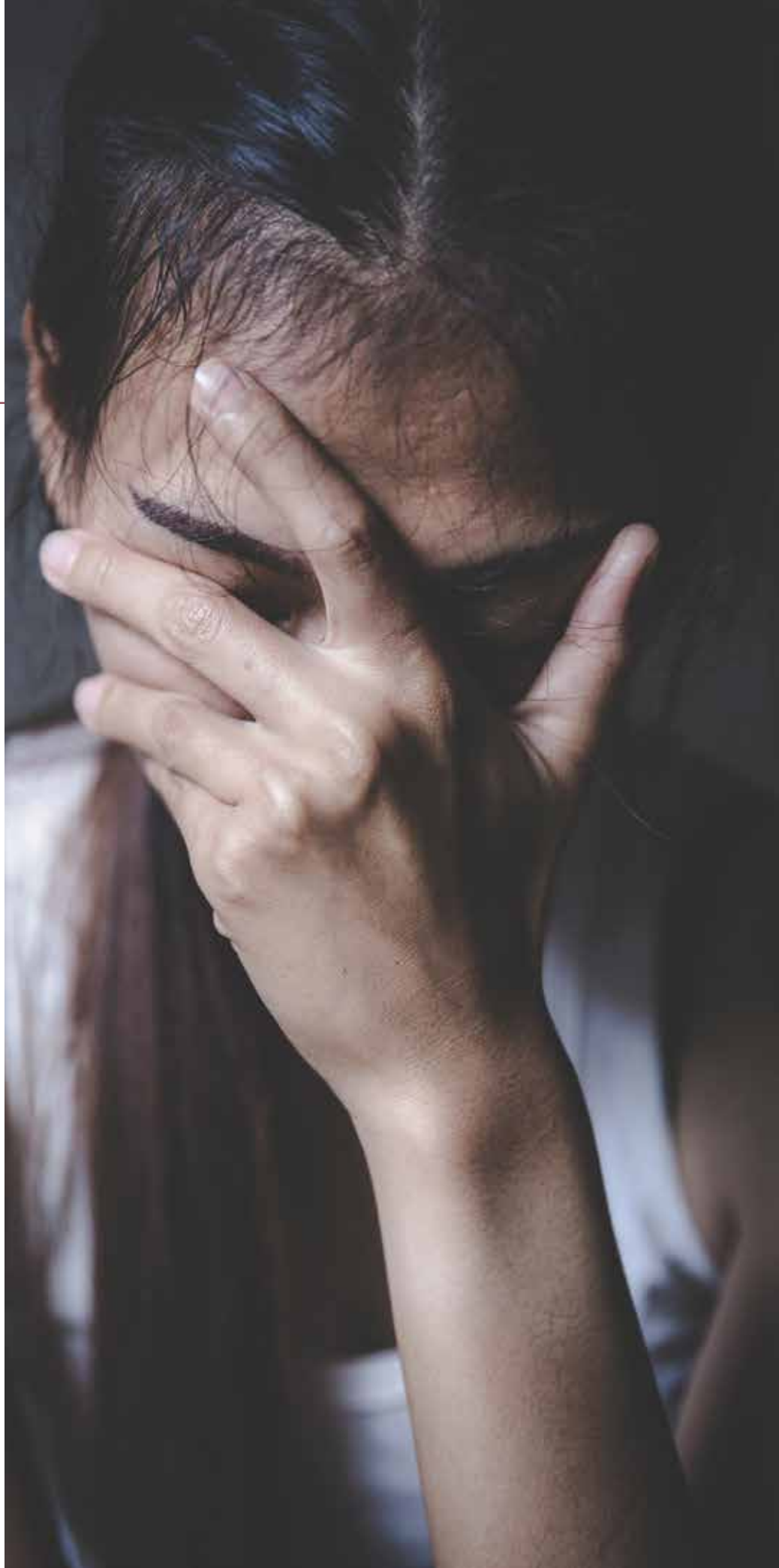
plea, sentencing, disposition, and parole.”⁴ The act also includes the rights of victims and for families of homicide victims to be provided a secure waiting area during court proceedings, to be informed of plea bargain negotiations and to have victim impact statements filed.⁵ In 2021, the Cherokee Nation established the Crime Victim’s Compensation Revolving Fund to provide compensation to victims of crimes in the Cherokee Nation pursuant to the Wilma P. Mankiller Victim’s Rights Act.⁶ The Cherokee Nation has also made additions to its existing victim services program, ONE FIRE, that now serves victims of all crimes.⁷

The Choctaw Nation of Oklahoma’s Criminal Code also contains substantial provisions pertaining to victim’s rights under their Victim’s Rights Act.⁸ This act provides victims protections

that are also very similar to those contained under state law, including to be provided a secure waiting area, to be informed of plea bargain negotiations, to have victim impact statements filed and to be told whether a sentence is overturned or modified. These rights also apply to the families of victims of homicide.⁹ Beyond the provisions created under the criminal code, the Choctaw Nation of Oklahoma also has a comprehensive Tribal Victim Assistance Program that serves the needs of Native American victims of all types of crimes. These services include emergency food and shelter assistance, court advocacy and safety plan creation.¹⁰ The Chickasaw Nation has created a similar Victim Rights Section within their code.¹¹ The Chickasaw code provides that all crime victims are entitled to be “treated with fairness, respect, and

dignity and to be reasonably protected from intimidation, harassment, or abuse throughout the criminal justice process” in addition to the right to be “informed of financial assistance and other social services available” to victims of crimes.¹² The Chickasaw code provides further rights specifically for victims of violent crimes, including the rights to be informed of all hearings, provide a victim impact statement, be present at all hearings and sentencing, be heard at proceedings involving release of the defendant, be provided a private waiting area and to suggest conditions of probation.¹³ Prior to *McGirt*, the Chickasaw Nation, like many tribes, already operated a large program serving domestic violence victims.¹⁴ However, after an increase in recognized jurisdiction, the Chickasaw Nation also established a hotline to support crime victims. The Crime Victim’s Support Services Hotline, which can be reached at 833-774-1601, provides referrals to various services within the Chickasaw Nation and helps victims of crimes stay informed through the judicial process.¹⁵

The Muscogee Nation, which was the tribe impacted directly by the decision in *McGirt*, has a tribal code that also contains numerous victim’s rights provisions. In addition to provisions providing for



the payment of restitution for all victims of crimes,¹⁶ the Muscogee Nation code also sets out specific rights that apply to victims of domestic violence crimes. These rights include the right to consult with the prosecutor if the defendant is being offered a deferred sentence, to be notified of all hearings, to be present and address the court and to receive a report if the defendant is out of compliance with probation requirements.¹⁷ The Muscogee Nation also operates an extensive program for victims of domestic violence, the Family Violence Prevention Program. This program provides a wide variety of services to victims of domestic violence, dating violence, sexual assault and other related crimes. These services include assistance finding emergency shelter, crisis intervention, assistance with protective orders, advocacy and emergency transportation.¹⁸ Finally, the Seminole Nation of Oklahoma, one of the most recent tribes to have their reservation recognized as remaining intact, also has many code provisions that protect the rights of victims, namely victims of domestic violence. The Seminole Nation of Oklahoma has a Domestic Violence Code that provides for

prosecutorial consultation with the victim during plea bargaining and allows for the victim to communicate concerns to the court during arraignment.¹⁹

OTHER PROTECTIONS

It is important to note that although the tribes whose reservations have been recognized all have codes that contain victim's rights provisions, many other tribes in Oklahoma also have victim's rights provisions in their codes. This means that regardless of the tribal jurisdiction, it is very likely that there are at least some provisions that address the rights of victims. One of the most interesting tribal codes that contain victim's rights provisions is the code of the Cheyenne-Arapaho Tribes of Oklahoma. Rather than having a separate section of the code where all victim's rights provisions are contained, the Cheyenne-Arapaho Tribes have integrated victim's rights provisions throughout the Criminal Procedure Act. For example, the act requires that the prosecutor and court consider the victim's views (or the views of the family of a deceased victim) when allowing the defendant to enter into a diversion agreement, at the plea stage and during sentencing.²⁰

The Cheyenne-Arapaho Tribes also have a portion of their code known as the Domestic Abuse and Family Violence Act that provides further protections and rights for victims of domestic violence or family violence crimes.²¹ Quapaw Nation has similarly included various victim's rights provisions throughout their Criminal Procedure Code in lieu of a separate victim's rights section. The Criminal Procedure Code includes requirements that the judge and prosecutor consider the victim's views (or the views of a close relative of a deceased or incapacitated victim) before allowing the defendant to enter into diversion and at sentencing.²²

Many other tribes have instituted laws that protect the rights of victims, especially the rights of victims of crimes, such as domestic violence, dating violence and sexual assault. Tribes with code provisions granting specific protections to victims of these crimes include the Citizen Potawatomi Nation,²³ Comanche Nation,²⁴ Iowa Tribe,²⁵ Kickapoo Tribe of Oklahoma,²⁶ Pawnee Nation,²⁷ Sac and Fox Nation²⁸ and Osage Nation.²⁹

A number of the other tribes in Oklahoma not discussed here either do not have a code or a court and instead utilize CFR

Overall, tribes in Oklahoma have already been doing substantial work to protect the rights of victims in their jurisdictions. This endeavor has only increased post *McGirt*.

Courts (also known as Courts of Indian Offenses), which are federally operated courts that serve tribal jurisdictions without courts. These tribes include the Apache Tribe of Oklahoma, Caddo Nation of Oklahoma, Delaware Nation, Eastern Shawnee Tribe of Oklahoma, Fort Sill Apache Tribe of Oklahoma, Kiowa Tribe of Oklahoma, Modoc Tribe, Ottawa Tribe of Oklahoma, Otoe-Missouria Tribe of Indians, Peoria Tribe of Oklahoma, Seneca-Cayuga Nation, Shawnee Tribe and Wichita and Affiliated Tribes. The Law and Order Code for CFR Courts can be found at 25 CFR §11.100. This Law and Order Code provides some basic victim protections, such as the ability to receive restitution³⁰ and obtain a protective order for domestic violence and related crimes.³¹ Some other tribes, such as the Alabama-Quassarte Tribal Town, Kialegee Tribal Town, Thlopthlocco Tribal Town and Euchee Tribe are under the jurisdiction of another tribe's court (specifically, the Muscogee Nation).

CONCLUSION

Many tribes in Oklahoma operate very successful victim's programs that provide a variety of services. Each program has differing requirements; however, attorneys who provide services to victims would benefit from looking into tribal victim services programs in their areas. Oklahoma Native Alliance Against Violence (NAAV) has a listing of all tribal victim programs in the state, which can be found on their website.³² Overall, tribes in Oklahoma have already been doing substantial work to protect the rights of victims in their jurisdictions. This endeavor has only increased post *McGirt*. Attorneys and advocates in tribal courts will find that often, many of the protections they can

expect victims to receive under state law are also present under tribal laws, particularly in many of the jurisdictions most directly impacted by the post-*McGirt* cases. Attorneys who are working with victims in tribal courts should familiarize themselves with tribal victim's rights provisions and services. Tribal codes can often be located on the tribal court's website. If a tribal code is not easily found online, generally, attorneys can contact the tribal court clerk's office to find out how to locate it. Even if not required by tribal code, it can be very helpful to victims if the attorney assisting them provides timely notice and reminders of upcoming hearings and makes a plan ahead of time as to where the victim will be the most comfortable sitting prior to and during hearings when the defendant will also be present.

ABOUT THE AUTHOR



Jacintha Webster is an assistant professor of legal studies at East Central University and directs the ECU Native

American Legal Clinic. She is admitted to practice law in the state of Oklahoma and numerous tribal jurisdictions. Jacintha served as the 2021 OBA Indian Law Section chair.

ENDNOTES

1. OK Const Art. 2 §34; Marsy's Law was a constitutional amendment passed in 2018 via State Question 794. The amendment provides specific rights for victims of crime, including the rights of victims to be provided with notice of and be present at all hearings; the right to protection; the right to be heard at any hearing involving release, plea, sentencing, disposition and parole; the right to be notified if a defendant is released; and the right to confer with the prosecutor.
2. *Bosse v. State*, 2021 OK CR 3; *Hogner v. State*, 2021 OK CR 4; *Sizemore v. State*, 2021 OK CR 6; *Grayson v. State*, 2021 OK CR 8.
3. 21 Cherokee Nation Tribal Code (CNTC) §143.1.
4. 21 CNTC §143.2.
5. 21 CNTC §143.3.

6. 21 CNTC §142.13.
7. One Fire, <https://onefire.cherokee.org/services>.
8. Choctaw Criminal Code §142A.
9. Choctaw Criminal Code §142A-2.
10. <https://bit.ly/3H953XI>.
11. 5 Chickasaw Code §5-301.13.
12. *Id.*
13. *Id.*
14. Chickasaw Domestic Violence Services, <https://bit.ly/3lb4pKk>.
15. Chickasaw Nation Media Relations Office, "Chickasaw Nation Creates Hotline to Support Victims of Crime" <https://bit.ly/3GTZbBs>.
16. 14 Muscogee Code (MC) 1-106.
17. 6 MC §3-306 – 313.
18. Family Violence Prevention Program, <https://bit.ly/3Hc99hJ>.
19. 6A Seminole Nation Code of Laws (SNCOL) §504, 605-608.
20. Cheyenne-Arapaho Code, Criminal Procedure Act §425, 427 and 705.
21. Cheyenne-Arapaho Code, Domestic Abuse and Family Violence Act §203.
22. Criminal Procedure Act, Quapaw Nation Court Code §60, 62 and 98.
23. 14 Citizen Potawatomi Nation Code §14-1-105.
24. 2 Comanche Nation Tribal Court Code §5.01.
25. Iowa Tribe Resolution I-99-92.
26. Kickapoo Tribe of Oklahoma Domestic Violence Protection Ordinance §501.
27. Pawnee Nation Law and Order Code, Criminal Offenses, Chapter 7 Domestic Abuse Act §12 and 14.
28. 13 Sac and Fox Nation Code of Laws §9-05 and 9-409.
29. Osage Nation Code §5-412.
30. 25 CFR §11.315(b).
31. 25 CFR §11.1202.
32. oknaav.org/tribalprograms.



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Total to be charged: \$ _____ Credit Card #: _____ CW: _____

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CANCELATION POLICY

Cancellations will be accepted at any time on or before June 6 for a full refund; a \$50 fee will be charged for cancellations made on or after June 7.

No refunds after June 13.

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Registration fee includes 12 hours CLE credit, including up to three hours of ethics. Includes all meals: evening buffet Thursday and Friday, breakfast buffet Friday and Saturday, lunch buffet Friday and Saturday.

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COVID-19 and Omicron Won't Stop Access to the Courts

By Judge Thad Balkman and Judge Richard Ogden

THE RECENT SURGE OF the omicron variant once again proved how crucial it is for the courts to be ready and flexible to maintain access to justice. Once the daily infection rates exceeded more than 4,000 cases, many judges quickly returned to conducting hearings virtually.

Oklahoma District Courts leaned into technology to navigate through the global COVID-19 pandemic. Beginning in early March 2020, judges and court administrators began discussions of how we could balance access to justice while safely protecting court personnel, attorneys and litigants against COVID-19. We knew

the seriousness of the virus and threat to public health and safety required that public access to the bricks and mortar courthouses be restricted. However, judges also knew that justice delayed is justice denied, and permanently shutting down access to courts would lead to adverse consequences. Regardless of how minor the case may be, judges knew that citizens rely on the court system to timely adjudicate their disputes even during times of a global pandemic.

In the spring of 2021, with the advent of vaccines, most courts resumed conducting live hearings. This continued until early January 2022, when the omicron variant

became rampant, and health concerns required a return to the virtual platforms. By the first week of January, we were able to quickly pivot from live to virtual hearings seamlessly. For example, in just four dockets during the week of Jan. 17-21, we conducted a combined 53 hearings virtually with over 58 participants. Dozens of other judges across the state similarly utilized virtual platforms to keep the virtual “doors to the courthouse open” during the omicron surge.

Fortunately, the rules for district courts provided judges broad discretion to use videoconferencing when presiding over cases in all stages of civil or criminal proceedings. These remote court proceedings are conducted very similarly to proceedings that would otherwise take place in a courtroom. The procedures and outcomes have the same binding force and effect as if they were conducted inside a courtroom.

In 2019, well before the COVID-19 pandemic, legislators began drafting legislation to codify the use of videoconferencing in the district courts. And last year, a bipartisan bill was enacted to expand the use of videoconferencing to all court proceedings, including trials.

Prior to the pandemic, most judges had very little experience

Yet once in-person court was no longer a feasible option, judges seamlessly transitioned to using platforms such as Zoom, BlueJeans, Skype and Teams to conduct day-to-day courtroom procedures.



with conducting courtroom procedures over a videoconferencing platform. Yet once in-person court was no longer a feasible option, judges seamlessly transitioned to using platforms such as Zoom, BlueJeans, Skype and Teams to conduct day-to-day courtroom procedures. In fact, Cleveland County District Judge Michael Tupper successfully used BlueJeans to hold drug court during the early stages of the pandemic. This use of videoconferencing ensured participants were able to complete their treatment plans and achieve sobriety without any gaps or delays in the program. As a result, Cleveland County Drug Court was recognized with an honorable mention in the Biggest Impact category of the BlueJeans by Verizon Customer Awards of 2021.

Turning to videoconferencing during the beginnings of the pandemic and now the omicron surge helped protect the health of court staff, attorneys and litigants during unprecedented times. And along the way, we discovered that in addition to protecting health, there are other benefits to videoconferencing like saving travel time, cutting the costs of litigation for people and businesses and greater flexibility in scheduling.

The onset of the pandemic and the advent of the omicron variant created several challenges across the nation, and the judicial system was far from immune from those challenges. The top priority of Oklahoma judges has been keeping access to the courts open to people who were injured, damaged or for other reasons petitioned the courts for relief without jeopardizing the

health of court staff, attorneys and litigants. Turning to videoconferencing was both an economical and efficient tool to carry on the important business before the courts during these unprecedented times. We believe judges and courts in Oklahoma will continue using videoconference technology as needed to ensure all citizens are given timely access to justice.

ABOUT THE AUTHORS



Judge Richard Ogden is a district judge in Oklahoma County.



Judge Thad Balkman is a district judge in Cleveland County.

Legislative Monitoring Update

By Miles Pringle



WE ARE WELL INTO THE Second Regular Session of the 58th Legislature, and the Legislative Monitoring Committee is hard at work keeping members abreast of developments. If you missed our live 2022 Legislative Kickoff, there's still time. OBA members can receive 2.5 hours of MCLE by viewing the program online. Visit <https://bit.ly/3AXQTHh> to register and view the session and find out what bills might become law and what a group of lawyer legislators expect from this session. The program included:

- 90 Bills in 90 Minutes
 - Adria Berry, executive director of the Oklahoma Medical Marijuana Authority (cannabis bills)
 - David McKenzie, Mulnix, Eddy, Ewert & McKenzie (criminal law bills)
 - Stephanie Alleman, Alleman Law (elder law and estate planning bills)
 - Jennifer Walford, deputy general counsel Office of Management and Enterprise Services (government law bills)
 - Jake Krattiger, GableGotwals (civil procedure/courts bills)

- Kaylee P. Davis-Maddy, Doerner Saunders Daniel & Anderson (environmental/natural resources bills)
- Haley Drusen, deputy general counsel and legislative & policy director at the Teachers' Retirement System of Oklahoma (education law bills)
- Austin R. Vance, Whitten Burrage (Native American law bills)
- Monica Dionisio, Hester Schem Dionisio & Didier (family law bills)

- Legislative Panel with Sen. Kay Floyd, Sen. Brent Howard, Rep. Chris Kannady and Rep. Emily Virgin

OBA DAY AT THE CAPITOL

Please join us Tuesday, March 22 for the OBA Day at the Capitol. We will hear from officeholders and others on what is going on with the Legislature this session. After lunch, we will head over to the Capitol to meet with legislators.

Finally, if there is any legislation you are following, please keep in mind the remaining deadlines:

- March 3: Committee deadline
- March 24: House deadline for third reading of bills and joint resolutions in chamber of origin

- April 4: House deadline for SBs/SJR out of subcommittee
- April 14: Committee deadline for bills from opposite chamber
- April 22: Deadline for SBs/SJR out of full A&B committee
- April 28: Third reading in opposite chamber deadline
- May 27: *Sine die* adjournment

Please reach out with any questions or comments!

ABOUT THE AUTHOR



Mr. Pringle is general counsel for The Bankers Bank in Oklahoma City and serves as the Legislative Monitoring Committee chairperson.



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THE OKLAHOMA BAR

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JACKSON COUNTY

Tal Oden, *Altus*

OKLAHOMA COUNTY

James G. Caster, *Oklahoma City*

William A. Gilbert Jr.,

Oklahoma City

Charles Albert Shadid,

Oklahoma City

WASHINGTON COUNTY

Robert Perry Kelly, *Bartlesville*

OUT OF STATE

Albert L. Kamas, *Cheney, KS*



In 1952, the first Chevrolet Corvette prototype was completed, *Singin' in The Rain* premiered at Radio City Music Hall, the iconic Mr. Potato Head toy was first sold in stores and Elizabeth II became queen of the United Kingdom.



CLEVELAND COUNTY

Keith Richard Treadway,

Oklahoma City

COMANCHE COUNTY

Billy Bob Crawford, *Lawton*

CREEK COUNTY

Thomas David Lucas, *Sapulpa*

OKLAHOMA COUNTY

Gary D. Baer, *Oklahoma City*

J. Edward Barth, *Oklahoma City*

Monty Larex Bratcher, *Edmond*

B. J. Brockett, *Oklahoma City*

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William G. Kerr, *Oklahoma City*

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John Charles Niemeyer,

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E. Neil Stanfield, *Oklahoma City*

Rex Travis, *Oklahoma City*

Charles Dean Williamson,

Oklahoma City

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Robert Francis Leblanc, *Tulsa*

Robert Ernest Martin, *Tulsa*

George William Newton, *Tulsa*

Tony L. Waller, *Tulsa*

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Jerry D. Mullins, *Tucson, AZ*

Gary Page Sibeck, *Los Angeles, CA*

Melvin J. Spencer, *Bothell, WA*

Ronald D. Whitten, *Dallas, TX*



In 1962, Lt. Col. John H. Glenn Jr. became the first American to orbit the Earth, President John F. Kennedy proposed a Consumer Bill of Rights, Marvel's Spider-Man made his first appearance in a comic book and the first Wal-Mart opened in Arkansas.



BECKHAM COUNTY

Michael Wayne Blevins, *Sayre*

CANADIAN COUNTY

Jack Sterling Dawson, *Yukon*
William Spencer Flanagan, *Yukon*

CARTER COUNTY

David Michael Hisey, *Ardmore*
Charles Guy Tate, *Ardmore*

CHEROKEE COUNTY

Ronald Liles Day, *Cookson*

CIMARRON COUNTY

Stanley Ed Manske, *Boise City*

CLEVELAND COUNTY

Michael Rhomney Chaffin, *Norman*
Drew L. Kershen, *Norman*
E. Joe Lankford, *Norman*
Carl C. McFarland, *Norman*
Albert Willard Murry Jr.,
Oklahoma City
Jeff Frank Raley, *Norman*
Ronald Lee Ripley, *Norman*
David B. Sugarman, *Norman*
William Clayton Woods, *Norman*
Charles Norman Woodward,
Oklahoma City

COMANCHE COUNTY

Don Laurence Smith, *Lawton*

CUSTER COUNTY

Randolph Stewart Meacham, *Clinton*

DELAWARE COUNTY

Phillip Karl Thompson, *Jay*

GARFIELD COUNTY

Norman Lawrence Grey, *Enid*

GARVIN COUNTY

John Roy Sprowls, *Pauls Valley*

GRANT COUNTY

John William Michael, *Medford*

KAY COUNTY

Michael R. Collins, *Ponca City*
David Owen Denton, *Blackwell*

LE FLORE COUNTY

Michael D. Lee, *Poteau*

MAYES COUNTY

Jess B. Clanton Jr., *Langley*

MUSKOGEE COUNTY

Rolla Jay Cook, *Muskogee*
Roger Henry Hilfiger, *Muskogee*
Preston Jones Jr., *Muskogee*
Charles Leroy Schwabe, *Haskell*
Betty Outhier Williams, *Tulsa*

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Oklahoma City
William Clyde Bowlby,
Oklahoma City
Charles James Byrd, *Oklahoma City*
Len Buford Cason, *Oklahoma City*
Michael Alan Cawley, *Oklahoma City*
Mark Dale Coldiron, *Oklahoma City*
Curtis Craig Cole, *Oklahoma City*
William Greg Cunningham,
Edmond
Bruce Ward Day, *Oklahoma City*
Michelin A. DeLier, *Oklahoma City*
Donald Fred Doak, *Oklahoma City*
Michael Edward Dunn, *Nichols Hills*
Stephen P. Friot, *Oklahoma City*
Edmond F. Geary Jr., *Oklahoma City*
Richard Keller Goodwin, *Edmond*
Terry Ross Hanna, *Edmond*
Harvey L. Harmon Jr., *Oklahoma City*
Alvin C. Harrell, *Oklahoma City*
Douglas R. Hilbert, *Oklahoma City*
James A. Ikard, *Oklahoma City*
Thomas Michael Jackson,
Oklahoma City
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Harold B. McMillan Jr.,
Oklahoma City
Gary L. Morrissey, *Oklahoma City*

Jack Ledrew Neville, *Oklahoma City*
Paul B. Nichols Jr., *Oklahoma City*
Daniel Michael O'Neil Jr.,
Oklahoma City
W. Davidson Pardue Jr.,
Oklahoma City
William Paul Parker, *Oklahoma City*
Gary Paul Snow, *Del City*
Michael Wayne Speegle,
Oklahoma City
John Thomas Spradling Jr.,
Oklahoma City
James Ray Stout, *Edmond*
James Wallace Swank Jr.,
Oklahoma City
Larry A. Tawwater, *Oklahoma City*
Michael John Tullius, *Oklahoma City*
Charles Lee Waters, *Oklahoma City*
Wayne A. Wells, *Arcadia*
J. Donald White, *Bethany*
Terry Truman Wiens, *Oklahoma City*

OSAGE COUNTY

Larry Lee Montanye, *Skiatook*

PAYNE COUNTY

William J. Baker, *Stillwater*
W. Franklin Muret Jr., *Stillwater*
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Sidney Lamar Anderson, *Tulsa*
Michael Pearce Atkinson, *Tulsa*
Lawrence T. Chambers Jr., *Tulsa*
Stephen R. Clark, *Tulsa*
E. Terrill Corley, *Tulsa*
Alice Katherine Coyle, *Tulsa*
Robert Sherman Durbin, *Tulsa*
James Robert Elder, *Tulsa*
William S. Flanagan Jr., *Tulsa*
Robert W. Folger, *Tulsa*
Michael Lon Graves, *Tulsa*
John Neil Hove, *Tulsa*
Patrick Joseph Malloy III, *Tulsa*
Bob Fred McCoy, *Tulsa*
James R. McKinney, *Tulsa*

Allen B. Pease, *Tulsa*
 Tilman E. Pool Jr., *Tulsa*
 Stephen Bryan Riley, *Tulsa*
 David K. Robertson, *Tulsa*
 James Keith Secrest II, *Tulsa*
 Charles William Shipley, *Tulsa*
 Ron Eugene Shotts, *Tulsa*
 Kenneth Michael Smith, *Tulsa*
 David L. Sobel, *Tulsa*
 Richard Amis Wagner II, *Tulsa*
 Thomas William Whalen, *Owasso*
 John Bryant Wimbish, *Tulsa*
 Charles Lyle Woodstock, *Tulsa*

WAGONER COUNTY

Floyd Patrick Grant, *Broken Arrow*

OUT OF STATE

John Philip Adamson,
Castle Rock, CO
 Robert Ashley Atherton,
Longmont, CO
 James L. Ayers, *Monticello, IL*
 A. Stanley Battise, *Livingston, TX*

David Michael Curtis, *Dallas, TX*
 Robert Ruyle Edmiston,
San Antonio, TX
 Edward David Ellis, *Paris, TX*
 Aimee Frances Fisher, *Cantonment, FL*
 Floyd Anthony Gonzalez,
Murfreesboro, TN
 W. Michael Hackett,
Santa Barbara, CA
 Francis Daniel Highley, *Dallas, TX*
 Stephen R. Johnson,
The Woodlands, TX
 Tom G. Johnson, *Oakland, CA*
 Jeffrey Alan King, *Santa Fe, NM*
 Charles Ray Lane, *New Orleans, LA*
 James Lloyd Lane, *Fort Worth, TX*
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 John Stanley Turner, *Vero Beach, FL*



In 1972, the United States Supreme Court ruled the death penalty unconstitutional, NASA's Space Shuttle Program was officially launched, American ground troops were withdrawn from Vietnam while President Richard Nixon signed the Black Lung Benefits bill into law and Atari introduced Pong, the first commercially successful arcade game.



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ETHICS COUNSEL

DID YOU KNOW?

The ethics counsel is available to assist members with ethical questions and inquiries on subjects such as conflicts, confidentiality and client concerns. All contact with ethics counsel is confidential per Oklahoma law. The ethics counsel also presents CLE programs on ethics and professionalism.

CONTACT

Richard Stevens, *OBA Ethics Counsel*
www.okbar.org/ec | richards@okbar.org | 405-416-7055

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

Professional Responsibility Commission Annual Report

As Compiled by the Office of the General Counsel
of the Oklahoma Bar Association

Jan. 1, 2021 – Dec. 31, 2021 | SCBD 7209

INTRODUCTION

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011, ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2021 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION

The Professional Responsibility Commission is composed of seven persons – five lawyer and two non-lawyer members. The attorney members are nominated for rotating three-year terms by the President of the Association, subject to the approval of the Board of Governors. The two non-lawyer members are appointed by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, respectively. Terms expire Dec. 31 at the conclusion of the three-year term.

Attorney members serving on the Commission during 2021 were Chairperson Sidney K. Swinson, Tulsa; Vice Chairperson Heather Burrage, Durant; Karen A. Henson, Shawnee; Jimmy D. Oliver, Stillwater, and Matthew Beese, Muskogee. The non-lawyer members were John Thompson, Oklahoma City, and James W. Chappel, Norman. Commission members serve without compensation but are reimbursed for actual travel expenses.

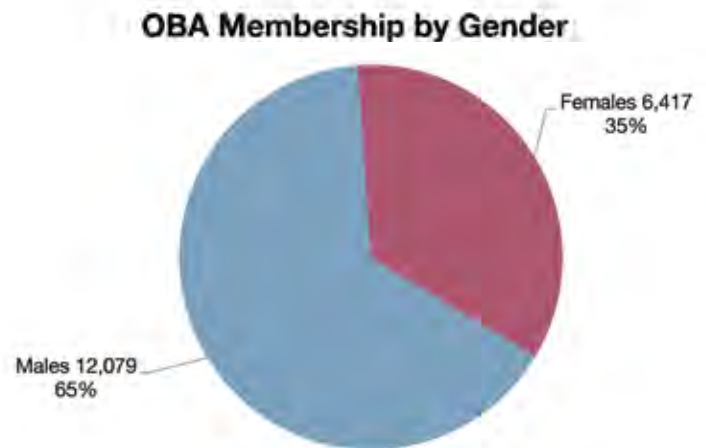
RESPONSIBILITIES

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any lawyer called to its attention, or upon its own motion, and takes such action

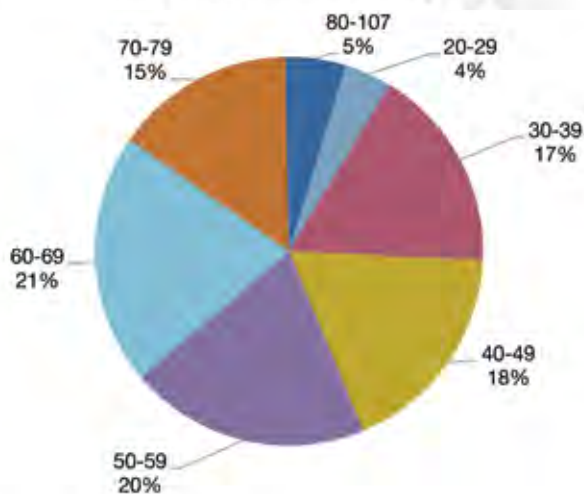
as deemed appropriate to effectuate the purposes of the Rules Governing Disciplinary Proceedings. Under the supervision of the Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel by grievance or otherwise and reports to the Commission the results of investigations made by or at the direction of the General Counsel. The Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged misconduct or personal incapacity of an attorney. The attorneys in the Office of the General Counsel prosecute all proceedings under the Rules Governing Disciplinary Proceedings, supervise the investigative process and represent the Oklahoma Bar Association at all reinstatement proceedings.

OBA MEMBERSHIP STATISTICS

Total membership of the Oklahoma Bar Association as of Dec. 31, 2021, was 18,496 attorneys. The total number of members includes 12,079 males and 6,417 females.



Total OBA Members by Age



VOLUME OF GRIEVANCES

During 2021, the Office of the General Counsel received 192 formal grievances involving 125 attorneys and 752 informal grievances involving 585 attorneys. In total, 944 grievances were received against 710 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office processed 157 items of general correspondence, which is mail not considered to be a grievance against an attorney.¹

On Jan. 1, 2021, 217 formal grievances were carried over from the previous year. During 2021, 192 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 409 formal investigations pending throughout 2021. Of those grievances, 253 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission.

Therefore, 156 investigations were pending on Dec. 31, 2021.

The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Commission.

Total Grievances Received



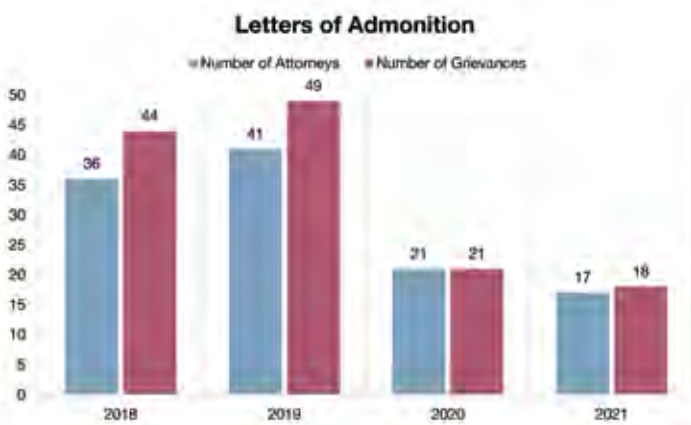
ACTIONS OF THE PROFESSIONAL RESPONSIBILITY COMMISSION

Formal Charges. During 2021, the Professional Responsibility Commission voted the filing of formal disciplinary charges against 16 lawyers involving 53 grievances. In addition, the Commission also oversaw the investigation of 15 Rule 7, RGDP matters filed with the Chief Justice of the Oklahoma Supreme Court.

Private Reprimands. Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of the attorney, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2021, the Commission issued private reprimands to 27 attorneys involving 43 grievances.



Letters of Admonition. During 2021, the Professional Responsibility Commission issued letters of admonition to 17 attorneys involving 18 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule, which the Commission believed warranted a warning rather than discipline.



Dismissals. The Professional Responsibility Commission dismissed four grievances that had been received but not concluded prior to the resignation of the attorney pending disciplinary proceedings, a continuing lengthy suspension or disbarment of the respondent attorney. Furthermore, the Commission dismissed one grievance upon successful completion of a diversion program by the attorney. The remainder were dismissed where the investigation did not substantiate the allegations by clear and convincing evidence.

Diversion Program. The Professional Responsibility Commission may also refer respondent attorneys to the Discipline Diversion Program, where remedial measures are taken to ensure that any deficiency in the representation of a client does not occur in the future. During 2021, the Commission referred 24 attorneys to be admitted into the Diversion Program for conduct involving 29 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating attorney and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program Direction involved in programming. Program options include Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills and Professionalism in the Practice of Law class. In 2021, instructional courses were taught by OBA General Counsel Gina Hendryx, OBA First Assistant General Counsel Loraine Farabow, OBA Assistant General Counsel Katherine Ogden, OBA Ethics Counsel Richard D. Stevens, OBA Management Assistance Program Director Jim Calloway and OBA Practice Management Advisor Julie Bays.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is now able to monitor when attorneys encounter difficulty with management of their IOLTA accounts. Upon recommendation of the Office of the General Counsel, the Commission may place those individuals in a tailored program designed to instruct on basic trust accounting procedures. This course is also available to the OBA general membership as a continuing legal education course.

2021 Diversion Program Curriculum	Number of Lawyers
Law Office Management Training	10
Communication and Client Relationship Skills	9
Professionalism in the Practice of Law	2
Professional Responsibility/Ethics School	11
Client Trust Account School	4
Law Office Consultations	11

SURVEY OF GRIEVANCES

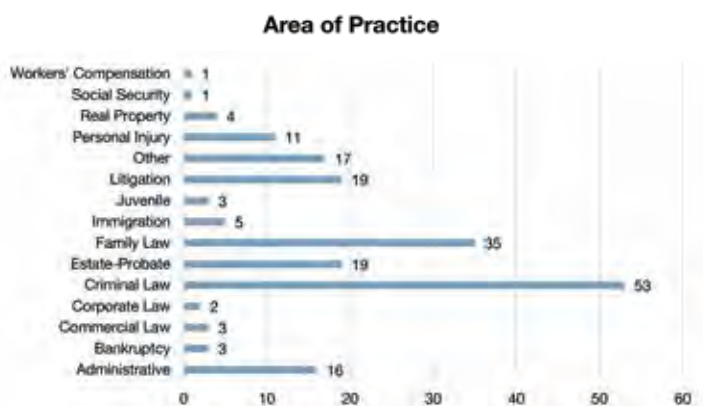
In order to better inform the Oklahoma Supreme Court, the bar and the public of the nature of the grievances received, the number of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Formal and informal grievances were received against 944 attorneys. Therefore, fewer than 6% of the attorneys licensed to practice law in Oklahoma received a grievance in 2021.

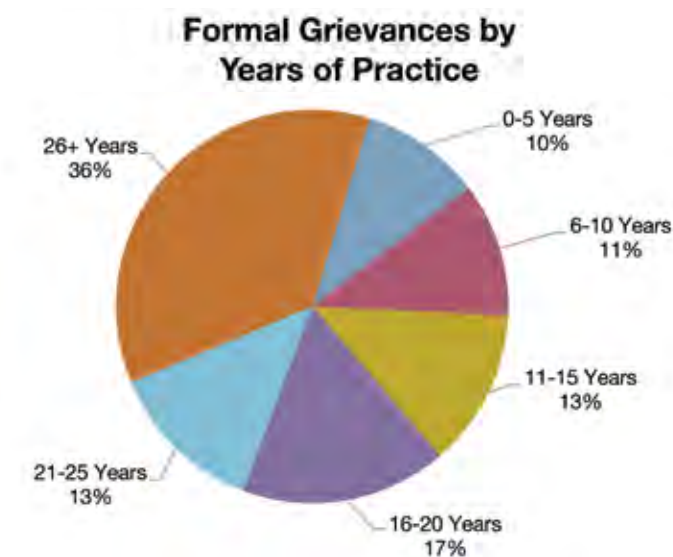
A breakdown of the type of attorney misconduct alleged in the 192 formal grievances opened by the Office of the General Counsel in 2021 is as follows:



Of the 192 formal grievances, the area of practice is as follows:



The number of years in practice of the 125 attorneys receiving formal grievances is as follows:



The largest number of grievances received was against attorneys who have been in practice for 26 years or more. The age of attorneys with disciplinary cases filed before the Oklahoma Supreme Court in 2021 is depicted below.

Type of Complaint Filed	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
Number of Attorneys Involved	10	15	3	3
Age of Attorney				
21-29 years old	0	0	0	0
30-49 years old	4	11	3	0
50-74 years old	6	3	0	3
75 or more years old	0	1	0	0

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT

In 2021, discipline was imposed by the Oklahoma Supreme Court in 21 disciplinary cases. The sanctions are as follow:

Disbarment

Respondent	Order Date
Charles Burton	2/23/21
Amber Ann Sweet	11/15/21

Resignations Pending Disciplinary Proceedings Approved by Court (Tantamount to Disbarment)

Respondent	Order Date
Eugene Robinson	3/2/21
Joseph Howard	9/14/21
William Eakin	11/8/21
James Montgomery	11/8/21

Disciplinary Suspensions

Respondent	Length	Order Date
Brandon Nichols	2 years	5/25/21
Jason Fields	1 year	6/8/21
Amber Sweet	Interim	9/13/21
Thomas Mortensen	Interim	9/27/21
Robert Faulk	2 years	9/28/21
William Eakin	Interim	10/25/21
Tynan Grayson	2 years + 1 day	11/16/21
Michael McBride	1 year	11/23/21
Heather Panick	2 years	12/13/21

Confidential Suspensions

Respondent	Length	Order Date
Confidential	Indefinite (R10 RGDP)	6/7/21
Confidential	Indefinite (R10 RGDP)	10/18/21

Public Censure

Respondent	Order Date
Tara Jack	1/19/21
Robert Newark	3/26/21
Kendra Coleman	11/23/21

Dismissals

Respondent	Order Date
William Smith	5/17/21
Grayson Barnes	6/28/21
Nicholas Porter	9/13/21
Kassie McCoy	10/1/21

There were 16 discipline cases filed with the Oklahoma Supreme Court as of Jan. 1, 2021. During 2021, 30 new formal complaints were filed for a total of 46 cases before the Oklahoma Supreme Court during 2021. On Dec. 31, 2021, 22 cases remained open before the Oklahoma Supreme Court.

Type of Discipline Imposed	Disbarment	RRDP	Disciplinary Suspension	Confidential Suspension	Public Censure	Dismissal
Number of Attorneys Involved	3	4	9	2	3	4
Age of Attorney						
21-29 years old	0	0	0	0	0	0
30-49 years old	1	0	6	2	3	3
50-74 years old	1	4	3	0	0	1
75 or more years old	0	0	0	0	0	0

REINSTATEMENTS

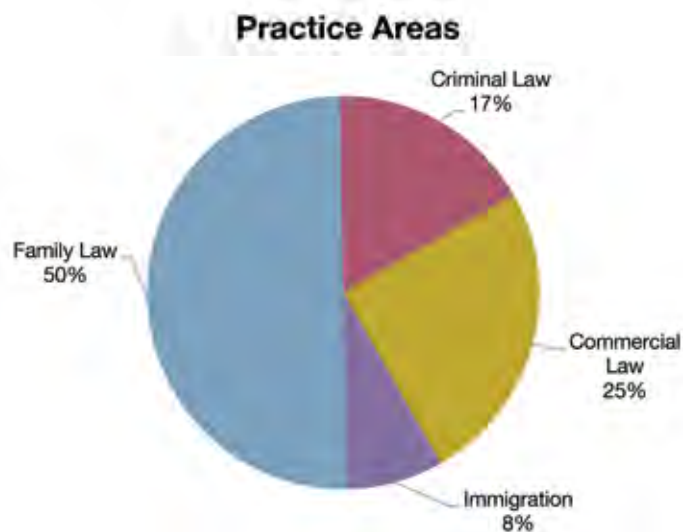
There were four Petitions for Reinstatement pending before the Professional Responsibility Tribunal and one Petition for Reinstatement pending with the Oklahoma Supreme Court as of Jan. 1, 2021. There were six new Petitions for Reinstatement filed in 2021. In 2021, the Oklahoma Supreme Court granted four reinstatements and dismissed two reinstatements. On Dec. 31, 2021, there were two Petitions for Reinstatement pending before the Professional Responsibility Tribunal and three Petitions for Reinstatement pending decision with the Oklahoma Supreme Court.

UNAUTHORIZED PRACTICE OF LAW

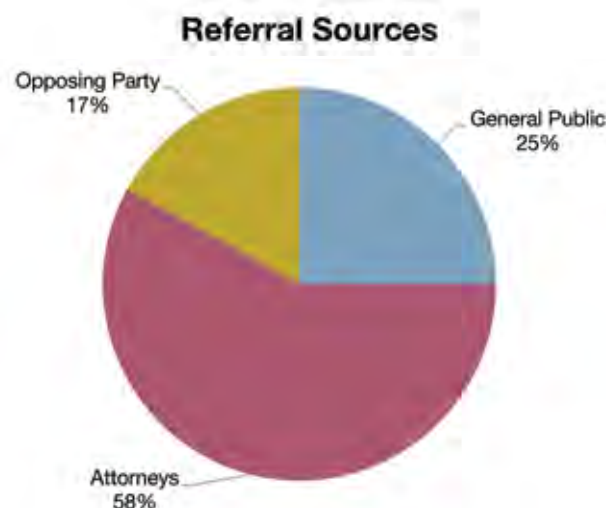
Rule 5.1(b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers, suspended lawyers and disbarred lawyers. Rule 5.5, ORPC, regulates the unauthorized practice of law by lawyers and prohibits lawyers from assisting others in doing so.

Requests for Investigation. In 2021, the Office of the General Counsel received 12 complaints for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

Practice Areas. Allegations of the unauthorized practice of law encompass various areas of law. In previous years, most unauthorized practice of law complaints involved non-lawyers or paralegals handling divorce matters, and that trend continues in 2021 with one-half of the UPL complaints involving family law matters.



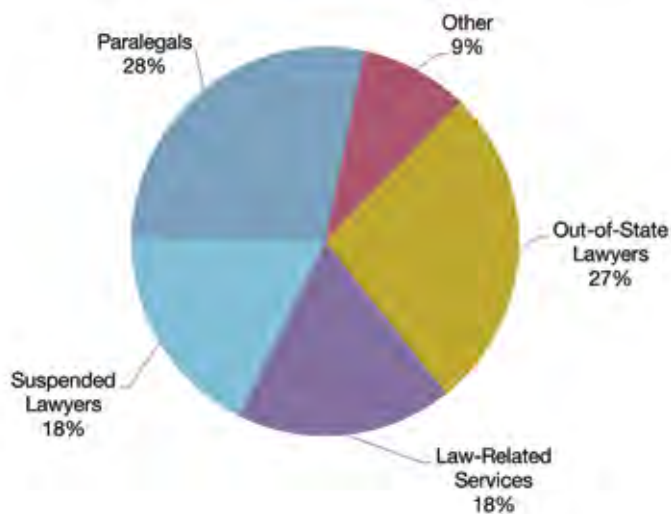
Referral Sources. Requests for investigations of the unauthorized practice of law stem from multiple sources. In 2021, the Office of the General Counsel received the most complaints from attorneys.



Respondents. For 2021, most requests for investigation into allegations of the unauthorized practice of law related to paralegals.

For purposes of this summary, the category “paralegal” refers to an individual who advertises as a paralegal and performs various legal tasks for their customers, including legal document preparation.

Respondents Allegedly Participating in UPL



Enforcement. In 2021, of the 12 matters received, the Office of the General Counsel took formal action in two matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, referring a case to an appropriate state and/or federal enforcement agency or filing the appropriate district court action. Five matters were closed after corrective action was taken. The remainder of the matters remains under investigation.

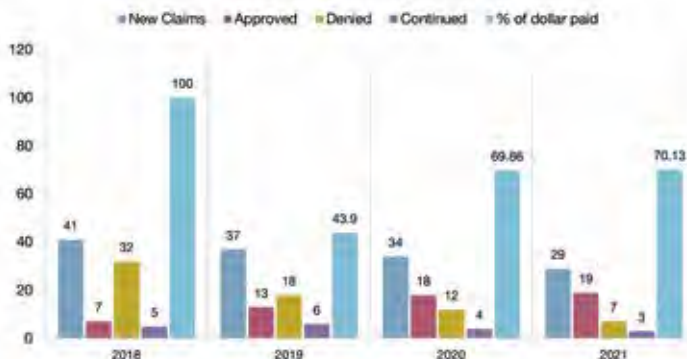
CLIENTS' SECURITY FUND

The Clients' Security Fund was established in 1965 by Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee, which is comprised of 17 members, 14 lawyer members and three non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2021, the Committee was chaired by lawyer member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers. It is also intended to protect the reputation of lawyers in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates \$175,000 each year to the Clients' Security Fund for payment of approved claims.

In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a *pro rata* basis until the total amount paid for all claims in that year is \$175,000. The Office of the General Counsel reviews, investigates and presents the claims to the committee. In 2021, the Office of the General Counsel presented

29 claims to the Committee. The Committee approved 19 claims, denied seven claims and continued three claims into the following year for further investigation. In 2021, the Clients' Security Fund paid a total of \$176,509.38 on 19 approved claims.

Clients' Security Fund



CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA

The Office of the General Counsel represented the Oklahoma Bar Association in several civil (non-discipline) matters during 2021. Three cases carried forward into 2022. The following is a summary of all 2021 civil actions against or involving the Oklahoma Bar Association:

McCormick et al. v. Barr et al., United States District Court for the Northern District of Oklahoma, Case No. CIV-20-24-JED-JFJ, filed Jan. 21, 2020. The Plaintiffs assert various claims against 21 defendants. Although named as a party, there were no claims asserted against the Oklahoma Bar Association. The Oklahoma Bar Association filed its Motion to Dismiss on Feb. 12, 2020. On Dec. 8, 2021, the court dismissed the matter without prejudice and imposed filing restrictions on the plaintiffs.

Bednar v. McGuire, et al., Oklahoma County District Court Case No. CJ-2020-5931. Bednar filed a Petition for Damages on Dec. 14, 2020. Bednar named 26 Defendants. The case is ongoing. To date, the Oklahoma Bar Association has not been served.

Alberta Rose Jones v. Eric Bayat, et al., Lincoln County District Court No. CJ-2021-21. Jones filed a Petition on March 5, 2021, naming 10 defendants and "Does 1-25." These included the Oklahoma Bar Association and an Assistant General Counsel. To date, the Oklahoma Bar Association and the Assistant General Counsel have not been served.

Brewer v. Oklahoma Bar Association, Oklahoma Supreme Court Case No. 119532. On April 22, 2021, Brewer filed an Application to Assume Original Jurisdiction and Writ of Prohibition alleging various claims and seeking broad relief from various branches of government. Thereafter, Brewer filed multiple motions in this matter. Pursuant to the Court's Order, the Oklahoma Bar Association

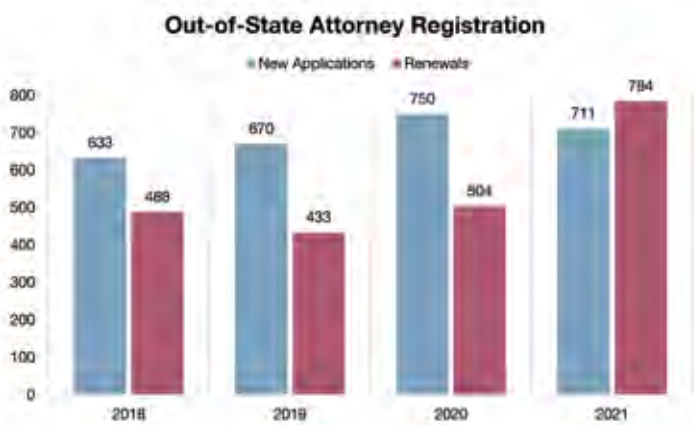
responded to Brewer's filings. On June 21, 2021, the Supreme Court denied Brewer relief. Brewer has notified the Oklahoma Bar Association multiple times that he is filing a Petition for Certiorari with the United States Supreme Court. Though he has sent many United States Supreme Court filing forms to the office, this case has not appeared on that court's docket.

Stewart v. Vincent, et al., United States District Court for the Northern District of Oklahoma, Case No. CIV-21-450. The Oklahoma Bar Association was named in a Complaint filed Oct. 15, 2021, but never served. This case was dismissed without prejudice on Dec. 30, 2021.

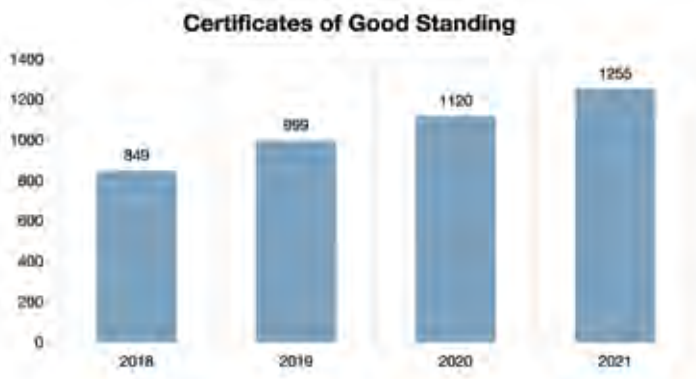
Farley v. Williams, et al., United States District Court for the Western District of Oklahoma, Case No. CIV-21-65. A Complaint was filed Jan. 29, 2021, naming the Oklahoma Bar Association as a defendant. The Oklahoma Bar Association was not served. Plaintiff has filed multiple documents in this matter. On April 6, 2021, the magistrate recommended that the case be dismissed. Plaintiff objected on April 14, 2021, and again on Sept. 24, 2021. This matter is pending.

ATTORNEY SUPPORT SERVICES

Out-of-State Attorney Registration. The Office of the General Counsel processed 711 new applications and 785 renewal applications submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in their licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or Tribunal as an exhibit to a "Motion to Admit."



Certificates of Good Standing. In 2021, the Office of the General Counsel prepared 1,255 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.

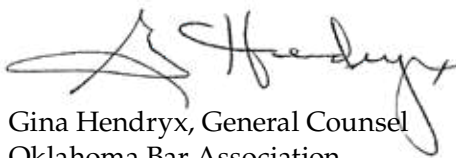


ETHICS AND EDUCATION

During 2021, attorneys in the General Counsel's office presented more than 30 hours of continuing legal education programs to county bar association meetings, attorney practice groups, OBA programs, all three state law schools and various legal organizations. In these sessions, disciplinary and investigative procedures, case law and ethical standards within the profession were discussed. Due to pandemic restrictions, the majority of these programs were presented via videoconference. These efforts direct lawyers to a better understanding of their ethical requirements and the disciplinary process and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. The Office of the General Counsel worked with lawyer groups to assist with presentation of programming via in-person presentations and videoconferencing platforms.

The attorneys, investigators and support staff for the General Counsel's office also attended continuing education programs in an effort to increase their own skills and training in attorney discipline. These included trainings by the Oklahoma Bar Association, the National Organization of Bar Counsel (NOBC) and the Organization of Bar Investigators (OBI).

RESPECTFULLY SUBMITTED this 2nd day of February 2022, on behalf of the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.


Gina Hendryx, General Counsel
Oklahoma Bar Association

ENDNOTES

1. The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to a formal grievance after investigation.



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NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE OKLAHOMA INDIGENT DEFENSE SYSTEM BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract ("Offers") to provide non-capital trial level defense representation during **Fiscal Year 2023** pursuant to 22 O.S. 2001, '1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2023 (July 1, 2022 through June 30, 2023) in the following counties: **100% of the Oklahoma Indigent Defense System caseloads in THE FOLLOWING COUNTIES:**

CADDO, CARTER, DELAWARE, JOHNSTON, LOVE, MARSHALL, MAYES, MURRAY, OSAGE, PAWNEE

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board's consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor, traffic, youthful offender and wildlife cases in the above counties during FY-2023 (July 1, 2022 through June 30, 2023). Offers may be submitted for complete coverage (100%) of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m.

The deadline for submitting sealed Offers is 5:00 PM, Thursday, March 17, 2022.

Each Offer must be submitted separately in a sealed envelope or box containing one (1) complete original Offer and two (2) complete copies. The sealed envelope or box must be clearly marked as follows:

FY-2023 OFFER TO CONTRACT
_____ **COUNTY / COUNTIES**

TIME RECEIVED:
DATE RECEIVED:

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to OIDS, FY-2023 OFFER TO CONTRACT, P.O. Box 926, Norman, OK 73070-0926. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at 111 North Peters, Suite 500, Norman, OK 73069. **Please note that the Peters Avenue address is NOT a mailing address; it is a parcel delivery address only.** Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 PM, THURSDAY, March 17, 2022 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 18, 2022, beginning at 9:30 AM, and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Non-conforming Offers will be rejected on Friday, March 18, 2022, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 25th, 2022**, at *a place to be announced*.

With each Offer, the attorney must include a résumé and affirm under oath his or her compliance with the following statutory qualifications: presently a member in good standing of the Oklahoma Bar Association; the existence of, or eligibility for, professional liability insurance during the term of the contract; and affirmation of the accuracy of the information provided regarding other factors to be considered by the Board. These factors, as addressed in the provided forms, will include an agreement to maintain or obtain professional liability insurance coverage; level of prior representation experience, including experience in criminal and juvenile delinquency proceedings; location of offices; staff size; number of independent and affiliated attorneys involved in the Offer; professional affiliations; familiarity with substantive and procedural law; willingness to pursue continuing legal education focused on criminal defense representation, including any training required by OIDS or state statute; willingness to place such restrictions on one's law practice outside the contract as are reasonable and necessary to perform the required contract services, and other relevant information provided by attorney in the Offer.

The Board may accept or reject any or all Offers submitted, make counter-offers, and/or provide for representation in any manner permitted by the Indigent Defense Act to meet the State's obligation to indigent criminal defendants entitled to the appointment of competent counsel.

FY-2023 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2018, FY-2019, FY-2020, FY-2021 and FY-2022 together with a 5-year contract history for each county listed above. The request form below may be mailed to **OIDS OFFER-TO-CONTRACT PACKET REQUEST, P.O. Box 926, Norman, OK 73070-0926**, or hand delivered to **OIDS at 111 North Peters, Suite 500, Norman, OK 73069** or submitted by facsimile to **OIDS at (405) 801-2661**.

REQUEST FOR OIDS FY-2023 OFFER-TO-CONTRACT PACKET

Name _____ OBA # _____

Street Address _____ Phone _____

City, State, Zip _____ Fax _____

County / Counties of Interest _____

In a League of Her Own

By John Morris Williams

IN THE MOVIE *A LEAGUE OF Their Own*, the character played by Tom Hanks said, "There is no crying in baseball." Obviously, there was, or he wouldn't have said it. We try not to have too much crying in bar work, but there are times when a tear comes to the eye. I'm suffering through one of those times right now with the retirement of my long-suffering executive assistant, Debbie Brink.

We have many outstanding and hardworking employees at the Oklahoma Bar Association. I can promise you that every day, you got your money's worth with Debbie Brink. Debbie truly cared about our association and our members. A good deal of her job included providing support to our presidents and Board of Governors. She was the unseen hand in many successful programs and projects. Never one to seek recognition or credit, she labored tirelessly and took immense pride in her work.

When I became executive director, I found that very little of the OBA's policies and procedures had been captured in writing. Because of Debbie's hard work, we now have a complete policy manual that is indexed and electronically searchable. Another of her great accomplishments is "The Book."

Like many policies and procedures, when I came to the OBA, there was no comprehensive compilation of all the duties,



John Morris Williams and retiring Executive Assistant Debbie Brink

appointments, schedules and timelines for the incoming presidents. While my previous assistant and I began the task of building the book, Debbie Brink took it to perfection. Every year she spent about a month assembling all the necessary information for the president-elect to have at their fingertips a complete roadmap to the OBA presidency. This is no small task given that there are more than 200 potential appointments that rotate from year to year. Each year the book must be customized and tailored to the incoming president. I believe anyone who has become president since Debbie has taken over building the book can attest

that her work has made the job much more manageable. This is just one of the countless examples of work Debbie took to perfection.

Personally, I have enjoyed every minute of working with her. Working with Debbie was just plain fun. During times of stress and heavy workloads, we always found a way to laugh and keep our eye on the mission. Since my office handles associate membership applications, Debbie and I have seen a number of members who were forced to take associate membership status due to disabilities of various types. Debbie always exercised the utmost compassion and went out of her way

to help those members who were struggling to get the paperwork done and retain their membership. On more than one occasion, Debbie worked with family members or other lawyers when members were too sick to navigate the paperwork. Not only did she diligently perform her duties, she genuinely cared about those who were suffering. I am sure she put them on her prayer list on more than one occasion.

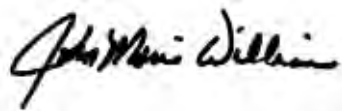
Like most jobs at bar associations of our size, there are countless duties that are not found in any job description. Debbie is the person who reordered the president's pin if one got lost. She is the one who maintained the inventory of cuff links and pins given to outgoing members of the Board of Governors. She ordered the gift baskets for visiting bar presidents at the Annual Meeting and prepared the scripts for the president, president-elect and me for every Annual Meeting.

There are a thousand details she attended to with absolute perfection, all the while maintaining my schedule and making sure nothing lived on my desk long. (Except when she rescued a potted plant I was killing.) Prior to coming to the OBA, Debbie had been a legal secretary and a darn good one. Her methods of maintaining workflow and attention to detail are second-to-none. She is an incredible editor and could

create a spot-on first draft after only a brief conversation between us. Having worked together for so long, we often could literally finish each other sentences.

While I try to have no crying in bar work, I must admit my eyes are a bit moist over Debbie's retirement. I've worked with excellent people throughout my career, but I have enjoyed working with no one more than Debbie Brink. I am eternally grateful we have had the incredibly great times we spent working together. I'm even more grateful for the extraordinary friendship and the opportunity every day to witness the magic that she worked. She truly is in a league of her own.

Thank you, Debbie! All the best to you in your retirement.



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



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OBA Solo & Small Firm Conference is Back in 2022

By Jim Calloway

THE OBA SOLO & SMALL Firm Conference is back, bigger and better than ever! It will be held June 23 – 25 at the Choctaw Casino Resort in Durant, with more educational sessions and more fun. Registration is now open, as is the OBA hotel room block. Visit the conference website www.okbar.org/solo for more information, including the complete schedule, hotel reservation info and online registration.

As always, the conference provides 12 hours of CLE so attendees can satisfy all of the year's MCLE requirements at this conference. This year that includes two hours of MCLE ethics credit.

Brett Burney returns to the conference this year. He is principal of Burney Consultants LLC and served as 2015 ABA TECHSHOW chair. He coauthored the *eDiscovery Buyers Guide* (free download at www.ediscoverybuyersguide.com), designed to help small- and mid-sized law firms understand the options available for their e-discovery needs. Every lawyer needs to understand basic e-discovery law so they can properly advise clients on how to respond when they receive a data preservation request. Mr. Burney will teach a two-part session, "Everything a Small Firm Lawyer Needs to Know About Electronic Discovery" and an



Brett Burney will teach a two-part session, "Everything a Small Firm Lawyer Needs to Know About Electronic Discovery" and an additional session on "How to Collect, Preserve & Produce Text Messages From Mobile Devices."

additional session on "How to Collect, Preserve & Produce Text Messages From Mobile Devices."

Professor Robert Spector will also return to our conference. As many of you know, he is professor *emeritus*, Glenn R. Watson Centennial Chair in Law at the OU College of Law. During the conference, he will teach "Recent Developments in Family Law" and "Dealing with Relocations and Custody Modifications."

Did you know there are many new startup companies in our region that need advice and often cannot afford large law firm representation? Martha Londagin is an executive consultant with the



Professor Robert Spector will teach "Recent Developments in Family Law" and "Dealing with Relocations and Custody Modifications."

Startup Junkie Foundation. She is an Oklahoma-licensed attorney and former banker who has been working with attorneys and other professionals as a business consultant for northwest Arkansas nonprofit groups that empower startup and high-growth companies throughout the Oklahoma-Arkansas region. Not only will she discuss the types of legal services these entrepreneurs need, but she will also share many resources that are currently available to assist startups. If you think you would like to advise emerging entrepreneurs, you will want to attend this session.



The OBA Solo & Small Firm Conference will be held June 23 – 25 at the Choctaw Casino Resort in Durant.

Kenton Brice will speak to us about two very important subjects: “Evaluating Technology Tools – A Toolkit for Legal Professionals” and “Document Generation Workflows and Why They Matter.” Mr. Brice is director of technology innovation for the OU College of Law and a current member of the ABA TECHSHOW planning board. I believe improving document generation workflows is one of the more important future considerations for lawyers in any practice setting.

Our Saturday morning ethics session will be taught by OBA General Counsel Gina Hendryx and OBA Assistant General Counsel Tracy Nester. But after our Saturday luncheon, you will be treated to a different type of



Martha Londagin will help you grow your law practice by fostering new and long-term client relationships with entrepreneurs.

buffet, where you choose among three programs all approved for MCLE ethics credit. Your “buffet” options are: “This is BS! Burnout and Stress” with Scott B. Goode



Kenton Brice will discuss “Evaluating Technology Tools – A Toolkit for Legal Professionals” and “Document Generation Workflows and Why They Matter.”

and Sheila J. Naifeh, “Coping with Conflicts of Interest” with OBA Ethics Counsel Richard Stevens and “An Ethical Cybersecurity Playbook for Your Law Firm” with

Visit the conference website www.okbar.org/solo for more information, including the complete schedule, hotel reservation info and online registration.

Sharon Nelson and John Simek. So, you've got many options for many great programs on ethical competency for lawyers.

Attorney Mark Robertson's presentations at Solo and Small Firm Conference are always well attended and well received because he provides great content and many forms for attendees. This summer he is teaching two sessions: "Basics of Business Formations (with Forms)" and "Basics of Estate and Transition Planning for Business Owners (with Forms)."

"The Basics of Budgeting & Business Planning" and "Serving the Underserved – Limited Scope Services and More" are programs that will be taught by OBA Practice Management Advisor Julie Bays. In uncertain times, it is more important than ever for a small law firm to have a budget and appropriate business planning.

I will be reprising my presentation from ABA TECHSHOW 2022, the "Digital Client File." I recall when the discussion was about whether one actually needed to maintain a digital client file, while now everyone wants to know how to handle their digital client files more effectively.

Conference gold sponsor Clio will be giving a presentation on "How to Build the Perfect Client Intake Process for Your Law Firm." Improving our intake procedures so that we make it as easy as possible for clients and avoid entering the same data two, three or four times into our computer systems is a very important topic. This presentation contains content for every lawyer whether or not they use practice management software Clio.

Jeri Holmes will share her expertise on "The Nuances of Representing Tax-Exempt Organizations." It is one thing to serve on a nonprofit board

as a volunteer. But it's another thing entirely if that evolves into becoming a free lawyer with all the responsibilities and potential liability associated with that. This is just one of many situations Ms. Holmes will discuss with her audience.

Since we have expanded the number of our educational sessions, we cannot cover them all here. Please visit the Solo Conference website to see all the offerings. There are substantive law programs ranging from appellate practice to guardian *ad litem* & juvenile law.

We will still feature many of the same events and networking opportunities that have made this



Mark Robertson will teach two sessions, "Basics of Business Formations (with Forms)" and "Basics of Estate and Transition Planning for Business Owners (with Forms)."



Jeri Holmes will discuss "The Nuances of Representing Tax-Exempt Organizations."

conference successful. The conference will open with “60 Tips in 60 Minutes.” Our Thursday night dinner will feature live entertainment and, since we are now in the 20s, what better theme for our Friday night event than “The Great Gatsby”? There will be more information provided on that event later, but you can start shopping for appropriate party attire today.

Our closing Saturday session has a new title, “The Future of Law.” But it will still feature a lot of laughs and a lot of door prizes given out. There’s so much discussion about the future of law practice and the impact of the mergers of legal technology providers that we wanted to give our panelists a chance to discuss these cutting-edge issues.

If you have never attended a Solo & Small Firm Conference,

it’s hard to share what a great experience it is. There are lots of opportunities to socialize with the other attendees, and the Choctaw Casino Resort in Durant has many other entertainment options in addition to gaming. If you’ve been meaning to go for some time, why not make this your year? If you’ve attended the conference before, then we want you to come back! Register early because we may have capacity attendance.

I hope to see you at the 2022 OBA Solo and Small Firm Conference!

Mr. Calloway is OBA Management Assistance Program director. Need a quick answer to a tech problem or help solving a management dilemma? Contact him at 405-416- 7008, 800-522-8060, jimc@okbar.org. It’s a free member benefit.



A vintage-style poster with a cream background and dark blue and black text. At the top, "SAVE THE DATE" is written in a bold, blue, sans-serif font, flanked by horizontal lines. Below this, "OPENING YOUR LAW PRACTICE" is written in a large, blue, 3D block font. Underneath, "PRESENTED BY THE OKLAHOMA BAR ASSOCIATION" is written in a smaller, black, sans-serif font. A decorative blue flourish separates the text from the date. The date "MAY 3, 2022 • VIRTUAL" is written in a large, black, sans-serif font, with two hands pointing towards it from the left and right. Another decorative blue flourish is below the date. At the bottom, "FOR MORE INFORMATION, VISIT WWW.OKBAR.ORG/OYLP" is written in a black, sans-serif font.

SAVE THE DATE

OPENING YOUR LAW PRACTICE

PRESENTED BY THE OKLAHOMA BAR ASSOCIATION

MAY 3, 2022 • VIRTUAL

FOR MORE INFORMATION, VISIT WWW.OKBAR.ORG/OYLP

OKLAHOMA BAR FOUNDATION PRESENTS



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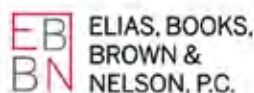
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Have You Considered Monthly Giving?

By Candice Pace

DONATING TO YOUR favorite charity on a monthly, recurring basis, the giving method most popular among millennial donors, is now a mainstream giving option for nonprofit organizations. Studies show this isn't just a trend but a very effective fundraising strategy that provides benefits to both the cause you support and you as the donor. Whether you already give monthly or have just been considering it, you should know how much more beneficial this method is than a one-time donation.

Here are the top three reasons for monthly giving:

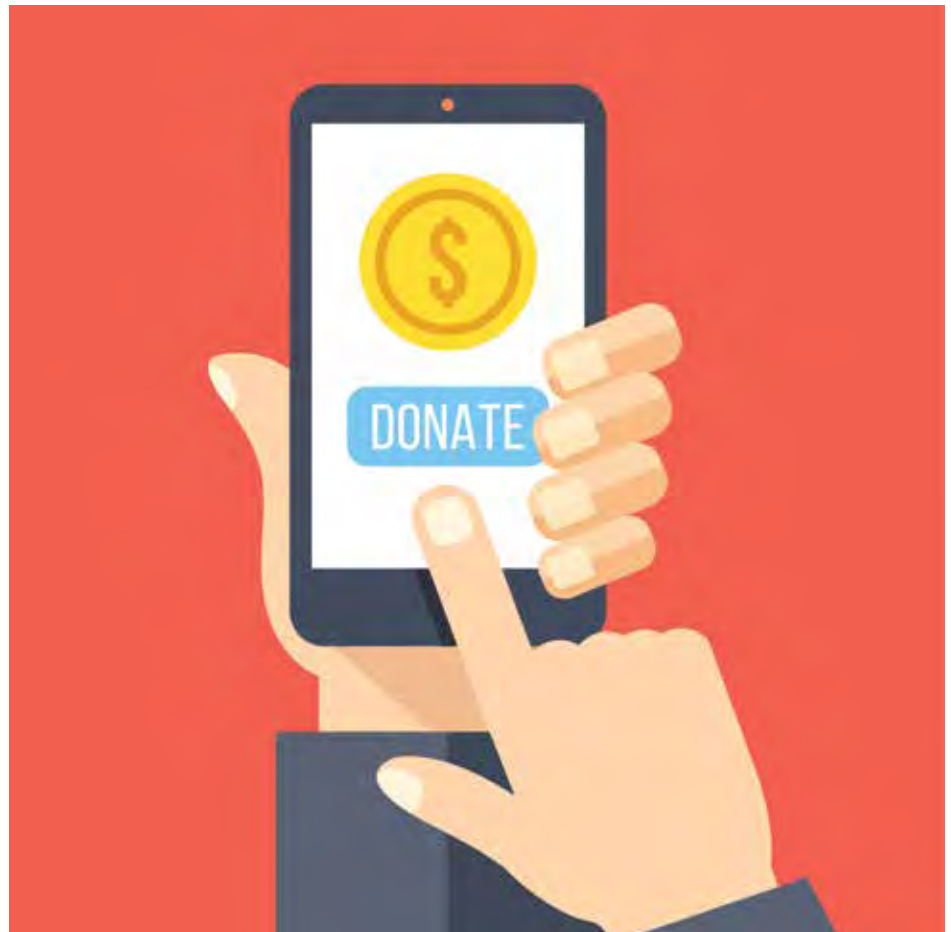
1) CONVENIENT FOR YOU, THE DONOR!

Monthly giving is an easy and effective way for you to enhance your monetary impact on your favorite cause throughout the entire year. It's easy to set up. Using a credit card or electronic funds transfer, donations are automatically withdrawn each month. Automatic payments made on a monthly basis are easier and more practical for the donor, and monthly donors report they can contribute more on an annual basis. In fact, "The average monthly online donation is \$52 (\$624 per year) compared to the average once a year gift of \$128," according to

nonprofitsource.com.¹ Monthly giving is a great way to increase your annual donation and your impact on a cause. The OBF offers a monthly giving option. Many OBF Trustees and Partners for Justice donate automatically on a monthly basis and have given positive feedback about this donation method.

2) HELPS THE NONPROFIT'S BUDGET AND PROTECTS GRANTEES AND CLIENTS

Monthly giving provides nonprofits with consistent information for making annual budget projections, while at the same time increases their revenue and cash flow. Due to the seasonal nature of giving, most nonprofits typically



“Recurring donors have the highest lifetime financial return, 42% above fundraisers and 440% above one-time donors.”

receive the bulk of their fundraising income during just a couple of months of the year. The OBF, for example, receives the largest amount of donations in December every year. Continuing, automatic monthly donations help the overall budget and make fundraising projections easier.

A robust monthly giving program provides stability for a nonprofit and its grantees in times of uncertainty or emergency. For example, the OBF’s major source of revenue, Interest on Lawyers’ Trust Accounts (IOLTA), fluctuates greatly due to changes banks make in interest rates they pay. Also, unexpected events like the 2008 recession, COVID-19 pandemic, natural disasters and cuts to state and federal funding make reliable sources of income even more important to meet unforeseen needs. A solid monthly giving program allows a nonprofit like the OBF to respond quickly and support its grantees during hard times.

Monthly giving is also more cost effective for nonprofits. It generally costs less to maintain a monthly donor than an annual donor. As a monthly donor, you can be assured that your donation is making a bigger impact by keeping overhead low.

3) INCREASES DONOR RETENTION AND SUSTAINS IMPACT

Studies have shown that monthly donors are much more likely to continue giving to a nonprofit than one-time donors. According to DonorPerfect, an online fundraising system, “Research shows that organizations who have monthly giving programs increase donor retention for those donors from 43 percent to 90 percent.”² Other online fundraising systems report the same findings: Monthly giving almost doubles donor retention rates. This increases more sustainable funding year after year.

Additionally, “Recurring donors have the highest lifetime financial return, 42% above fundraisers and 440% above one-time donors,” as reported in *The State of Modern Philanthropy*.³ This makes a huge difference, especially when coupled with the fact that recurring giving programs are more cost effective than fundraisers and acquiring one-time donors. Monthly donations not only keep overhead low, they also make returns on investment high, allowing nonprofits to help more people in need.

As you can see, monthly giving is a great idea for nonprofits and their supporters to increase funding for critical, life-saving

programs. Lawyers can easily set up monthly giving with the OBF and enhance the mission strategy to provide legal services, education and access to justice to all Oklahomans.

To sign up as an OBF Monthly Partner, visit <https://bit.ly/3pefe6T>.

Ms. Pace is OBF director of development & communications.

ENDNOTES

1. <https://bit.ly/3Hc99hJ>.
2. <https://bit.ly/3vaM38Q>.
3. www.classy.org/blog/recurring-donations-infographic.

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PERFECTING YOUR CASE FOR APPEAL

MCLE 1/0

Featured Speakers: Scott Hester, Staff Attorney, Oklahoma Court of Civil Appeals

This course provides broad and general guidance on civil appeals and illustrates that what happens at the trial level can impact your case on appeal. Enjoy real life examples and application of the appellate rules in learning how to perfect your case for a possible appeal.

Originally released on January 28, 2022

A REFEREE'S ROLE IN THE APPEALS PROCESS

MCLE 1/0

Featured Speakers: Kyle Rogers and John Holden, Referees, Supreme Court of Okla.

This program provides an overview of what to expect when a Referee is involved in your appeal.

Originally released on February 4, 2022

MORE THAN JUST DRAFTING AND DEADLINES

MCLE 1/0

Featured Speaker: Keith A. Jones, Divorce Law

Learn the basics of appellate practice. In particular, how to do it; what to look for; and helpful tips for handling an appeal.

Originally released on February 11, 2022

HOW TO CONSTRUCT COMPLEX PLEADINGS WITH MICROSOFT WORD

MCLE 2/0

Featured Speaker: Barron Henley, Esq., Founding Partner, Affinity Consulting Group

In this program, you will receive a finely tuned 10th Circuit U.S. Court of Appeals brief template (in Microsoft Word), and learn how to use it, customize it to your purposes, AND SO MUCH MORE!!!

Originally released on February 18, 2022

LEGAL WRITING: STRIVING FOR CLARITY

MCLE 1.5/0

Featured Speaker: The Honorable Robert Bacharach, U.S. Court of Appeals, 10th Circuit

Learning Objectives: Guidance from bench on effective legal writing; Skills to clearly and concisely convey your argument; Tips and tools on structure and context.

Originally released on February 25, 2022

Trial & Error

By Dylan D. Erwin

SOMEHOW, AND AS NON-sensical as it may seem, I knew I wanted to be a trial attorney before I even knew I wanted to be an attorney. A noble and vociferous trial attorney, standing before a jury of my client's peers, arguing with impassioned and nuanced language in favor of my case. Reaching such poetic and rhetorical heights that I seemed to float across the courtroom rather than walk. I'm not unique in this desire. Many of my ilk during our law school education shared the same dreams – reveling in the Atticus Finch of it all. Little did I know, expectation and reality rarely find common ground.

A few years ago, there was a series of features in the Oklahoma County Bar Association publication, the *Briefcase*, in which seasoned trial attorneys recounted their earliest trial experience. Not only were the articles informative, but many of them were equal parts hilarious and cringe-inducing. Hilarious because – as Mark Twain *allegedly* said – humor is tragedy plus time; cringe-inducing because well, to err is to human – and we're all human. Reading those articles made me think about my first trial experience. They made me think about whether my first experience was one of "The Incredible Floating Trial Lawyer" or something more akin to the articles I read in the *Briefcase*. I'll let you be the judge.



The year was 2014. My license to practice law was still warm from the printer. I was a 26-year-old prosecutor. It was a perfect day outside. The sun was shining, but the heat, distracted by a soft breeze, wasn't oppressive. It was the day of my first trial – a non-jury trial on a misdemeanor DUI charge – and even the weather seemed to be on my side. Even though it was a non-jury trial, I still gave an opening statement. Why not? After all, I was a trial lawyer. That's what trial lawyers do. The defense attorney waived her opening statement. It threw me off, but I quickly recovered. I called my first and only witness. The police officer who stopped my client and performed the standard field sobriety test. I didn't even need my notes. I knew the case

inside out. The defense barely even cross-examined the officer. When the judge asked if I had any redirect, I smiled and said, "No, your honor" and sat back down. He excused my witness and asked me to call my next one. I didn't have one. I didn't need one. So, after a stellar opening and a seamless, off-the-cuff direct examination, I announced my rest.

Then something happened. Defense counsel was smiling. Defense counsel stood up. Defense counsel said the words that would haunt me for years to come.

"The State of Oklahoma has failed to establish that the crimes alleged were perpetrated by my client, and that the crimes alleged took place within the confines of Comanche County, Oklahoma."

I had forgotten to ask the officer to identify the defendant. I had forgotten to establish venue. While the realization began to sink in, I heard a voice from the other end of the courtroom. It was the judge.

"Demurrer sustained. Case dismissed."

And just like that, my first trial was over. I had lost. I didn't even have the wherewithal to crash and burn. I had fizzled out like a wet firecracker. The noble and vociferous trial attorney I imagined I was seemed to have taken the day off. Probably to enjoy the nice weather. I left the courtroom disappointed, confused and feeling the emotional equivalent of having had a sprig of parsley in my teeth and no one to tell me.

Eight years have passed since that first trial, but the lessons I learned are as fresh today as they were then. No matter how prepared I am, you will never find me in court without notes. No matter how confident I am, you will never find me grandstanding. No matter how convinced I am that I'll remember to bring up every element of every claim, I won't sit down until I've placed little checkmarks beside each element on a printed OUJI.

This is what I've come to learn about expectation vs. reality, in law as well as in life. Reality is nothing more than expectation tempered by experience – or, in

my case, purified in a (non-jury) trial by fire. While we may not immediately be what we set out to be in this profession, each success and misstep gets us closer to that ideal. As young lawyers, it's imperative that we keep that idea in mind. In his *Meditations*, Marcus Aurelius tells himself, "What stands in the way becomes the way." As you navigate the uncertain and oft-choppy waters of a budding legal career, never

forget that every step – even every misstep – leads you closer to the lawyer you always wanted to be. And with that, I rest.

Mr. Erwin practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at derwin@holladaychilton.com. Keep up with the YLD at www.facebook.com/obayld.



Steidley & Neal, PLLC is pleased to announce that Jamie A. Rogers has joined the firm.

Steidley & Neal, PLLC is pleased to announce that Jamie Rogers has joined the firm as an associate. Jamie graduated from Ponca City High School in 1996. She graduated Summa Cum Laude from Oklahoma State University in 1999, then received her Juris Doctorate with highest honors from the University of Oklahoma in 2003. She was a member of the Oklahoma Law Review and The Order of the Coif. She was awarded multiple American Jurisprudence awards while at OU and was named a Comfort Scholar. She and her husband enjoy sailing.

FOR YOUR INFORMATION

TULSA ATTORNEYS SERVE AFGHAN EVACUEES BY PROVIDING FREE LEGAL SERVICES



In August 2021, thousands were evacuated from Afghanistan after it was seized by the Taliban. Oklahoma has welcomed the largest number of Afghan evacuees per capita in the nation, and several Tulsa-area

law firms have stepped up to help them gain legal status through the asylum process. Today, over 670 evacuees have arrived in Tulsa. Catholic Charities, the primary evacuee resettlement agency for Oklahoma, will provide the evacuees with the basics needed to live in the community, while the legal community works in tandem to offer legal counsel.

Conner & Winters is one of several law firms that has committed to helping Afghans who recently arrived in Tulsa. The firm will assist in the asylum application process and will devote at least 500 hours of pro bono legal work this year. "It's truly an honor and privilege to serve these new members of the Tulsa community. As lawyers, we feel a duty to help where we think we can have a significant impact. The need for assistance is huge, and we encourage our friends and colleagues in the legal community to join in the effort in any way they can," said Isaac Ellis, a partner with Conner & Winters.

MARK YOUR CALENDARS FOR DAY AT THE CAPITOL MARCH 22

Oklahoma lawyers, let your voices be heard! The OBA will host its annual Day at the Capitol Tuesday, March 22. Registration begins at 9:30 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., and the agenda will feature speakers commenting on legislation affecting various practice areas. There will also be remarks from the judiciary and bar leaders, and lunch will be provided before heading to the Capitol for the afternoon. Watch for more details soon at www.okbar.org/dayatthecapitol.



COURT OF CIVIL APPEALS JUDICIAL ASSIGNMENTS ANNOUNCED

The Court of Civil Appeals judicial assignments have been announced. John F. Fischer of Tulsa will serve as the chief judge, and E. Bay Mitchell III of Oklahoma City will serve as vice chief judge. The following have been selected to serve as presiding judge for their respective divisions: Robert D. Bell, Oklahoma City, Division I; Jane P. Wiseman, Tulsa, Division II; Thomas Prince, Oklahoma City, Division III; and Deborah B. Barnes, Tulsa, Division IV. These positions are one-year terms that began Jan. 1.

ASPIRING WRITERS TAKE NOTE

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

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA



Have you checked out the OBA LinkedIn page? It's a great way to get updates and information about upcoming events and the Oklahoma legal community. Follow our page at <https://bit.ly/3IpCrec> and be sure to check out the OBA on Twitter, Facebook and Instagram.



SCAM ALERT

You may have been taught in the past that cashier's checks are just as good as cash. Today, that is no longer the case, as forged cashier's checks are often indistinguishable from real ones. Oklahoma lawyers are being targeted – don't let it happen to you. OBA Management Assistance Program Director Jim Calloway says it's a new version of an old scam. This is what he says to look out for:

1. You receive an unusual communication out of the blue where someone has decided to hire your law firm. It is often for something your firm doesn't normally handle, but they offer a flat fee of \$10,000 or more.
2. The criminals send you a large cashier's check for your fee. Other variations include large cashier's checks to purchase equipment.
3. The deal somehow goes bad: The equipment was sold to another buyer, or the party whose suit you were going to defend dismisses the suit.
4. The "client" is sorry for the trouble and says while you need to return the money promptly, you should keep \$5,000 or \$10,000 for your trouble, even though you often have done little or no work. The lawyers wire the balance back.
5. A week or so later, the law firm gets a notice that their trust account is overdrawn because the initial, huge cashier's check was a forgery and bounced. It takes a while to catch this because it is a forgery on an actual account, like a mortgage company clearinghouse account, that has millions of dollars in it. So, the person who reviews the checks coming in is the one who will ultimately catch it.

Many lawyers today may not appreciate that cashier's checks are not as good as cash because of these scams and don't know it could take a while to discover a forged cashier's check in an often-churning escrow account. It is rarely possible to reverse a wire transfer if done in a few hours. By the 24-hour mark, that money will have been wired through several accounts and is gone for good. This could lead to financial difficulties and even disciplinary action. Don't let it happen to you!

The FBI urges firms or victims of an internet scam to file a complaint with the Internet Crime Complaint Center. For more information on scams, visit www.okbar.org/map/scams.



OBA MEMBERS RECOGNIZED FOR PRO BONO SERVICE

The American Bar Association recognized six OBA members for their dedication to pro bono service through participation in ABA Free Legal Answers, a virtual legal clinic where income-eligible clients can post civil legal services questions. Timothy C. Dowd, Michael John Miller, Mary J. Rounds, Travis Calvin Smith, Margaret Travis and Paula D. Wood were recognized for answering 50 or more civil legal questions through the program in 2021. Attorneys at the law firm of Riggs Abney Neal Turpen Orbison & Lewis PC were also recognized for collectively answering 79 legal questions. The OBA Access to Justice Committee thanks these attorneys for their service.



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ON THE MOVE

Judge Susan Nigh was sworn in as the associate district judge of Rogers County. She will handle half of the civil docket, probate and trust cases and some civil miscellaneous cases. She was appointed to the position by Gov. Stitt on Dec. 1. A Nebraska native, Judge Nigh moved to Enid in 1987 to start a court reporting career. She received her J.D. from the TU College of Law in 2005 and began serving as a Washington County assistant district attorney in 2011.

Judge Amy J. Pierce was appointed as the first full-time district court judge for the Choctaw Nation of Oklahoma's Judicial Branch. She was sworn in by Choctaw Nation Chief Justice David Burrage at the Choctaw Nation Judicial Center in January. Judge Pierce, an enrolled member of the Choctaw Nation, was previously in private practice as a mediator, arbitrator and civil litigation attorney. She received her J.D. from the OCU School of Law in 1999 and completed the Harvard Negotiation Institute program through Harvard Law School.

Jason Coutant has joined the Tulsa office of GableGotwals as a shareholder and member of the firm's Business Practice Group. He practices in the areas of banking and finance, mergers and acquisitions, and securities. Mr. Coutant also assists companies ranging from privately held businesses to large, publicly-traded companies with a variety of matters, including business formation and planning, acquisitions and dispositions, public and private offerings of securities and SEC compliance.

John Dorman and **Betsey Streuli** have joined the Oklahoma City office of Spencer Fane LLP. Before joining the firm, Mr. Dorman was the city attorney of Stillwater and previously served as assistant city attorney of Edmond and Broken Arrow and litigation division manager of Tulsa. He is a member of the Litigation and Dispute Resolution Group. Ms. Streuli has nearly two decades of environmental regulatory experience after serving in the Oklahoma Department of Environmental Quality's Water Quality Division from 2004 until 2021.

Joshua D. Poovey was named a shareholder of the Tulsa law firm of Johnson & Jones PC, and **Kenneth E. Dornblaser** has returned to the firm as of counsel. Mr. Poovey graduated from the TU College of Law with highest honors in 2014 and joined the firm in 2016. He practices in the areas of insurance defense, business litigation and trust litigation. Mr. Dornblaser, a founding shareholder of Johnson & Jones PC, practiced with the firm from 1994 until 2011. He has over 40 years of experience in the area of securities, acquisitions, mergers and general corporate law. Most recently, he retired as senior vice president and general counsel of Laredo Petroleum Inc.

B. Chance Holland and **Daniel J. Thompson** have been named partners of the Oklahoma City law firm of Wiggins Sewell & Ogletree.

Michael Romero has been named president of the Oklahoma-based Heritage Trust Company. Mr. Romero

received his J.D. from the OU College of Law and recently earned the designation of certified wealth strategist through Cannon Financial Institute.

Matt A. Thomas has joined Thompson & Winton PLLC. He leads the firm's community association collections and foreclosures practice and assists litigation clients. Mr. Thomas may be reached at mthomas@thompsonandwinton.com or 405-478-4818.

Anna Sanger has joined the Tulsa office of Conner & Winters LLP as a bilingual transactional associate attorney. Her practice will focus on health care, banking, real estate and other corporate transactional matters. Previously, Ms. Sanger represented individual and corporate clients in actions involving contract disputes, tort claims, First Amendment media defense, zoning and land use and bankruptcy at a regional firm. She received her J.D. from the TU College of Law in 2020.

Rachel Lenehan and **Hayley Stephens** were elected partners of Conner & Winters' Tulsa office. Ms. Lenehan has experience in developing comprehensive estate plans to help clients maximize estate tax savings and structure efficient means for transferring wealth to future generations. She regularly advises clients in business succession planning and the establishment of tax-exempt organizations, including private foundations and charitable trusts. Her work also involves administering trusts and estates of decedents. Ms. Stephens' practice involves commercial litigation and transactional matters.

She has experience representing companies in complex commercial disputes involving breach of contract claims, business torts, insurance and indemnity issues and employment claims. The transactional side of her practice is focused on assisting financial institutions in documenting, negotiating and closing loan transactions.

Diane L. Hernandez, Joel P. Johnston, Tami Hines, Jacqueline M. McCormick and Margo E. Shipley were elected shareholders of Hall Estill. Ms. Hernandez's practices in the areas of employment-based immigration and labor and employment law. Mr. Johnston practices environmental, regulatory and

corporate/transactional law across a variety of industries, leveraging his decade of experience working as a technical and corporate leader in the environmental consulting arena. Ms. Hines practices primarily in the areas of bankruptcy and complex commercial litigation, as well as litigation involving oil and gas, construction/contract and general corporate matters. Ms. McCormick is a litigator representing clients in a variety of matters, including professional negligence, oil and gas law, banking, construction law, premises liability, commercial disputes and employment issues. Ms. Shipley concentrates her practice in litigation, assisting her clients in the areas of complex business and general litigation.

Travis Weedn has joined the Oklahoma Corporation Commission as a policy advisor and legislative liaison. He will represent and advise the OCC in federal and state legislative matters. For the past seven years, Mr. Weedn has served as deputy general counsel for the Petroleum Storage Tank.

Philip Feist has been named a shareholder of GableGotwals' Tulsa office, where he is a member of the firm's Wills, Trusts, Estate Planning & Probate and Tax Law groups. Mr. Feist advises clients on estate planning, family business planning and asset protection planning issues.

KUDOS

The Oklahoma City office of Ogletree Deakins celebrated its fifth anniversary in January. The office, led by **Sam Fulkerson, Vic Albert and Andre' Caldwell**, has grown to include nine attorneys who practice the full spectrum of labor and employment law.

Jason M. Hicks has been appointed by Gov. Kevin Stitt to serve as the commissioner representing the Oklahoma District Attorneys Council at the Oklahoma Commission on Children and Youth. Mr. Hicks serves as district attorney for Oklahoma's Sixth

Prosecutorial District and was elected to the office in 2010. He received his J.D. from the OU College of Law in 2001.

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 May issue must be received by April 1.

IN MEMORIAM

Richard D. Beeby of Tulsa died Jan. 24. He was born Sept. 24, 1940, in Enid. **Upon graduating from Enid High School in 1958, Mr. Beeby joined the U.S. Army Reserves while attending OSU. After his freshman year, he was called to active duty and served stateside for a couple of years.** In 1964, he earned his bachelor's degree in education and began a career with Tulsa Public Schools teaching science. He received his J.D. from the TU College of Law in 1975. Mr. Beeby then began a private practice, slowing down only as he reached his 70s and continuing to serve clients until right before his death. Memorial contributions may be made to Samaritan's Purse.

Russell Dale Chapman of Plano, Texas, died Dec. 31. He was born March 21, 1951, in Altus. In 1969, Mr. Chapman was appointed to the Air Force Academy, which he attended until 1972. **He served honorably in the U.S. Air Force and achieved the rank of sergeant.** In 1978, he received his J.D. from the TU College of Law with honors and graduated 12th in his class. He earned his LL.M. from the Southern Methodist University Dedman School of Law. After serving as in-house counsel for a Fortune 20 energy company, he entered private practice. He later joined Littler Mendelson PC as special counsel. He was a former member of the Southwest Benefits Association Board of Directors and a member of the American Bar Association's Litigation, Labor and Employment, and Employee Benefits and Executive Compensation sections. He also

served as an adjunct professor at SMU for over nine years. Memorial contributions may be made to the UT Southwestern Kidney Cancer Program.

Gene Paul Dennison of Skiatook died Dec. 20. He was born Aug. 3, 1948, and grew up on his family's Osage allotment land in Skiatook. He graduated from Skiatook High School in 1966, where he won state championships in speech and drama. Later, he had a starring role as Judge Dave Harrington in *Juvenile Court*, broadcast on Tulsa's KJRH Channel 2, as well as many performances through the Theatre Tulsa and Boston Avenue Church. He worked his way through college as a sports reporter for the *Tulsa Tribune* and by producing sports videos for the Oral Roberts University basketball team. Mr. Dennison received his J.D. from the TU College of Law in 1973 and served the Tulsa and Skiatook communities as a lawyer for 48 years. Mediation and compromise were his passions, and he always sought treatment rather than incarceration for his clients.

Jerry Lynn Franks Jr. of Tulsa died March 9, 2021. He was born July 16, 1964, in Ft. Smith, Arkansas. Mr. Franks graduated from the University of Arkansas, where he was a member of the Sigma Chi fraternity. He received his J.D. from the TU College of Law in 1990 and served as an attorney in Tulsa for 32 years, proudly representing Oklahoma firefighters. Memorial contributions may be made to the Oklahoma Firefighters Burn Camp.

James Michael Frieda of Granbury, Texas, died Dec. 7. He was born March 1, 1942, in St. Louis. **Mr. Frieda was drafted into service during the Vietnam War and served as a forward observer in a field artillery unit.** In 1978, he left the military and received his J.D. from the OCU School of Law in 1980. He became a lawyer in Duncan, where he initially served as a deputy district attorney before going into private practice. He finished his career as the Duncan city manager, having served as city attorney for two decades prior to his appointment.

Joe Brian Hobbs of McKinney, Texas, died Dec. 23. He was born Dec. 8, 1967, in Oklahoma City. After graduating from Edmond Memorial High School in 1986, he earned his bachelor's degree in finance from OSU, where he was a member and president of the Delta Tau Delta fraternity. Mr. Hobbs received his J.D. from the OCU School of Law in 1994 and focused his entire career on insurance litigation. He co-founded TransEleven Claims Managers in 2014 after serving as president of Professional Claims Managers for over 17 years. Under Mr. Hobbs' leadership, TransEleven grew to be one of the most respected third-party claims administrators in the U.S. serving the London Insurance Market. Memorial contributions may be made to Disabled American Veterans.

Matthew J. Holman of Broken Arrow died Jan. 29. He was born Feb. 8, 1988, in Little Rock, Arkansas. Mr. Holman graduated from Broken Arrow High School in 2006 and was awarded the National

High School Heisman Award. He graduated *summa cum laude* from the University of Arkansas and received his J.D. *magna cum laude* from the University of Arkansas School of Law. He was a member of the *Arkansas Law Review* and served on the Student Bar Association Executive Committee. He received the school's business law certificate and worked as a legal research and writing teaching assistant. Mr. Holman was a practicing transactional attorney. He also served the Tulsa community through a variety of non-profit positions, including on the boards of Iron Gate and Lawyers Fighting Hunger. Memorial contributions may be made to Iron Gate Tulsa or the Oklahoma Alliance of Animals.

Mark Bennett Hutton of Wichita, Kansas, died Dec. 29. He was born Dec. 31, 1953, in Newton, Kansas. Mr. Hutton received his J.D. from the Washburn University School of Law in 1979, co-founded the Wichita law firm of Hutton & Hutton and practiced for over 40 years. He served on the boards of several organizations and businesses, including the Community Bank of Wichita for 16 years and Title Midwest Inc. for 14 years. He was appointed by President George W. Bush to serve as an ambassador and Kennedy Center representative for the President's Advisory Committee on the Arts from 2004 to 2009. He was also business partners with movie theater icon, Bill Warren, for over 25 years until their successful chain of theaters sold in 2017. Memorial contributions may be made to the MD Anderson Cancer Center or Catholic Charities USA.

Eric Robert Jones of Ardmore died Jan. 15. He was born Aug. 28, 1950, in Little Rock, Arkansas. Growing up, Mr. Jones was a devout Boy Scout; he earned all his patches and appeared at the 1964 World's Fair. He received his J.D. from the Tulane University School of Law in 1976. He was also the Tulane chess champion four years in a row and practiced and competed all over Oklahoma and Texas.

Homer L. Lawson of Oklahoma City died Dec. 23, 2020. He was born Sept. 2, 1936, in Oklahoma City and was a member of the Citizen Potawatomi Nation. **Mr. Lawson served in the Air National Guard.** Throughout college, he worked an entry-level, part-time position at a local accounting firm and joined the firm full-time after graduating in 1958. He received his J.D. from the OCU School of Law in 1961 and eventually rose to senior partner of the same accounting firm. He then became president of Ricks Exploration, an oil and gas company, where he worked for many years before founding Kent Energy.

Thomas C. Newhouse of Bellaire, Texas, died Aug. 29. He was born May 21, 1935, in Cincinnati. Mr. Newhouse was a graduate of Tulsa's Cascia Hall Preparatory School and the University of Notre Dame. He received his J.D. from the TU College of Law in 1962 and his LL.M. from the New York University School of Law in 1966. That same year, he joined the University of Houston Law Center faculty. In his over 40 years at the law center, Mr. Newhouse focused on labor law, family law, alternate dispute

resolution, mediation and directing the student-run legal aid clinic. In 1987, he was ordained as a deacon with the Diocese of Galveston-Houston. He served as a deacon of several Texas parishes and as a chaplain at St. Luke's and Texas Children's hospitals. Memorial contributions may be made to the University of Houston Law Center Blakely Advocacy Institute.

Dennis Conway Roberts of Edmond died Feb. 7, 2021. He was born Jan. 13, 1941, in Enid. Mr. Roberts received his J.D. from the OU College of Law in 1970. Memorial contributions may be made to the OU College of Law Memorial Scholarship Fund.

Lynn C. Rogers of Norman died Jan. 19. He was born April 15, 1939, in Oklahoma City and grew up on his family's farm in Maysville. Mr. Rogers earned his bachelor's degree from OU and a master's degree in chemistry from the Georgia Institute of Technology. He worked as a Conoco research chemist for 10 years. In 1974, he received his J.D. from the OU College of Law. While working for the Cleveland County District Attorney's Office, Mr. Rogers found a passion for municipal law, public finance and local government law that spanned nearly 50 years. He was a municipal bond lawyer and a charter member of the National Association of Bond Lawyers. He was also involved in the Oklahoma Municipal Attorneys Association and acted as city attorney for various municipalities across Oklahoma. In 2002, he closed his private practice and went to work for the Oklahoma

Attorney General's Office. Mr. Rogers recently published a book titled "Favorite Stops on my way to Paradise."

Anthony W. Speck of Newcastle died Nov. 3. He was born Aug. 3, 1941, in Metropolis, Illinois. Mr. Speck received his J.D. from the OCU School of Law in 1972 and practiced law in Oklahoma for over 40 years before retiring in 2014. He tried cases in all 77 Oklahoma counties, the Oklahoma Court of Criminal Appeals and the Oklahoma Supreme Court. He also tried cases in Oklahoma federal district courts as well as the U.S. 10th Circuit Court of Appeals. He served as a member of Newcastle's Planning Committee and the OU Health Sciences Center Institutional Animal Care & Use Committee to regulate medical testing on animals nationally.

Gerald G. Stamper of Tulsa died Dec. 21. He was born Feb. 8, 1936, in Dawson. Mr. Stamper received his J.D. from the OU College of Law in 1959. **He was then sworn in to the U.S. Navy and joined the JAG Corps.** In 1964, he returned to Tulsa and started a private practice. He was a member of the Tulsa County Bar Association for over 60 years. He was also a member of the Boston Avenue United Methodist Church for over 50 years and a longtime Sooner football season ticket holder. Memorial contributions may be made to the Alzheimer's Association or Clarehouse.

Irby R. Taylor of Norman died Jan. 21. He was born Jan. 25, 1934. **Mr. Taylor was a U.S. Army veteran and served in Japan following the end of the Korean War.** He received his J.D. from the OU College of Law. After acting

as district attorney for Hobart, he returned to Norman as the assistant district attorney. He then served as a judicial referee for the Oklahoma Court of Criminal Appeals before becoming Cleveland County's first assistant district attorney for the last 15 years of his career. Memorial contributions may be made to Heifer International.

Judge Donald L. Worthington of Stillwater died Jan. 18. He was born Aug. 3, 1926, in Dewey County near Canton. **Judge Worthington enlisted in the U.S. Army and served in the Pacific Theater of Operations during World War II. He was awarded two battle stars for the southern Philippines and Luzon campaigns, the Philippine Liberation Ribbon and one Bronze Star. He was discharged in 1946.** In 1950, he received his J.D. from the OU College of Law. He began his legal career as an attorney for Phillips Petroleum Company before going into general practice in 1951. In 1987, he was elected district judge of Payne and Logan counties, a position he held until retiring in 2010. He was appointed by the Oklahoma Supreme Court Chief Justice in 1997 to represent the Judiciary of the State on a Criminal Justice System task force that was dedicated to the improvement of the state criminal justice system. In 2006, he received the OBA Award of Judicial Excellence and was inducted into the Stillwater Hall of Fame. He was awarded the Oklahoma Supreme Court Award of Judicial Excellence in 2013 and was recognized by the Payne County Bar Association for his over 70 years of service in the practice of law in 2021.

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FEATURED PRESENTER:
Lenne' Espenschied

Lenne' Eidson Espenschied has earned her status as one of the two most popular contract drafting speakers in the U.S. by continually striving for excellence and providing innovative, practical skills-based training for transactional lawyers. She practiced law in Atlanta, Georgia for 25 years, focusing on corporate and transactional representation of technology-based businesses. She is the author of two books published by the American Bar Association: *Contract Drafting: Powerful Prose in Transactional Practice* (ABA Fundamentals, 3rd Ed. 2019) and *The Grammar and Writing Handbook for Lawyers* (ABA Fundamentals, 2011). After graduating from the University of Georgia School of Law magna cum laude, Ms. Espenschied began her legal practice at the firm now known as Eversheds Sutherland; she also served as Senior Counsel in the legal department of Bank of America before eventually opening her own law office. As a law professor, Ms. Espenschied taught commercial law, contracts, and contract drafting. Her passion is helping lawyers acquire the skills they need to be successful in transactional practice.

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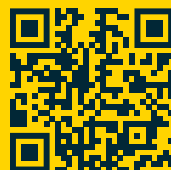
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