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THE OKLAHOMA BAR Journal

Volume 93 — No. 6 — August 2022

Civil Procedure

§12-1. Title of chapter.

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the State of Oklahoma
H.L. 1910, §4641

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important for
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— Dalai Lama

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WELLNESS WEDNESDAYS

Wednesday, August 17

8 DIMENSIONS OF WELLNESS

Featured Presenter: Robyn Goggs, *A Chance to Change*

Wednesday, September 21

MCLE 1/1

WE ARE ALL IN THIS TOGETHER:

HANDLING IMPOSTER SYNDROME IN THE LEGAL PROFESSION

Featured Presenters:

April Merrill, Director, Medical-Legal Partnership Initiatives, Legal Aid Services of Oklahoma, Inc.

Erin Street, M.A., Doctoral Student Clinical Psychology, University of Tulsa

Learning Objectives: Understanding Imposter Syndrome; Recognizing Depression and Self-Doubt; and Acknowledging the Many Perspective and Factors Impacting Imposter Syndrome

Wednesday, October 19

WHAT MY FACEBOOK POSTS TEACH ABOUT LAWYER MENTAL HEALTH

Featured Presenter: **Stuart Teicher, Esq.**, Attorney and Educator

Join Stuart as he discusses how lawyers are affected by anxiety, compassion fatigue, over-functioning, and more.

Wednesday, November 16

HOW BEING TRAUMA-INFORMED IMPROVES JUDICIAL DECISION-MAKING

Featured Presenter: **Jennifer Sullivan**, Criminal Justice Specialist, Mental Health Association Oklahoma

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The OBA Unmasked!

By Jim Hicks

EARLIER THIS YEAR, the Oklahoma Center for Nonprofits conducted the OBA Membership Survey. The purpose of the survey was to engage our members in providing feedback on services, obtain input on the future direction of the organization and solicit members' perspectives on the qualities and characteristics needed in a new executive director. The anonymous survey was open for three weeks in March and generated 1,841 responses. This is considered a statistically relevant response rate.

Based on the survey responses, the OBA is in a strong position with its members, and the commitment to customer service is apparent throughout the data. We received a 3.9 *overall rating*, or 4 out of 5 stars. Our organization is benefiting from well-run programs that go beyond professional compliance and offer direct support and relevance to our diverse membership.

The members engaged in this survey are overwhelmingly supportive of the OBA becoming a leader in diversity, equity and inclusion efforts in the practice throughout the field. Nevertheless, there is a segment of the membership

that does not see this as relevant to its mission or as a political topic best avoided. The OBA is not a political organization and takes no positions on legislative matters not directly germane to the practice of law.

The survey showed the OBA has benefitted from strong leadership. There was a clear appreciation for the management and leadership style John Morris Williams brought to our organization. In general, members would like to see an executive director who understands the demands of practicing law and the particulars of the profession and leads by listening and communicating. They would also like to see someone who is sincere and has the ability to build relationships with staff and members. In summary, members are looking for a leader and an advocate.

Members also identified areas of concern and needed improvement. The top items identified by responding members that must be addressed by the OBA in the next three years are:

- 1) Technology – invest in new technologies to reach geographically diverse membership.
- 2) Educating the Public – education efforts on the judicial branch of government, how the legal process works and how the legal profession supports civil and individual rights.
- 3) Accommodations – assist differently abled members, support a diverse, aging membership, create affinity groups, offer mental health services, encourage work/life balance and provide support to retain women and BIPOC/LGBTQIA+ individuals in the profession.

A search committee of past OBA Presidents Bill Grimm, Kim Hays, Susan Shields, Judge Jon Parsley, Judge Linda Thomas and Chuck Chestnut, together with past YLD Chair April Moaning, will review the candidates and make suggestions to the Board of Governors for the final selection. President-Elect Brian Hermanson, Vice President Miles Pringle and I serve on the committee as *ex officio* members.

Thank you to every member who participated in the survey, and thank you to each and every OBA member, all of whom make this a wonderful professional organization.



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To view survey results, log in to MyOKBar. Select "Membership Survey Results" under "My OKBAR Links" on the right-hand side of the page.

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Out-of-State Discovery Simplified

How the Interstate Depositions and Discovery Act Can Save You and Your Client Time and Money

By Timothy F. Campbell

ON APRIL 23, 2021, Gov. J. Kevin Stitt signed HB 2229 into law. Commonly known as the Uniform Deposition and Discovery Act (UIDDA), this new provision of Oklahoma law went into effect Nov. 1, 2021, codified in 12 O.S. §3250, *et seq.*, (OSCN 2022). Promulgated by the Uniform Law Commission in 2007,¹ the UIDDA intends to “make it more efficient and inexpensive to depose out-of-state individuals and to produce discoverable materials located out of the trial state.”²

With the adoption of the act, Oklahoma joined 45 other states (as well as the District of Columbia and U.S. Virgin Islands) in signing on to the UIDDA.³ The enactment of the UIDDA across the vast majority of the country serves to bring state subpoena discovery practice more in line with the nationwide subpoena regime found in Rule 45 of the Federal Rules of Civil Procedure.⁴ The following article aims to provide Oklahoma practitioners with an overview of the UIDDA and some practical advice on utilizing it to conduct discovery in other states.

The UIDDA is a handy tool for eliminating the jurisdictional hurdles that, prior to the promulgation of the UIDDA, commonly drove up the cost and hassle associated with attempting to obtain a source of proof – most often deposition testimony and documents – across state lines. Under prior practice, if discovery was sought out of state, a letter rogatory and/or commission

were commonly required.⁵ This involved filing a motion, with some judges then requiring a hearing prior to issuing an order allowing discovery to be had out of state. This process would then have to be repeated each time a new source of proof was located in another state. As one can imagine, this process is particularly burdensome in the context of personal injury actions, wherein a non-resident plaintiff who is injured and filed suit in Oklahoma receives medical care and treatment from several healthcare providers in their home state. Each time a new provider was identified, a new letter rogatory and/or commission would have to be issued from the district court in Oklahoma to obtain medical records or depose the treating physician. In addition to obtaining a letter rogatory and/or commission, it was not uncommon to then retain local counsel to assist with navigating the subpoena practice in the foreign jurisdiction. Some

jurisdictions required the payment of a filing fee to open a miscellaneous matter through which the court in the foreign jurisdiction would obtain jurisdiction and issue the subpoena. This unnecessarily complicated process had the natural effect of increasing the time and cost associated with conducting discovery in another state.

The UIDDA is fairly straightforward and easy to use. The statute itself is relatively short and contains definitional provisions for all key terms used therein. The UIDDA refers to the jurisdiction outside Oklahoma where the litigation is pending as the “foreign jurisdiction”⁶ and the subpoena issued by that court and received in Oklahoma as the “foreign subpoena.”⁷ The UIDDA’s definition of “subpoena” contemplates deposition subpoenas, subpoenas *duces tecum*, as well as subpoenas permitting inspection of premises.⁸ The UIDDA broadly defines “person” as any “individual, corporation,

business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.”⁹

Section 12 O.S. §3252 sets forth the procedure whereby a foreign subpoena is honored in Oklahoma. Specifically, “a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought” in Oklahoma.¹⁰ The UIDDA provides that the clerk, upon receipt of the foreign subpoena, “in accordance with that court’s procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.”¹¹ Note the mandatory language whereby the court clerk is commanded to promptly issue an Oklahoma subpoena, with discretion only afforded to the extent the clerk is acting “in accordance with that court’s procedure.” Section 12 O.S. §3252(C)(1-2) provides the Oklahoma subpoena must “incorporate the terms used in the foreign subpoena; and contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding with which the subpoena related and of any party not represented by counsel.” The requirement that counsel for parties to the case be identified can be easily satisfied via the foreign attorney’s signature block and certificate of service. Notably, a request by a foreign attorney for issuance of an Oklahoma subpoena pursuant to the UIDDA “does not constitute an appearance in the courts of [Oklahoma].”¹²

Once an Oklahoma subpoena is issued containing provisions consistent with those found in the foreign subpoena, 12 O.S. §3253 states the Oklahoma subpoena must be served in accordance with

12 O.S. §2004.1. With respect to the duties of a person in Oklahoma served with such a subpoena, the UIDDA again refers us to 12 O.S. §2004.1, this time expressly incorporating the language found in 12 O.S. §2004.1(D). A party resisting the newly-issued Oklahoma subpoena may, upon service of the



same pursuant to Oklahoma law, apply to the court that issued the subpoena for a protective order or to quash or modify the subpoena.¹³ Similarly, the party serving the subpoena may also apply to the same court to enforce the subpoena.¹⁴ Section 3255 makes clear that litigation regarding the subpoena is governed by the “rules or statutes of this state,” and requests to enforce, quash or modify the subpoena must be “submitted in the county in which discovery is to be conducted.”

Here again, the UIDDA tracks Rule 45, which likewise provides that subpoena disputes be resolved in the jurisdiction where discovery is sought.¹⁵ Further underscoring the UIDDA’s emphasis on consistent nationwide subpoena procedures, 12 O.S. §3256 provides, “In applying and construing this

uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.” This provision seems to indicate that interpretation of the UIDDA by courts in Oklahoma should be undertaken with an eye toward coherence with foreign

jurisdiction decisional law. Similarly, it would appear that pursuant to this provision, foreign case law should be treated as instructive when construing the UIDDA.

Prior to Oklahoma’s adoption of the UIDDA, this author used versions of the UIDDA adopted in other jurisdictions to issue document subpoenas. In terms of practical advice for conducting discovery in a foreign jurisdiction pursuant to the UIDDA, the first task should be to locate the version of the UIDDA adopted in the foreign jurisdiction where discovery is to be had. As the UIDDA is a uniform law, the version adopted in such a jurisdiction should be similar to 12 O.S. §3250, *et seq.* However, some variations may exist, and best practices dictate starting with the language of the statute in the state where

discovery is sought. Once you have located the UIDDA for the state where the source of proof is located, it is advisable to contact the court clerk in the court where the subpoena will be served. Remember, the UIDDA does give court clerks some leeway with respect to “that court’s procedure” for issuing a subpoena pursuant to that state’s version of the UIDDA. This discretion leads to some variability in the process of seeking discovery pursuant to the UIDDA.

Typically, the court clerk will require a letter invoking the local version of the UIDDA and the payment of a small fee for issuance of the foreign subpoena. However, the author has encountered at least one jurisdiction (Illinois) that also required the completion of a local form subpoena proscribed for use in that state. Once the clerk receives your duly issued Oklahoma subpoena, they should then issue a local subpoena conforming to the Oklahoma subpoena.

The local subpoena will then be transmitted back to counsel for service pursuant to the foreign jurisdiction’s procedures for service of subpoenas. Again, this will require an examination of that state’s law regarding proper service of subpoenas. Another means of ensuring compliance with foreign state law in this regard is to retain a local process server to handle service of the subpoena in accordance with state law. This author recently used a process server to present an Oklahoma subpoena to the court clerk and then serve the local subpoena pursuant to state law. This may be preferable in cases where time is of the essence or when local law only permits personal service of subpoenas. Another issue to be cognizant of is the turnaround time needed for mailing the Oklahoma subpoena to the foreign jurisdiction, issuance

of a local subpoena and return mailing of the newly issued subpoena. If you go the mail route as opposed to using a process server, it is advisable to allow plenty of time for the party to be served with the subpoena to comply. In one case, this author did not allow for adequate time, and the response deadline contained in the subpoena had run before it could be served. This required the issuance of an amended subpoena and payment of an additional fee. This issue can be avoided by retaining a local process server to both obtain and serve your subpoena in the foreign jurisdiction.

CONCLUSION

With the adoption of the UIDDA, practitioners in other states can now issue both document and deposition subpoenas in Oklahoma with relative ease. If your practice involves assisting Oklahoma clients with subpoena compliance, it is likely you will eventually see an Oklahoma subpoena issued in connection with an action pending in another state. So long as the subpoena in question complies with Oklahoma’s version of the UIDDA, it is a valid and enforceable subpoena. Disputes over subpoena enforcement may then be heard in the county in Oklahoma from which the subpoena was issued. More importantly, if your practice frequently crosses state lines or commonly involves seeking sources of proof located outside Oklahoma, the UIDDA can be a valuable tool for cutting the time and cost typically associated with conducting subpoena-based discovery in other states. Unfortunately, the state in which an Oklahoma practitioner is most likely to seek out-of-state discovery, Texas, has yet to sign on to the UIDDA. However, as the vast majority of states have

adopted the UIDDA, subpoena discovery in those jurisdictions has been greatly simplified thanks to the UIDDA.

ABOUT THE AUTHOR



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ENDNOTES

1. <https://bit.ly/3NzSFmr>.
2. “The Uniform Depositions and Discovery Act – A Summary.” <https://bit.ly/3uIIxXl>.
3. As of the date of this writing, only Texas, Massachusetts, New Hampshire and Wyoming have failed to adopt the UIDDA, while the 2007 model language was introduced and passed committee in the Missouri Legislature during the 2022 term but did not receive a full floor vote.
4. Rule 45(b)(2) expressly provides, “A subpoena may be served at any place within the United States.”
5. See, e.g., 12 O.S. §3228(b)(3). In addition, while Oklahoma law previously permitted the county district court where discovery was to be had to issue Oklahoma deposition and document subpoenas in actions pending outside the state pursuant to 12 O.S. §2004.1(2)(a-c), these provisions were not often used and lacked the specificity of process provided by the UIDDA. Although the UIDDA did not repeal these provisions, it is likely they will be even less frequently utilized due to the widespread adoption of the UIDDA.
6. 12 O.S. §3251(1).
7. 12 O.S. §3251(2).
8. 12 O.S. §3251(5)(a-c).
9. 12 O.S. §3251(3).
10. 12 O.S. §3252(A).
11. 12 O.S. §3252(B).
12. 12 O.S. §3252(A).
13. 12 O.S. §3255.
14. *Id.*
15. See, Rule 45(d)(3)(B).

What is the OCPA, and Why Should Attorneys Care About It?

By Kindra N. Dotson



ONE LIMITATION OF TRADITIONAL FIRST AMENDMENT jurisprudence is that the guarantees of free speech, free association, free press and free exercise of religion generally restrict only governmental infringement. Otherwise, the First Amendment and other laws have done little to protect non-governmental persons and entities from filing spurious litigation to chill, squelch and intimidate citizens from speaking out on matters of public concern.

Thus, the need for the Oklahoma Citizens Participation Act (OCPA). The OCPA was enacted “to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.”¹ The legislative concept behind the OCPA originated in the 1980s, but the OCPA did not become law in Oklahoma until much later. The Legislature unanimously passed the OCPA in the 2014 legislative session, and Gov. Mary Fallin approved it April 22, 2014.² The current version is codified at 12 O.S. §1430. It provides “a new summary process/dismissal procedure in certain cases.”³

The OCPA is an example of anti-SLAPP legislation. SLAPP stands for Strategic Lawsuits Against Public Participation, and a majority of states have now

recognized the need for laws to prevent and quash suits that are based primarily on a citizen’s exercise of their right to participate in public forums.⁴ The five common causes of action asserted by SLAPP suit filers are defamation, business torts, process violations, conspiracy and constitutional and civil rights violations.⁵

The public policy interest of protecting against SLAPP suits is so fundamental and widespread that 28 states have adopted anti-SLAPP legislation to protect innocent defendants.⁶ In fact, defendants in such suits are generally referred to as “targets” rather than “defendants.”⁷ Anti-SLAPP legislation, such as the OCPA, is designed to allow for and protect: public comment and criticism in forums such as city council and school board meetings, grievances against governmental agencies and public officials and negative opinions expressed about public figures.⁸ The OCPA is unequivocal in prohibiting suits based upon

such activities. It provides for a swift summary dismissal procedure for any such suit.

The Oklahoma Legislature has declared the OCPA “shall be construed liberally to effectuate its purpose and intent fully.”⁹ Therefore, Oklahoma’s courts have established an early and firm precedent of construing the OCPA liberally in favor of protecting Oklahomans’ First Amendment rights.¹⁰ “The Oklahoma judiciary has articulated a policy concern for protecting petitioning activities and has applied this policy by liberally defining the statutory requirements ... so that immunity is available in a wide variety of situations.”¹¹

HOW THE OCPA WORKS

Time is of the essence for a successful OCPA motion. A motion to dismiss based upon the OCPA must be asserted within 60 days of service upon the defendant.¹² There are exceptions for good cause if the filing is not timely,

but they are few. Additionally, the court must hear the OCPA dismissal motion within 60 days of the date it is served upon the non-moving party.¹³ But, the court “could require a later hearing, upon a showing of good cause, or by agreement of the parties.”¹⁴ However, “In no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.”¹⁵ Thus, OCPA motions take precedence over many other items on crowded trial court dockets.

Subsection C of §1433 allows for a maximum of 120 days from service of the motion until the hearing if the court allows discovery under Subsection B of the statute.¹⁶ Failure to hold a hearing within the time frames prescribed by the OCPA is grounds for an immediate and expedited appeal.¹⁷ So then, “OCA procedure states a *mandatory duty* by the district court to set [a] hearing” on every OCPA-based motion to dismiss.¹⁸ Indeed, appellate courts have ruled, “If the trial courts have no duty to hear OCPA cases but may simply send them to the appellate court by inaction, the appellate courts must necessarily assume the function of holding trial on these motions. Not being a *nisi prius* court, this is a function we have never traditionally performed, and for which we have no established procedure.”¹⁹

Other distinctive aspects of the OCPA are a heightened evidentiary standard and unique burden-shifting provisions. Section 1434 mandates that a court “shall dismiss a legal action against the moving party if the moving party shows by a *preponderance of the evidence* that the legal action is based on, relates to or is in response to the party’s exercise of: 1) The right of free speech; 2) The right to petition; or 3) The right of association.”²⁰ So, the onus is on the moving party (usually the target defendant) to first prove it is more likely than not that the claims against them arise out of conduct relating to their constitutional rights to freedom of speech, to petition and to freely associate. The target party only needs to “make a plausible showing that the plaintiff’s lawsuit was driven, at least in part, by one of the forms of speech enumerated in §1431.”²¹ Even “the possibility that [the target party] has been involved in one of the broad forms of speech protect by the Act, and that the plaintiff’s lawsuit is somehow connected or related to that speech” is sufficient.²²

Once the target party meets this initial burden, the non-moving party (generally a plaintiff) then has to prove by *clear and specific evidence* a *prima facie* case for each essential element of each claim. “The court shall not dismiss a legal action under this section if

the party filing the legal action establishes by clear and specific evidence a *prima facie* case for each essential element of the claim in question.”²³ The courts have ruled that a “party establishes a *prima facie* case by producing competent evidence to support each material element of its cause(s) of action.”²⁴ More specifically, however, there must be “something more fact-intensive than general allegations that the required elements exist.”²⁵

But wait, there’s more burden-shifting to be done! The OCPA further provides that notwithstanding the evidentiary requirements set forth in Subsection C, “The court shall dismiss a legal action against the moving party if the moving party establishes by a *preponderance of the evidence* each essential element of a valid defense to the non-movant’s claim.”²⁶ So then, even if the non-moving party can prove, at nearly the inception of the litigation and with clear and specific evidence, each element of its claims, the moving party can easily defeat such proof by establishing a defense by just the preponderance of the evidence.

Therefore, the analysis under the OCPA is three-pronged as follows: 1) Has the targeted party shown the claims against it are based on, relate to or in response to their exercise of rights protected under the OCPA?; if so, 2) Has the plaintiff established by clear and specific evidence a *prima facie* case?; if so, 3) Has the target party shown a valid defense by a preponderance of the evidence?²⁷

The burden-shifting paradigm operates to protect those who have been sued for “communication made in connection with a matter of public concern.”²⁸ While this necessarily includes First Amendment protections, speech protected under the OCPA “is considerably wider than the category

To be clear, the OCPA includes, but is not limited to, the right to free speech, the right to petition and the right of association.³¹

of speech protected by the First Amendment.”²⁹ Matters of public concern, as defined under the OCPA, encompass: health or safety; environmental, economic or community well-being; the government; a public official or public figure; or a good, product or service in the marketplace.³⁰

To be clear, the OCPA includes, but is not limited to, the right to free speech, the right to petition and the right of association.³¹ The OCPA, in fact, protects any “communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding.”³²

APPEAL PROCESS AND ATTORNEY FEES

The OCPA also provides for an expedited appeal process. Pursuant to 12 O.S. §1437(B), “An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action filed pursuant to Section 3 of this act or from a trial court’s failure to rule on that motion in the time prescribed by Section 5 of this act.”³³ Further, should a party be successful in having a claim dismissed pursuant to the OCPA, it is statutorily entitled to attorney fees and costs. Specifically, the court *shall* award to the moving party court costs, reasonable attorney fees and other expenses “as justice and equity may require.”³⁴ Moreover, the statute mandates that the court additionally impose “sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Oklahoma Citizens Participation Act.”³⁵ On the other hand, however, the statute provides

for fees and costs if the court finds that a motion to dismiss under the OCPA was brought frivolously or for the purpose of delay.³⁶

OKLAHOMA OCPA JURISPRUDENCE

The first case in Oklahoma to really explore the OCPA was *Steidley v. Singer*,³⁷ in which several Roger County district attorneys sued citizens in 2013 for filing a petition for a grand jury investigation.³⁸ The district attorneys alleged the citizens’ petition contained “false and reckless allegations against them.”³⁹ The citizens moved for dismissal pursuant to the OCPA, but the court ruled the legislation did not apply retroactively.⁴⁰ The court held, “Because the OCPA affects substantive rights, it must be prospectively applied to legal actions filed after the November 1, 2014, effective date.”⁴¹ The Oklahoma Supreme Court reiterated that the OCPA shall not be applied retroactively in *Anagnost v. Tomecek*.⁴²

In 2018, the Oklahoma Court of Civil Appeals took up the OCPA in *Krimbill v. Talarico*.⁴³ The parties in *Krimbill* had long been involved in protracted business litigation in Delaware.⁴⁴ During that time, Mr. Talarico sent an email to certain board members in which he stated he believed the allegations in the litigation were “illustrative of broader, more systematic issues at the company under Mike’s [Krimbill’s] leadership ...”⁴⁵ In response, Mr. Krimbill filed suit in Tulsa County district court alleging libel.⁴⁶ Mr. Talarico then filed a motion to dismiss pursuant to the OCPA; the district court denied the motion and he appealed.⁴⁷

The court, finding this an issue of first impression, advised, “There is no established appellate standard of review in this case.”⁴⁸ But, following the lead of other states

with similar anti-SLAPP statutes, the court determined, “A *de novo* standard [was] indicated by existing precedent and persuasive authority ...”⁴⁹ *Krimbill* contains the first in-depth analysis and application of the burden-shifting provisions of the OCPA. In doing so, the court noted, “Interpreting the OCPA requires balancing the unusual judgment/dismissal provisions of §1434 against two other OCPA provisions, §§1430 and 1440.”⁵⁰

The court accepted the district court’s finding that Mr. Talarico’s email was “a communication made in connection with a matter of public concern regarding a good, product or service in the marketplace,” as contemplated under §§1431(3) and 1421(7).⁵¹ It then had to determine if Mr. Krimbill had established a *prima facie* case for libel by clear and specific evidence, an evidentiary standard having no prior history in Oklahoma.⁵² The court found the district court did not err by relying on the pleadings, and Mr. Krimbill’s affidavit in finding a *prima facie* case had been established.⁵³

Next, the court shifted its focus to determine whether Mr. Talarico had established by a preponderance of the evidence a defense to the libel claim. It examined various privileges and ultimately determined that “pursuant to the limited record” available for review, it could not determine which, if any, privileges may apply to the libel claim.⁵⁴ Ultimately, the appellate court found the district court did not err in denying Mr. Talarico’s motion to dismiss pursuant to the OCPA.⁵⁵ *Krimbill* is probably the most thorough and illuminating analysis of the OCPA currently available.

A FAIRY TALE EXAMPLE OF HOW THE OCPA SHOULD WORK

Let us say a used car purchase goes awry (gasp!), and the plaintiff filed suit alleging breach of contract, fraud and violations of the Oklahoma Consumer Protection Act. For purposes of this example, the defendants then file counterclaims alleging defamation, slander and libel and tortious interference with business.⁵⁶ The defendants claim the averments contained in the petition maligned the defendants' business reputation, and the defendants had been damaged thereby.

Because of the enactment of the OCPA, the plaintiff/counter-defendant in this scenario has a unique opportunity to swiftly dispose of these frivolous counterclaims rather than suffer through months or even years of litigation (and the cost associated with it!). After all, anti-SLAPP legislation, such as the OCPA, is aimed at "reduc[ing] the time commitment and financial resources [necessary] to combat SLAPP suits ..."⁵⁷ The plaintiff/counter-defendant in this case should quickly file a motion to dismiss the defendants' counterclaims pursuant to the OCPA. The plaintiff must urge the court to prohibit the defendant from targeting the plaintiff for pursuing a legitimate legal dispute and from "slapping" the plaintiff with counterclaims for simply filing the petition. The onerous is on the plaintiff here to timely file for a dismissal and attorney fees and costs pursuant to OCPA's Section 1438.

WHAT DO ATTORNEYS NEED TO TAKE AWAY FROM ALL OF THIS?

Anti-SLAPP legislation is here to stay in order to battle an increasing tendency by parties with substantial resources to file meritless lawsuits against legitimate critics, with the

express intent to silence those critics by burdening them with the time, stress and cost of legal action. Indeed, SLAPP suit filers are generally well-financed entities or individuals, while targets of such litigation are usually private citizens or small business owners whose criticism "may be detrimental to the organization's business interests."⁵⁸

As attorneys, we should always, as a standard element of the preliminary and ongoing litigation process, make sure we are analyzing all claims to determine if an OCPA motion to dismiss may be appropriate.⁵⁹ We must be on the lookout for weak and retaliatory claims – while notice pleading remains the standard in Oklahoma, it will not suffice to defeat an OCPA motion to dismiss meritless claims.⁶⁰ If an OCPA motion to dismiss is appropriate, we must certainly be ethically bound to assert it and engage in the accelerated process to relieve our clients and the courts of frivolous and punitive litigation.

ABOUT THE AUTHOR



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COVID-19 Deadline Extensions: What Litigators Need to Know

By Alexandra J. Gage

THE COVID-19 PANDEMIC BROUGHT COUNTLESS CHANGES to the legal community, including the implementation of numerous deadline extensions granted by the government, courts and various state agencies. By analyzing opinions issued by the courts, attorneys can determine the most efficient arguments to successfully represent their clients and gain a greater understanding of the scope of the extensions granted by the courts.

OKLAHOMA COURT DECISIONS

On March 13, 2020, Gov. Stitt declared a state of emergency in Oklahoma due to the pandemic.¹ His executive order directed state agencies to “promulgate any emergency rules necessary to respond to the emergency.”² In response, the Supreme Court of Oklahoma and the Oklahoma Court of Criminal Appeals released three emergency joint orders (SCAD orders) that ultimately created a tolling period for all deadlines from March 16, 2020, to May 15, 2020.³ On May 16, 2020, all deadlines were to be enforced based on the number of days remaining before March 16, 2020.⁴ Now, over two years after the tolling period ended, courts have begun issuing opinions regarding the scope of those deadline extensions. Most courts in Oklahoma have taken a broad stance on deadline extensions and tolling periods, especially when ruling on dispositive motions.

The Oklahoma Supreme Court released an opinion upholding the tolling periods for all deadlines

covered by the SCAD orders in *McBee v. Shanahan Home Design, LLC*.⁵ In the case, Ms. McBee filed suit on Nov. 19, 2019. However, service was not made until July 8, 2020. The defendant filed a motion to dismiss for failure to serve within the statutory 180-day limit. The trial court sustained the motion, concluding, “Because the Summons had not been issued prior to the COVID-19 issues that were addressed by the Supreme Court Directives, the directives do not apply.”⁶ On appeal, the Oklahoma Supreme Court reversed the trial court’s holding and explained the tolling period in the SCAD orders applied to *any* deadline in which time would have fallen during the tolling period. Whether summons had been issued was inconsequential. This pushed Ms. McBee’s deadline to July 18, 2020, making service timely.

Like *McBee*, several lower courts have continued to affirm the tolling period, extending deadlines in both state and federal jurisdictions.⁷ However, some courts have

broadened the deadline extension further beyond the tolling period. Of particular note is *McLenithan v. Farmers Ins. Co., Inc., et al.* The McLenithans filed a claim with Farmers Insurance under their homeowners insurance policy on July 9, 2020, which was subject to a one-year contractual suit limitation provision. The plaintiffs filed suit Aug. 2, 2021, nearly a month after the one-year deadline in the policy. The SCAD orders, which tolled all deadlines, expired nearly a month before the date of the loss. Therefore, the plaintiffs instead relied on the Oklahoma Insurance Department’s (OID) PC Bulletin No. 2020-01, issued March 20, 2020. That bulletin stated insurance carriers “shall suspend ... all policyholder rights or benefits related to deadlines until 90 days after the state of emergency ends.”⁸ The end of the state of emergency was not announced until May 3, 2021. Thus, the plaintiffs alleged they had 90 days from that date to file suit timely under the insurance agency’s order.

The defendants argued in response that the extension did not apply because the OID bulletin upon which the plaintiffs relied was rescinded June 30, 2020, before the *McLenithans'* claim arose.⁹ Despite the rescission of the OID bulletin and the termination of the SCAD orders prior to the claim, the court denied the defendants' motion to dismiss, determining the bulletin effectively delayed the plaintiffs' deadline to 90 days after the state of emergency ended, and the matter was filed within the suit limitation period based on the original OID bulletin's extension.

The extension granted in *McLenithan* suggests Oklahoma courts may generally apply a broad interpretation of COVID-19 deadline extensions. On the other hand, Oklahoma courts have also provided some distinction as to the limitations of COVID-19 deadline extensions. In *Head v. City of Choctaw*, the plaintiff failed to serve the defendant within the 180-day statutory deadline, even when accounting for the SCAD orders' tolling period.¹⁰ In fact, the plaintiff was three months over the deadline.¹¹ After hearing argument on the issue, the judge granted the city of Choctaw's motion to dismiss, seemingly affirming the untimely service under the SCAD orders.¹² This



ruling suggests that Oklahoma courts may give leeway for actions that occurred two weeks after a deadline expired – like in *McLenithan* – but will find a three-month delay unacceptable.

Nevertheless, one exception to Oklahoma's broad interpretation of COVID-19 deadline extensions stands out. Oklahoma courts have explained that certain constitutional mandates may be exempt from deadline extensions or be held to a stricter standard when analyzing the need for an extension. In *re State Question No. 805, Initiative Petition No. 421* stands for the premise that statutory duties imposed by the Oklahoma State Constitution are mandatory and can typically be accomplished while taking necessary safety precautions.¹³ Proponents of Initiative Petition No. 349 submitted signed petitions to the secretary of state as set forth in Article 5, Section 3 of the Oklahoma State Constitution.¹⁴ Accordingly, it is the duty of the secretary of state to file the signed petitions and begin a signature counting process.¹⁵ However, the secretary of state expressed concerns that commencing the signature counting process during the pandemic would be impractical while protecting the safety of those involved in the process.¹⁶ The court determined the secretary of state could perform the signature counting process in an efficient manner while taking necessary safety precautions, reasoning, "The duties imposed upon the Secretary of State regarding the initiative and referendum is ministerial, and is mandatory."¹⁷ This premise was affirmed by the Oklahoma Supreme Court in *Kiesel v. Rogers*, which dealt with nearly identical issues.¹⁸ In both cases, the Oklahoma Supreme Court ordered the constitutionally mandated actions be accomplished without the need of an extension or delay in the required timelines.

FEDERAL COURT DECISIONS

Federal courts apply a slightly more complex analysis in their interpretation of state-supplied tolling periods or extensions due to COVID-19. Before turning to the merits of the issue, federal courts must first determine if state law should be applied. When determining what law applies to an issue, federal courts utilize the *Erie* doctrine. "Under the *Erie* doctrine, 'federal courts apply substantive state law when adjudicating diversity-jurisdiction claims, but in doing so apply federal procedural law to the proceedings.'"¹⁹ Therefore, federal courts, in determining issues of state-ordered deadline extensions, analyze whether the deadline extension issues are procedural or substantive.

Federal courts have varied on the issue thus far.²⁰ In Texas, the Eastern District Court determined the issue to be procedural, applying the state-ordered tolling period to the deadlines at issue.²¹ Likewise, Oklahoma federal courts have found the tolling period was procedural when applied to a statute of limitations deadline.²² In California, however, the federal court found an emergency COVID-19 order, which tolled deadlines from April 27 to May 22, did not apply in federal court because it was "clearly procedural, and the federal, not state, rule applies."²³

Although the federal courts have produced differing opinions nationwide, federal courts in Oklahoma have generally applied state law to the deadlines at issue. For instance, the *Barraza v. State Farm Fire & Casualty Co.* court came to a similar conclusion as the *McLenithan* court on the same issue in a motion to dismiss.²⁴ Arguing that the one-year contractual limitation was extended by the OID bulletin, the plaintiff maintained that his pleading was timely filed

within the 90 days after the state of emergency ended. The defendant countered that because the OID bulletin, issued by an Oklahoma agency, was rescinded, the one-year limitation should at most be tolled to the date of rescission rather than the 90 days after the state of emergency. However, the court denied the defendant's motion to dismiss, siding with the plaintiff and applying the state agency's previous order to the deadline.²⁵

State agencies are not the only agencies to provide deadline extensions. Several federal agencies announced deadline extensions as well. For example, on May 4, 2020, the Department of Labor and the Internal Revenue Service issued a joint emergency rule affecting deadlines for HIPPA, ERISA and COBRA.²⁶ A federal court in Nebraska recently discussed the federal deadline extension in *Anglim v. Sharp Medical Staffing, LLC*.²⁷ The case stems from Ms. Anglim's termination from Sharp in March 2020. As an employer subject to COBRA requirements, Sharp was statutorily required to provide notice to Ms. Anglim of continued COBRA coverage. Notice was required to be furnished within 44 days of a qualifying event – *i.e.*, Ms. Anglim's termination. Sharp did not provide the statutory notice until November 2020, nearly eight months after the qualifying event. However, the court determined the notice was timely due to the extension granted by the joint IRS and DOL order. The order provided that COBRA notice requirements would be disregarded until the earlier of one year after the qualifying event or 60 days after the announced end of the COVID-19 national emergency.²⁸ Such relief was to be made retroactive to March 1, 2020.²⁹ Because of the retroactivity of the order, the *Anglim* court applied the extension in this case and ruled

that notice within eight months of the qualifying event was timely. Ms. Anglim appealed the ruling to the 8th Circuit on Jan. 4, 2022.³⁰ It has yet to be heard.

The joint IRS and DOL order also provided extensions for ERISA claims, benefits and appeals until 60 days after the end of the national emergency. This led to litigation regarding deadlines in *Solze v. United of Omaha Life Ins. Co.*³¹ In its opinion, the federal District of Colorado determined the plaintiff's motion to supplement the administrative record following denial of her ERISA claim was not covered by the joint order. The court noted the order provided relief for claims and appeals but did not provide extra time to supplement the record. Therefore, her timeline to supplement the record would remain unchanged, and her motion was untimely.

WHAT LITIGATORS NEED TO KNOW

In Oklahoma, arguments relying on the SCAD order's tolling period or a similar state agency deadline extension have seen success. Courts have broadly interpreted deadline extensions and allowed many cases to extend their deadlines based on the orders, bulletins and notices from various agencies. As one might expect, counsel has also found remarkable success in receiving broad extension interpretation when utilizing prior cases that support deadline extensions. For instance, counsel in *McLenithan v. Farmers Ins. Co., Inc.* utilized two prior federal cases supporting the extension granted by the OID in support of his argument that an extension was warranted in that case, even after the bulletin providing the extension had been rescinded by the OID.³²

In situations where there was a delay or issue due to the pandemic



that fell outside the scope of the SCAD orders or related state agency orders, attorneys have utilized arguments that COVID-19 affected their ability to timely file, accomplish or complete an action and requested an extension. This has seen little success. Although the courts have provided consistent leeway when it comes to the SCAD orders' tolling period for set deadlines, most courts have rejected generalized arguments that COVID-19 caused delays in meeting deadlines, particularly in the federal courts. For instance, when counsel in *G&G Closed Circuit Events, LLC v. Alvarez* argued the COVID-19 pandemic generally "slowed progress" on the case, the Western District pointed out that none of the counsel's arguments were specifically directed to explaining how he was postponed from meeting the deadline due to the pandemic.³³ Similarly, the Western District stated in *Gragg v. Roth*, "Plaintiff offers no specific reason why COVID-19 caused this particular docketing error ... [S]uch generalized assertions involving COVID-19 do not suffice."³⁴

Still, where generalized arguments of COVID-19 delays have

failed, some attorneys have seen success in making generalized arguments when paired with another delaying factor. A cyber-attack paired with the COVID-19 pandemic was satisfactory for the court in *Cruz v. Reliance Standard Life Ins. Co.*³⁵ The court determined each excuse was ordinarily insufficient on its own.³⁶ However, the party "suffered a one-two punch consisting of a cyberattack and an international pandemic with real life changes within weeks of each other ... Accordingly, the Court will allow the extension."³⁷

Other 10th Circuit courts rejected such generalized arguments as well. The plaintiff in *Liming Wu v. Zinke* argued she missed a filing deadline because of inadequate medical care and treatment due to the pandemic.³⁸ The court specified that her argument was not supported by any explanation as to how the pandemic caused her to miss the filing deadline.³⁹ Her argument was rejected, and the court failed to find good cause for her extension of time.⁴⁰

In summary, courts are wary of providing deadline extensions for generalized COVID-19 delays. If one plans to argue for

an extension due to COVID-19 delays, one should always utilize specific information to explain exactly how the pandemic affected the timeliness of the action. By providing detailed accounts of COVID-19's impact on the case, the attorney can more efficiently persuade the court to understand why a worthy cause exists for an extension outside the prescribed tolling periods.

Further, a litigator arguing a deadline extension would best serve their client by determining if there is any extension applied to the time period from any agency. Since courts have been lenient in extending deadlines provided by state and federal agency orders, a litigator should research every agency that may influence the case to determine if a deadline extension was granted by that agency. The Department of Insurance, Supreme Court, Department of Labor, Internal Revenue Service, Department of Housing and Urban Development, Department of Agriculture and Department of Energy are just a few examples of the many agencies that provided some type of COVID-19 deadline relief.⁴¹ Litigators should also pay attention to what is specifically being extended. Some agencies provided extensions only for very specific deadlines that could not be effectively accomplished during the pandemic. Be sure to explore every possible interpretation of its limitations to best frame your arguments.

CONCLUSION

The COVID-19 deadline extensions provided by state and federal agencies open the door for future extensions due to world or even local events. Although the pandemic affected deadlines on a wide scale, it is possible these types of extensions could become more common throughout various sections of the law as emergencies

arise. Litigators need to be aware of the courts' responses to these deadline extensions and how they affect their clients in every area of law. COVID-19 deadline extensions can be an important factor in the success or failure of a litigator's case and should be thoroughly investigated in future cases.

Editor's note: This article was previously published by Doerner, Saunders, Daniel & Anderson LLP. Reprinted with permission.

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Defending a Lawsuit With Your Best Foot Forward

By Melissa East

AS A DEFENSE LAWYER, you will often face a client – whether it’s a current client or a new client – who has been served with a petition and discovered they have been sued. When the client presents that petition to you, they may be stressed, they may be angry or they may be in denial. What is certain is the client will want the lawsuit to go away. Having a case dismissed on the merits from the outset can be daunting for defense lawyers, and when faced with responding to a petition, you must perform your due diligence before taking that next step.

Review the allegations in the petition and meet with the client to determine the facts and understand their side of the story. While you may be tempted to simply answer the allegations and move into discovery to determine the plaintiff’s side of the story, moving too quickly could lead to a missed opportunity. It is important to closely analyze who the parties are, the allegations and the basis for the claims before taking that next step to ensure you put your best foot forward for the client. The question ultimately becomes: What can be done?

What follows in this article is a summary of the many strategic moves and procedural tactics available when responding to a petition and an analysis of the law that justifies each strategic move or procedural tactic.

SPECIAL ENTRY OF APPEARANCE AND RESERVATION OF ADDITIONAL TIME TO PLEAD

When you receive a petition from a client, you may determine that you cannot perform your due diligence and submit a timely response and then find yourself needing additional time. What can be done to get that additional time? Under the Oklahoma Pleading Code, a defendant has 20 days from the date of service to serve an answer.¹ In *Young v. Walton*,² the Oklahoma Supreme Court held that the terms of Okla. Stat. Tit. 12, §2012(A) provide a defendant with the ability to file an appearance within the 20 days and extend the period to respond, but in doing so, the appearance operates as a waiver of certain defenses.³ The Oklahoma Supreme Court in *Young* stated, however, that this waiver of defenses only applied to a general appearance, or an unspecified appearance, and it did not apply to an appearance that

is explicitly qualified.⁴ By filing a qualified or special appearance, it reserved the right to later assert additional defenses.⁵ Oklahoma defense attorneys could therefore file a “special entry of appearance” to not only extend their time to respond but to also preserve their right to assert affirmative defenses. This tactic has often been used by defense attorneys.

The ability to use this tactic was, however, recently affected by the Oklahoma Supreme Court ruling in *McBee v. Shanahan Home Design*.⁶ In *McBee*, the defendants filed special appearances citing *Young v. Walton* and requested additional time to respond without waiving any affirmative defenses.⁷ In its ruling, the Oklahoma Supreme Court recognized that in 2002, the language of Okla. Stat. Tit. 12 §2012(A) changed, and the use of the word “appearance” was removed and replaced by the term “reservation of time.”⁸ This arguably overturned *Young v. Walton* and removed the ability to file a special entry of appearance to



extend the period of time to respond and not waive certain affirmative defense.⁹ “The distinction between a special or general appearance would now appear inconsequential, and ostensibly, *any reservation of time* ‘waives the defenses in paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of Section 2021.’”¹⁰

Defense attorneys can no longer rely on a special entry of appearance to extend the period of time to respond to a petition without waiving any affirmative defenses. Instead, defense attorneys needing additional time must now obtain consent from the plaintiff’s attorney or a court order granting a request for additional time. While this is not an incredibly difficult task, defense attorneys should not sit on their hands. Upon receipt of a new lawsuit from a client, defense attorneys should act immediately to investigate the claims asserted in the lawsuit and avoid the need to file an application with the court to seek additional time to respond. Otherwise, you may face filing an

answer and foregoing other possible strategic moves.

MOTION TO DISMISS

Motions to dismiss can be the most effective strategic move in response to a new lawsuit. Filing a motion to dismiss can not only lead to a dismissal of the lawsuit, but it could cause a plaintiff to reconsider their allegations. Still, filing a motion to dismiss can be time consuming and costly to a client, so a determination on whether to file a motion to dismiss must be thoroughly examined and discussed with the client. Oklahoma is a notice pleading state, and all that is required for a plaintiff to plead a viable lawsuit is to give fair notice of their claim and the grounds on which it rests.¹¹ Under the Oklahoma Pleading Code, a petition must contain “[a] short and plain statement of the claim showing that the pleader is entitled to relief.”¹² Terms of art or legal phraseology is not required, and each allegation “shall be simple,

concise, and direct” with no technical form of pleading or motion required.¹³

Motions to dismiss test the law that governs the claims in the petition and are generally disfavored.¹⁴ The court examines the controlling law, not the facts, and a motion to dismiss will be granted only when there are no facts consistent with the allegations or there are insufficient facts under a cognizable legal theory.¹⁵ The question becomes, when is it appropriate to file a motion to dismiss?

Lack of Jurisdiction

To have a viable cause of action against a defendant, a plaintiff must set forth allegations sufficient to allow a court to exercise subject-matter jurisdiction over the claims and personal jurisdiction over the defendant. Under Okla. Stat. Tit. 12 §2012(B)(1) and (2), a defendant can seek dismissal of a lawsuit because of a lack of subject-matter jurisdiction or personal jurisdiction. Jurisdiction

“is the authority by which courts take cognizance of and decide cases, and that the three elements necessary to the validity of a court order are jurisdiction of the person, jurisdiction of the subject matter and the power of the court to decide the particular matter and render the particular judgement at issue.”¹⁶

Subject-matter jurisdiction.

For a court to have authority to adjudicate a dispute, it must have jurisdiction over the type of legal issues in dispute. Subject-matter jurisdiction “is the power and authority of a court to hear and determine causes of the kind in question.”¹⁷ Subject-matter jurisdiction cannot be waived by the parties or conferred upon the court through consent, and it can be challenged at any time during the proceedings.¹⁸ Subject-matter jurisdiction is generally challenged at the beginning of litigation by filing a motion to dismiss under Okla. Stat. Tit. 12 §2012(B)(1). When filing a motion to dismiss for lack of subject-matter jurisdiction, a party is allowed to submit evidence outside the pleadings. While a court faced with a motion to dismiss attaching evidence outside of the pleadings will typically treat the motion as a motion for summary judgment, when attaching evidence to a motion to dismiss to challenge subject-matter jurisdiction, the court is not required to convert the motion to dismiss to a motion for summary judgment.¹⁹ To avoid having the motion to dismiss converted to a motion for summary judgment, however, the evidence submitted must only relate to the issue of jurisdiction. “When this additional disputed evidence relates to an element of the cause of action pled by a party, the motion to dismiss for lack of subject-matter jurisdiction is converted to one for summary judgment.”²⁰

Personal jurisdiction. Personal jurisdiction is a protection granted by the Due Process Clause of the U.S. Constitution and Oklahoma Constitution.²¹ It is the power of the court to deal with a person as a defendant and issue a binding judgment against that defendant.²² “When *in personam* jurisdiction is challenged, the jurisdiction over a non-resident defendant cannot be inferred, but instead must affirmatively appear from the trial court record, and the burden of proof in the trial court is upon the party asserting that jurisdiction exists.”²³ When deciding whether personal jurisdiction exists, the court will exercise the minimum contacts test to determine whether the defendant has certain minimum contacts with Oklahoma, such that the exercise of jurisdiction over the defendant does not offend “traditional notions of fair play and substantial justice.”²⁴ To exercise personal jurisdiction over a defendant, the minimum contacts between the defendant and the state of Oklahoma must be sufficient to show the defendant reasonably anticipated being hauled into court in Oklahoma.²⁵

Failure to State a Claim Upon Which Relief May be Granted

Under the Oklahoma Pleading Code, a petition that fails to state a claim upon which relief can be granted is subject to dismissal.²⁶ A court may dismiss a party’s claim as a matter of law for two reasons: 1) lack of any cognizable legal theory or 2) insufficient facts under a cognizable legal theory.²⁷ A petition must set forth sufficient facts in support of each element of the claim being asserted. A motion brought under Okla. Stat. Tit. 12 §2012(B)(6) will be granted where it appears beyond doubt that the plaintiff cannot prove a set of facts that support the requested relief.²⁸

In reviewing a petition upon a motion to dismiss, the court considers the legal sufficiency of the petition, taking all allegations as true.²⁹ A dismissal is appropriate for lack of any cognizable legal theory or insufficient facts under a cognizable legal theory.³⁰

If the petition asserts a fraud claim, the pleading standard is higher, and a motion to dismiss can be more effective. In Oklahoma, all claims of fraud must be pled in accordance with the particularity requirements of Okla. Stat. Tit. 12 §2009(B).³¹ The Oklahoma Supreme Court has recognized this particularity requirement extends to *all* claims of fraud, and when an action involves more than one defendant, the plaintiff “must plead facts from which fraud may be reasonably inferred as to each defendant.”³² A fraud claim must set forth facts sufficient to show the time, place and content of the alleged false representation and must show more than circumstances from which fraudulent intent could be inferred.³³ Thus, while a petition may set forth allegations sufficient to withstand Oklahoma’s notice pleadings standard, a petition may not withstand the higher pleading standard for fraud claims.

When the petition fails to fulfill the particularity requirement under Okla. Stat. Tit. 12 §2009, there is a procedure for obtaining this information instead of pressing for dismissal. Under Oklahoma case law, a defendant can file a request that the plaintiff provide a more definite statement with the necessary particulars that would support the allegation of fraud – *i.e.*, time, place and content of the alleged false representation.³⁴ This may be asserted in the alternative rather than a request for dismissal.

RESPONDING TO THE PETITION

Filing a motion to dismiss can be costly for a client as it can require an attorney to expend a great deal of time researching and brief writing. Because motions to dismiss are rarely granted in Oklahoma state courts, there will often be times when a motion to dismiss is not proper and responding to the petition is the appropriate move. However, it is still not the time to rush as there are numerous considerations to be made, strategic moves that can be pursued and opportunities that can be missed. The next step should result from discussions with the client and a determination of the facts.

Asserting a Counterclaim, Cross-Claim or Both

Under the Oklahoma Pleading Code, there are two types of counterclaims: a compulsory counterclaim and a permissive counterclaim. A compulsory counterclaim is any claim against the opposing party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claims.³⁵ If you do not assert a compulsory counterclaim in response to the petition, it will bar a later action of that claim.³⁶ "The purpose of the compulsory counterclaim bar is to prevent multiplicity of litigation over related claims."³⁷ A permissive counterclaim includes any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claims.³⁸ Any claim that falls short of a compulsory counterclaim essentially qualifies as a permissive counterclaim, and the failure to assert a permissive counterclaim in response to a petition does not bar a later action.

If there are multiple defendants, a cross-claim may be appropriate. A cross-claim is a claim against any party that is not an opposing party arising out of the transaction or occurrence that is the subject matter of the original action.³⁹ The most common cross-claims are derivative cross-claims, *i.e.*, a claim for contribution or indemnification. Contribution is available when one or more persons become jointly or severally liable in tort for the same injury to a person or property.⁴⁰ An indemnification claim is available to one who, without fault on their own, has paid damages because of the negligence of another.⁴¹

Third-Party Litigation

Under Okla. Stat. Tit. 12 §2014, a defendant can serve a petition and summons on a non-party who is or may be liable for the plaintiff's claim or a defendant's counterclaim arising out of the transaction or occurrence that is the subject matter of a claim asserted against them. This can be pursued by a defendant any time after the commencement of the action or by a plaintiff any time after a counterclaim is asserted. Often, third-party claims are initiated to assert a contribution

or indemnification claim or both. Yet it is worthy to note a recent trend surrounding contribution claims in the district courts. Under Okla. Stat. Tit. 23 §15, joint and several liability in Oklahoma was completely abolished in 2011 and liability in Oklahoma became several only. Any liable party is, therefore, only liable for their *pro rata* share of liability, and Oklahoma district courts have concluded that contribution is, therefore, not a viable cause of action between defendants. While the Oklahoma Supreme Court has not concluded there is no viable third-party contribution claim in the state of Oklahoma, it is vital to ensure you consider this analysis when determining whether to initiate that third-party claim for contribution.

Removal to Federal Court

Transferring a case from state court to federal court is a tactical move that could prove to be beneficial to a client. Federal courts have different procedural rules, and federal judges have more precedential authority to rely on than Oklahoma courts on many different issues. That said, removing a case from state court to federal court can be more costly than filing a motion to dismiss, and you

Because motions to dismiss are rarely granted in Oklahoma state courts, there will often be times when a motion to dismiss is not proper and responding to the petition is the appropriate move.



should discuss all the pros and cons with the client to ensure the client is on board.

Under 28 U.S.C. §1446, a defendant can file in the United States district court for the district within which the state court action is pending a notice of removal containing a short and plain statement of the grounds for removal.⁴² The notice of removal must be filed within 30 days after the defendant is served with the initial pleading setting forth the claim for relief.⁴³ Typically, the basis for removal of a state court action to federal court is either diversity of citizenship or the inclusion/joinder of federal law claims. Removal under 28 U.S.C. §1441(b) based on diversity of citizenship occurs when the matter in controversy exceeds the sum of \$75,000 and is between citizens of different states.⁴⁴ Removal under 28 U.S.C. §1441(c) because of federal question jurisdiction occurs when one or more claims asserted

in the initial pleading arises under the Constitution, laws or treaties of the United States.⁴⁵ A plaintiff does have the ability to object to removal. Within 30 days of when the notice of removal was filed, a plaintiff can file a motion asking the federal district court to remand the case back to state court.⁴⁶ This is where it can begin to get costly for the client, and before filing the notice of removal, the client should have a good understanding of what the removal process will entail.

Answering the Petition

There will be times, more often than not, when the only way to put your best foot forward is by answering the petition. Again, the decision for how you should answer a petition should not be rushed. Before answering the petition, you should sit down with your client and review each allegation to determine whether the allegation should be

admitted, denied or if some other response may be appropriate. The Oklahoma Pleading Code provides that a defendant shall set forth “in short and plain terms” their defenses to each claim, and it sets forth the standard for answering a petition. While you don’t want to show all your cards at this early stage, at times it may become necessary to set forth a brief explanation for why an allegation is denied. This is proper under Okla. Stat. Tit. 12 §2008.

Once you have answered each allegation in the petition, you will want to assert your affirmative defenses. Under Okla. Stat. Tit. 12 §2008(C), when responding to a petition, a defendant must set forth several defenses affirmatively. The language under Okla. Stat. Tit. 12 §2008(C) is mandatory, and the failure to plead an affirmative defense operates as a waiver of that defense.⁴⁷ For that reason, you will want to ensure you know your case when setting forth your affirmative defenses so you don’t waive any defenses that could become important to the case. Should you discover that you omitted an affirmative defense after filing your answer, you can amend your answer to include an affirmative defense that may have been omitted. Under the Oklahoma Pleading Code, 12 O.S. §2015(A), you can amend your answer as a matter of course at any time within 20 days after the answer is served. If the 20 days have elapsed, you will have to seek leave of court to do so, and effective Nov. 1, 2022, per an amendment to 12 O.S. §2015(A), you must submit your proposed amendment with the motion for leave to amend. It is within the court’s discretion on whether to allow you to amend your answer, so if you discover you have omitted an affirmative defense in your answer, you will want to act quickly.⁴⁸

CONCLUSION

There are several strategic moves available to a defendant when faced with a new lawsuit. A failure to properly consider these strategic moves as viable options when responding to a petition could lead to a missed opportunity for your client. Whether it is a current client or a new client, you will want to ensure you are zealously advocating for your client. By considering each of these strategic moves and determining whether any such move is appropriate, it will allow you and your client to put your best foot forward from the beginning.

ABOUT THE AUTHOR



Melissa East is a partner at McDaniel Acord PLLC in Tulsa. Her practice focuses on general civil litigation, including the areas of construction law, personal injury law, environmental and toxic tort law, commercial business litigation and family law. She is a 2007 graduate of the TU College of Law.

ENDNOTES

1. See Okla. Stat. Tit. 12, §2012(A).
2. 1991 OK 20, 807 P.2d 248.
3. *Id.* ¶14, 807 P.2d at 249.
4. *Id.*
5. *Campbell v. American Intern. Group*, 1999 OK CIV APP 37, ¶9, 976 P.2d 1102, 1105.
6. 2021 OK 60, 499 P.3d 1.
7. *Id.* ¶15 n. 12.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Gens v. Casady School*, 2008 OK 5, 177 P.3d 565.
12. 12 O.S. §2008.
13. *Id.*; *Gens*, 2008 OK 5.
14. *Osage Nation v. Board of Commissioners of Osage County*, 2017 OK 34, ¶22, 394 P.3d 1224, 1233-1234.
15. *Id.*
16. *In re. A.N.O.*, 2004 OK 33, ¶9, 91 P.3d 646.
17. *Id.*
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19. *Doe v. First Presbyterian Church U.S.A. of Tulsa*, 2017 OK 106, ¶14, 421 P.2d 284, 288.
20. *Id.*
21. *Montgomery v. Airbus Helicopters, Inc.*, 2018 OK 17, ¶18, 414 P.3d 824, 829.

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23. *Montgomery*, 2018 OK 17, ¶18, 414 P.3d at 829.
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25. *State ex rel. Fisher v. South Atlantic Dredging Co., Inc.*, 2000 OK CIV APP 123, ¶16, 15 P.2d 523, 525 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980)).
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29. *Gens v. Casady School*, 2008 OK 5, ¶18, 177 P.3d 565.
30. *Id.*
31. *Gay v. Akin*, 1988 OK 150, ¶7, 766 P.2d 985, 989.
32. *Id.* at ¶18.
33. *Id.*
34. *Estrada v. Kriz*, 2015 OK CIV APP 19, ¶123, 345 P.3d 403, 410 (citing *A-Plus Janitorial & Carpet Cleaning v. Employers' Workers' Comp. Ass'n*, 1997 OK 37, ¶36, 936 P.2d 916, 931).
35. 12 O.S. §2013(A).
36. *Robinson v. Texhoma Limestone, Inc.*, 2004 OK 50, ¶18, 100 P.3d 673, 675.
37. *Id.* (citing *Oklahoma Gas & Electric Co. v. District Court, Fifteenth Judicial District*, 1989 OK 158, ¶11, 784 P.2d 61, 64).
38. 12 O.S. §2013(B).
39. 12 O.S. §2013(G).
40. 12 O.S. §832(A).
41. *National Union Fire Insurance Company v. A.A.R. Western Skyways, Inc.*, 1989 OK 157, ¶7, 754 P.2d 52, 54.
42. 28 U.S.C. §1446(a).
43. *Id.* at §1446(b)(1).
44. 28 U.S.C. §1332(a).
45. 28 U.S.C. §1331.
46. 28 U.S.C. §1447(c).
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Put it Plainly: How the Use of Plain Language Can Increase Equity and Procedural Fairness in Small Claims Eviction Proceedings

By Katie Dilks and Shandi Campbell

LAWYERS ARE KNOWN FOR THEIR LOVE OF COMPLICATED LANGUAGE, but legalese is cumbersome and confusing to those who aren't law trained. Many of our judicial processes and procedures can be accomplished fairly and efficiently using plain language, and this is especially true in areas of law like small claims. Small claims court is known as "the people's court" for a reason – it's supposed to be a simpler, faster system to resolve conflicts between people, whether over a disagreement, contract or money.

That's why there are more relaxed rules in this setting for how courts can operate and how people bringing cases (or being sued) can tell their stories. One reason small claims court works this way is because the expectation is that many, if not most, people using it will be there without a lawyer. A section of Oklahoma law even tells court staff to help people without lawyers figure out how to fill out the paperwork to sue someone in small claims. In 1971, Oklahoma lawmakers decided eviction cases should be heard in small claims court because, at that time, most landlords didn't use lawyers in evictions. Today, though, it's a different story.

For evictions, in particular, "the people's court" has shifted to an unlevel playing field where most landlords are represented by lawyers, while the vast majority of tenants remain unrepresented. A study of the Tulsa County eviction docket by students with the Terry West Civil Legal Clinic at the TU College of Law found 82% of landlords had legal counsel compared to only 3.5% of tenants.¹ This disparity leads to one party having a translator for the legalese heavily used by courts and lawyers, while the other is left alone to decipher terms like "forcible entry and detainer," "affidavit" and "judgment under advisement." This imbalance has a dramatic impact on the outcomes of eviction cases. The TU study found that tenants

without representation were almost twice as likely to receive a judgment for eviction (79%) as those with representation (43%).² Additionally, tenants who appeared in court alone were more than twice as likely to have a money judgment against them (78%) than tenants who appeared with counsel (34%).³

For someone facing eviction, the first (and only) thing they receive to let them know they are being sued comes through the mail or is posted on their door: the summons. In Oklahoma, the Legislature created standardized form language for landlords to use (again, because lawmakers in 1971 assumed most landlords didn't have lawyers), and the language on that form is difficult to understand. The first sentence



starts, “You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as ...” It is intimidating and complicated language that doesn’t clearly describe what is happening; however, it is important people understand the court process and what they need to do. Right now, many people who receive this language from the court don’t understand exactly what it means or what they are supposed to do next. This results in a high number of default judgments.

Fortunately, there’s an easy solution to bring the small claims eviction process back to a true “people’s court”: plain language. Many people assume plain language simply means “dumbing down” words, but at its core, plain language means presenting information in a way that allows users to understand what they are reading the first time they read it. This means writers must employ shorter sentences,

use active voice, address the reader directly and reduce the reading level. Although experts recommend aiming for a sixth to eighth-grade reading level when creating public materials, Oklahoma’s eviction summons reads at a 14th-grade level, meaning you likely need a college education to understand it. Only 27% of Oklahomans have a four-year college degree.

The modern history of the plain language movement started in 1977 with President Nixon directing the Federal Register be written in “layman’s terms” and continued through President Obama signing the Plain Language Act of 2010 that required federal agencies to write clear government communications the public can use and understand. Today, federal agencies are annually scored on the use of plain language in their publications by the Center for Plain Language. These strides have led to an understanding of the benefits of plain

language. Simplifying text allows users to find what they need, understand what they find and use what they find to meet their needs.

The use of plain language in courts leads to increased equity and procedural fairness because both represented and unrepresented parties begin, move through and end the legal process with the same opportunity to understand information. It also builds greater trust in the legal process because unrepresented parties aren’t left wondering if they’ve missed a critical component that may have led to a different result. The National Association for Court Management notes two additional benefits of courts using plain language: 1) It can lower the burden on court staff, allowing them to focus on complex issues and other court business, and 2) cases can move through the court more quickly because unrepresented

court users better understand the process and their options.⁴

Three straightforward improvements could help ensure all Oklahomans understand the legal system, especially regarding an issue as important as eviction:

- 1) Courts could rely on the legislative direction that forms be in “substantially the same form” as the legislative language to create new, accessible forms using plain language (see the side-by-side examples included below).
- 2) The Legislature could update the Small Claims Civil Procedure Act to either include plain language forms or authorize the administrative office of the courts to develop and make available those forms

(as they have in the field of protective orders).

- 3) Courts could include plain language informational materials with the summons, through the clerk’s office and on their websites.

ABOUT THE AUTHORS



Katie Dilks is the executive director of the Oklahoma Access to Justice Foundation and is committed to building a legal system that works for everyone. She earned her law degree and master’s in public policy from Georgetown University.



Shandi Campbell is the director of the Housing Solutions Landlord Tenant Resource Center, where her work is focused on

making homelessness rare, brief and non-recurring in Tulsa County. Previously, Ms. Campbell served as assistant city attorney for Enid, staff attorney for the Apache Tribe of Oklahoma civil-legal program and as a contract attorney and mentoring attorney for the Native Alliance Against Violence CIRCLE Project.

ENDNOTES

1. The TU College of Law Terry West Civil Legal Clinic, Batien, T., Beatty, L., Fields, Q., Stout, C., Sweatt, K. and Amit, R. (January 2021). *Leveling the Playing Field: Legal, Economic and Policy Considerations in Establishing an Access to Counsel Program for Tulsa’s Eviction Docket* at 3. <https://bit.ly/3bWJr6L>.
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3. *Id.* at 5.
4. National Association for Court Management, Zamora, A., Robers, A., Borrud, T., Danser, R., Horvath, C., Kodidine, S., Rickard, E. and Spanner, A. (January 2019). *Plain Language Guide: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials* at 13. <https://bit.ly/3c50NP6>.

CURRENT SUMMONS

FORCIBLE ENTRY AND DETAINER

The State of Oklahoma to the within-named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as _____

_____ or to appear and show cause why you should be permitted to retain control and possession thereof. This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of _____, Oklahoma, at the hour of _____ o’clock of _____ day of _____ month, 20____, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summons is issued). You are further notified that if you do not appear on the date shown, judgment will be given against you as follows: For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the sheriff to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney’s fees and other costs, may also be given. Dated this _____ day of _____, 20____.

ALTERNATE SUMMONS

FORCIBLE ENTRY AND DETAINER (EVICTION)

To: [DEFENDANT’S NAME]

You are being sued for eviction by _____ [PLAINTIFF’S NAME] from _____ [ADDRESS].

You may either leave the property immediately, or you can appear in court to explain why you should not be evicted.

You are scheduled to appear in court at _____ [COURT ADDRESS] at _____ [TIME] on _____ [DATE]. If you do not appear in court, an eviction judgment will automatically be issued against you, which may include a financial judgment for any rent you owe and the costs of the court proceeding.

If an eviction judgment is issued against you by the court, you will be removed from the property by the sheriff.

Today’s Date: _____



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Nominating Petition
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Sept. 2, 2022

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(One-year term: 2023)
Mr. Hermanson automatically
becomes OBA president Jan. 1, 2023
Nominee: **Miles T. Pringle,**
Oklahoma City

Vice President

Current: Miles T. Pringle,
Oklahoma City
(One-year term: 2023)
Nominee: **D. Kenyon Williams Jr.,**
Tulsa

BOARD OF GOVERNORS

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Nominee: **Micah D. Knight, Durant**

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Nominee: **Vacant**

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(Three-year term: 2023-2025)
Nominee: **Vacant**

SUMMARY OF NOMINATIONS RULES

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

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

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

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

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

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

Elections for contested positions will be held at the House of Delegates meeting Nov. 4, during the Nov. 2-4 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2022.

Nomination and resolution forms can be found at <https://bit.ly/3PwHnS4>.

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS

President-Elect

Miles T. Pringle
Oklahoma City

Nominating Petitions have been filed nominating Miles T. Pringle for President-Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2023. Fifty of the names thereon are set forth below:

Laura N. Smith Pringle, Lynn A. Pringle, David A. Poarch Jr., James R. Hicks, Susan Stocker Shields, M. Joe Crosthwait Jr., Kimberly Hays, David K. Petty, Cathy M. Christensen, James T. Stuart, Charles W. Chesnut, William R. Grimm, Lane R. Neal, Cody J. Cooper, Melvin R. McVay Jr., Byrona J. Maule, Thomas G. Wolfe, Alissa D. Preble Hutter, Andrew E. Hutter, Amber N. Peckio Garrett, Joshua A. Edwards, Douglas D. Dale, Robin Lee Rochelle, D. Kenyon Williams Jr., Matthew C. Beese, Roy D. Tucker, Jennifer M. Castillo, Jimmy D. Oliver, Timothy E. DeClerck, Richard D. White Jr., Bryon J. Will, Mark E. Fields, Benjamin R. Hilfiger, Michael R. Vanderburg, Elaine R. Turner, Jonathan A. Epstein, Moira C.G. Watson, Timothy L. Rogers, Aaron M.

Arnall, Robert L. Bailey, Cyrus Bruce Crum, Mark E. Bialick, James K. Larimore, David B. Donchin, Douglas S. Pewitt, John E. Harper Jr., Dillon J. Hollinsworth, Ashley F. Vinson, James Kevin Hayes and Mark E. Hornbeek.

A total of 172 signatures appear on the petitions.

Vice President

D. Kenyon Williams Jr.
Tulsa

Nominating Petitions have been filed nominating D. Kenyon Williams Jr. for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2023. Fifty of the names thereon are set forth below:

Charles W. Chesnut, Susan Stocker Shields, Brian T. Hermanson, Matthew C. Beese, Brian K. Morton, Timothy E. DeClerck, Benjamin R. Hilfiger, James R. Hicks, Andrew E. Hutter, Alissa D. Preble Hutter, Robin Lee Rochelle, Mark Banner, Aaron C. Tifft, Pamela S. Anderson, James Kevin Hayes, Lynn Lane Williams, Kristen Pence Evans, Steven A. Broussard, Johnathan L. Rogers, Michael T. Keester, Kent A. Gilliland,

Jared R. Ford, Ty E. Schoenhals, Eric C. Money, Larry G. Ball, Emily P. Pittman, Seth A. Day, Littleton Tazewell Ellett IV, Daniel V. Carsey, Jonathan A. Epstein, John Frederick Kempf Jr., John W. Gile, Mitchell K. McCarthy, Raymond S. Rudnicki, Stephen R. Pitcock, Elaine R. Turner, James D. Satrom, Heather Flynn Earnhart, James M. Reed, Sarah E. Hansel, Christopher L. Carter, Samantha W. Davis, Jon M. Payne, Sarah C. Miller, James C.T. Hardwick, Thomas P. Schroedter, Gregory P. Reilly, Natalie S. Sears, W. Davidson Pardue Jr. and Brian T. Inbody.

A total of 91 signatures appear on the petitions.

BOARD OF GOVERNORS

Supreme Court Judicial District No. 2
Micah D. Knight
Durant

A Nominating Resolution from Bryan County has been filed nominating Micah D. Knight for election of Supreme Court Judicial District No. 2 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2023.



NOTICE

OKLAHOMA BAR ASSOCIATION EXECUTIVE DIRECTOR SOUGHT

Applications are being accepted for the position of Executive Director of the Oklahoma Bar Association.

The OBA Executive Director supervises all programs and projects of the Association; acts as Treasurer; prepares preliminary annual budget; supervises financial transactions; supervises the OBA legislative program and communicates status of legislation of interest to lawyers; supervises the 44 member Bar Center staff; assures that the work of the Association is properly performed; is responsible for successful execution of the Annual Meeting; serves as Editor in Chief of the *Oklahoma Bar Journal*; maintains the official roster of the members of the Association, House of Delegates and the Board of Governors; and performs other duties as directed by the President, Board of Governors and the House of Delegates.

Applicant should have a minimum of ten years of appropriate legal and/or managerial experience and must be a member of the Oklahoma Bar Association or eligible for admission to active or senior membership. Job requires travel in and out of state and availability for work assignments outside of regular office hours. Qualifications should include: strong verbal and written communication skills; sufficient knowledge and ability to aid in the development and execution of technology strategies and initiatives; ability to work effectively with diverse groups; ability to advocate on behalf of all members; and strong leadership and administrative skills.

Excellent benefits, including paid leave, 401(k), disability, life and health insurance. Salary is negotiable according to qualifications and experience.

Detailed position description and application form may be obtained from Janetta Cravens at the Oklahoma Center for Nonprofits. Submit your application in writing or in electronic format, before 5 p.m. on Friday, Sept. 2, 2022, to:

Oklahoma Bar Association
c/o Oklahoma Center for Nonprofits
720 W. Wilshire Blvd., Ste. 115
Oklahoma City, OK 73116
Email address: jcravens@okcnp.org

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The top half of the advertisement features a woman with dark, curly hair wearing a teal button-down shirt, smiling at the camera. To her left, a hand in a yellow sleeve holds a white rotary telephone receiver. The background is a solid pink color. The Ruby logo is in the top left corner.

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Bringing the National Parent Defense Movement to Oklahoma

By Gwendolyn Clegg



I AM A PARENT ATTORNEY, a public interest lawyer. I represent parents who have lost their children to foster care. I have practiced juvenile deprived law for more than 20 years. My journey to becoming a fierce parent defense lawyer was not planned and feels more like I purposefully fell down the rabbit hole.

As a brand-new lawyer, I started looking for volunteer work. I stumbled upon Court Appointed Special Advocates and their work as guardian *ad litem*s in deprived court and Tulsa Lawyers for Children and their work as conflict attorneys representing children in deprived court. Life's twists and turns kept me from volunteering for either organization. But fate intervened, and a few hours after hanging out my shingle, a close friend from law school called needing assistance with a deprived case. A coincidence? I think not. I had not thought about deprived law for a couple of years and still had no clue what it was or how it would turn my world upside down.

Representing parents is a lonely world. After nearly a decade of representing parents, I learned I was not alone. There were numerous passionate parent defense attorneys across the United States. There was a movement, a national parent defense movement, studying

parent defense, organizing parent defense and elevating parent defense representation out of confidential courtrooms, into the light of day, onto the front page of newspapers and into the center well of zealous courtroom advocacy.

Jurisdictions began bravely implementing interdisciplinary defense teams, consisting of a trained attorney, a master's-level social worker/intern and a parent mentor (a parent who has survived the child welfare and court systems). These parent defense teams were popping up in Washington, New York City, Massachusetts and Colorado. The ABA Center on Children and the Law held the inaugural ABA Parent Attorney Conference in 2009 in Washington, D.C., to showcase parent defense work. Here I learned about the movement and what other jurisdictions were doing to raise the bar of parent representation to defend parents and reunite families. How could I bring the movement to Oklahoma?

In spring 2020, my phone rang. On the other end of the line was a voice asking, "Would you like to be the managing attorney for Legal Aid Services of Oklahoma's newly formed Parent Representation Defense Program in Tulsa County?" Absolutely! Heck Yeah! Finally!

LASO's Parent Representation Defense Program is the first program in Oklahoma to provide interdisciplinary parent defense. Parents receive a highly trained attorney, a master's-level social worker and a parent mentor to defend them and help them navigate the child welfare and court systems. Two decades of research show children reunify months sooner when their parents are represented by an interdisciplinary team, saving tens of millions of dollars in foster care costs.

I am now the program director of LASO's Parent Representation Defense Program. I am excited about the future of parent representation in Oklahoma. I am excited about the access to justice this program will bring to our most vulnerable families.

ABOUT THE AUTHOR

Ms. Clegg is the program director of Legal Aid Service of Oklahoma's Parent Representation Defense Program.

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The Sovereignty Symposium XXXIV

Oklahoma City | June 8-9, 2022



1. The Kiowa Black Leggings Warrior Society

2. Members of the “Signs, Symbols and Sounds Panel”: from left James Pepper Henry, director and COO, First Americans Museum; Roy Boney, language program manager, Cherokee Nation; Kenneth Johnson; Winston Scambler, panel moderator

3. From left John Turner, staff attorney, Oklahoma Supreme Court; Justice Noma Gurich, Oklahoma Supreme Court; Julie Rorie, staff attorney, Oklahoma Supreme Court, and Symposium event coordinator

4. From left Lt. Gov. Chris Anoatubby, Chickasaw Nation; Justice Dustin Rowe, Oklahoma Supreme Court and citizen of the Chickasaw Nation; Gov. Bill Anoatubby, Chickasaw Nation

5. Patrick Riley and Trey Hays of the Education panel

6. Principal Chief Geoffrey Standing Bear of the Osage Nation

7. Cheyenne Peace Chief Gordon Yellowman

8. Chairman John A. “Rocky” Barrett of the Citizen Potawatomi Nation, the 2022 Sovereignty Award winner







9. From left Bill Lance, secretary of state, Chickasaw Nation; Jim Collard, director of planning and economic development, Citizen Potawatomi Nation; Brennah Wilson

10. Flute Circle with Chief Lewis Johnson of the Seminole Nation

11. Justices of the Oklahoma Supreme Court: from left Justice Douglas Combs, Chief Justice Richard Darby, Justice Noma Gurich, Retired Justice Steven Taylor and Justice Yvonne Kauger

12. Gov. Bill Anoatubby of the Chickasaw Nation presents during the Criminal Law panel discussion.

13. The Sovereignty Symposium staff

14. Allison D. Garrett, Oklahoma chancellor for higher education; and John Hargrave, chief executive officer, East Central University Foundation

15. From left Kenneth Johnson, jeweler and silversmith; the Honored One and keynote speaker Janie Hipp, general counsel of the USDA; and Chief Justice Richard Darby



10.



11.



13.



14.



15.



**FRIDAY, SEPTEMBER 30
OKLAHOMA CITY
CIVIC CENTER**

MCLE 6/1



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

*Lilly
Ledbetter*

Women in Law Conference

**CLE Program and
Mona Lambird Spotlight Awards Luncheon**

Agenda

- 8:00 am : Breakfast & Registration
- 9:00 am : Oklahoma Judicial Panel
- 10:00 am : Dean of OU Law, Katheleen Guzman
- 11:00 am : Rhiannon Baker
- 12:00 pm : Mona Salyer Lambird Spotlight Awards Luncheon
Keynote Speaker: Lilly Ledbetter
- 1:40 pm : Stacy Acord & Katherine Mazaheri
- 3:00 pm : Tulsa Law Professor, Sarah Cravens
- 4:00 pm : Closing Reception

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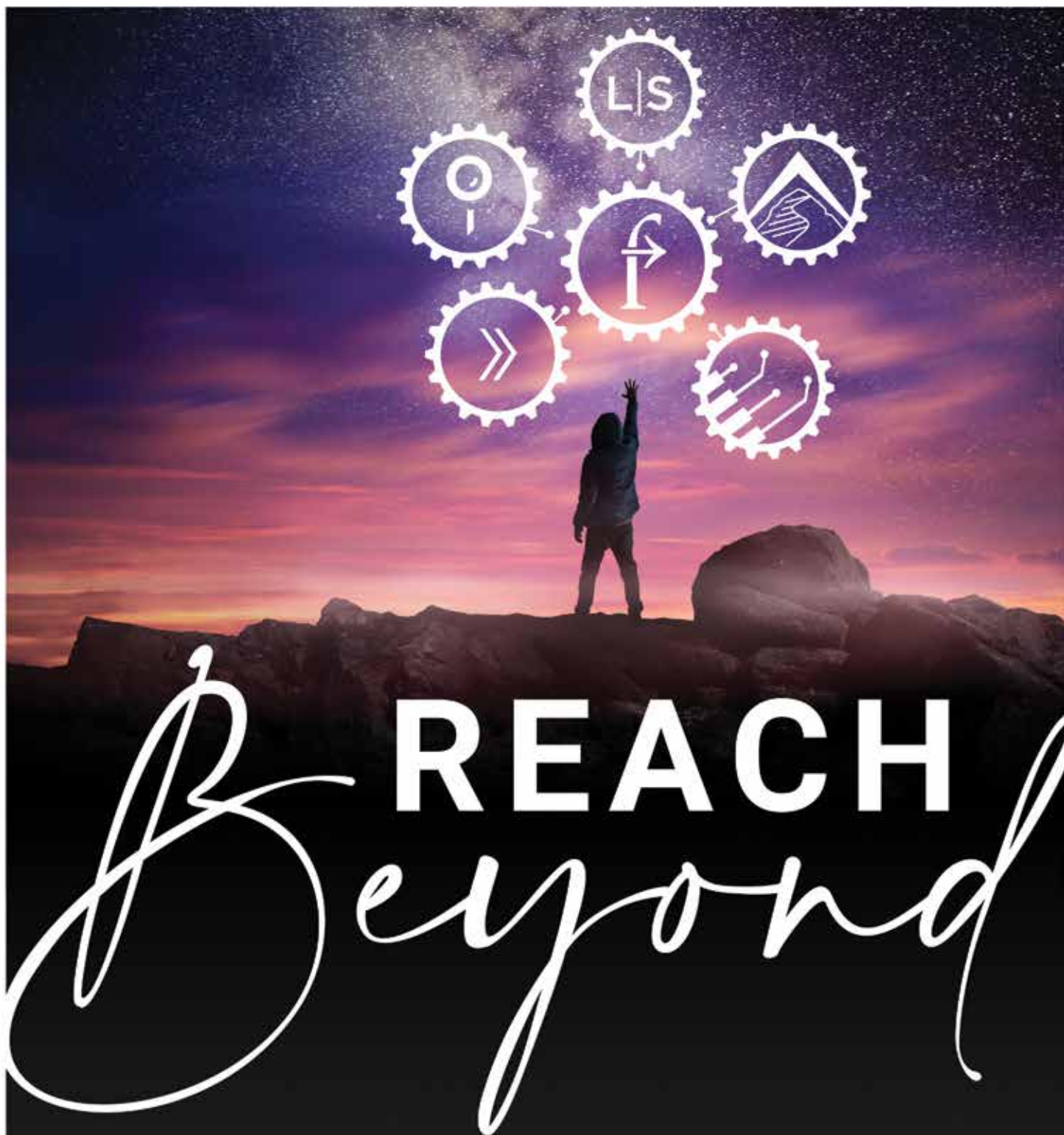
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Dog Days of Summer and Pie

By John Morris Williams

IGOOGLED THE TERM “dog days of summer” and found that it may have origins as far back as the Roman emperors and even has a biblical reference. I just generally thought it meant the hot days in summer. I was close enough in my assumptions to not feel totally ignorant. But it is good to look things up, like what has changed in the law after the last session of the Legislature. Most of the legislation goes into effect Nov. 1. The dog days of summer are an excellent time to catch up on what has been recently passed into law and to be prepared when the laws go into effect – that would be frost on the pumpkin time.

Every year, the Oklahoma Legislature passes legislation that affects the practice of law, and often civil and criminal procedure bills are in the mix. My research indicates that 417 new bills were passed. This includes those signed by the governor, veto overrides and bills that became law absent the governor’s signature. Eight of those bills were Title 12 bills that every lawyer who practices civil law probably should read. There were 18 Title 21 bills and 19 Title 22 bills that passed this session. Those who practice criminal law may be wise to review these.

The invariable question is how do I look these up? There are a couple of ways. One is to search

the session laws on the Oklahoma Secretary of State website. That site has a nice search feature powered by Westlaw. It is especially good to search by topics and keywords. There is another way that is, in my opinion, most beneficial. The OBA Legislative Monitoring Committee lists all the bills that passed the last session in its community library, indexed by statutory title number. The lists contain summaries of the bills that make them easy to review. If a member sees a bill they want to know more about, the Oklahoma Legislature website or the Secretary of State website both are good locations to get the full text of bills. There is one catch: You



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THURSDAY, AUG. 11
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must be a member of the Legislative Monitoring Committee to access this information. To sign up for the committee, simply email alishad@okbar.org and ask to be added. Signing up is totally free, and it makes it incredibly easy to get all the information on all the bills. Given that these are the dog days of summer, it is a perfect exercise to do while inside with the air conditioning on.

Another thing that happens in the dog days of summer is the annual Legislative Monitoring Committee

Legislative Debrief, where numerous bills of interest are discussed, and a legislative panel made up of members of the Oklahoma Legislature deliberate on the highlights of the session. The debrief this year will be held Aug. 11. Not only is this a great program, but it provides *free CLE credit* and will be simulcasted for those who cannot attend in person. There will be great snacks for those who attend in person – there is more than a high chance that Arbuckle Fried Pies will make a return to the snack menu. Watch for more details in *Courts & More*. To sign up for the program, go to www.okbar.org, click on the CLE icon, and the program will be listed in the offerings. Credit for online participants will be recorded, and sign in is required for those attending in person. We ask that everyone register so we can record your credit, and so we can have the room properly set and a good headcount for the pies!

Whether you want to get out in the heat and join us in person or wish to view the program remotely, there is no better way to spend a couple of hours in the dog days of summer than getting some *free CLE* and catching up on new laws passed last session. Did I mention there will be pie?

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

Takeaways From the 2022 OBA Solo & Small Firm Conference

By Jim Calloway

THE 2022 OBA SOLO & SMALL Firm Conference came back strongly after its two-year hiatus. We had a great attendance and many sponsors supporting the event. Mainly, we all were happy to meet in person again.

The conference featured a blend of substantive law programs and practice management/legal technology education. There were programs on the implications of the *McGirt* decision, cannabis law, estate and succession planning for business owners, guardianships and Professor Robert Spector on recent developments in family law.

The opening session for the conference is always “60 Tips in 60 Minutes,” often noted as one of the high points of the conference in reviews. The 60 in 60 format originated at ABA TECHSHOW and soon spread to many legal technology conferences, as well as solo and small firm state bar conferences. With so many topics covered in a rapid-fire manner, it is hard to not learn something useful. In fact, one attendee came up to me after the session saying she had taken three pages of notes.

This year’s tipsters included Kenton Brice, director of technology innovation at the OU College of Law; Brett Burney, principal of Burney Consultants, an e-discovery consultancy and co-producer of

the *Apps in Law* podcast; OBA MAP Director Jim Calloway; and OBA Practice Management Advisor Julie Bays.

In this month’s column, I thought I’d share a few takeaways from the conference, including several of the 60 tips.

Client development for lawyers used to focus on one-to-one meetings and in-person events. Today, with very few exceptions, solo and small firm lawyers should devote attention to having a good law firm web page and some appropriate social media outreach. Most of us were not trained for any of this. Video is very effective online. Julie Bays noted that www.descript.com is an easy-to-use video and editing tool. The company promotes it as “as easy as editing a doc,” and there seems to be some truth in that claim.

As the co-star of the *Apps in Law* podcast,¹ Brett Burney was happy to share some of his favorite apps. Notability² is an iOS app that makes it easy to save notes whether written or recorded. The app is optimized for use with the Apple Pencil. There is a free version, but Notability Plus may be worth the subscription fee because it includes handwriting recognition and math equation conversion. This app may be an excellent way to save random bits of information to your iPhone or iPad that

you need to keep temporarily or permanently.

Brett also singled out the free Microsoft To Do³ as a simple list-keeping app that synchronizes across all your devices, and it allows you to set due dates and reminders. This functions on all three major phone platforms. Since it has the reminder function, this may be one way to keep personal items off the law office calendar.

Solo and small firm lawyers have a particular responsibility to make certain there is somebody to take care of their clients’ matters in the event of their death or disability. When was the last time your firm updated your succession plan? Log in to MyOkBar,⁴ and on the list at the lower right is the Attorney Transition Planning Guide. Download this free guide to help with your transition planning.

There is free Fastcase training available at <https://bit.ly/3PoF6s3>. If you haven’t taken advantage of the free training associated with your bar-provided legal research member benefit, we encourage you to do so. The upgrade to Fastcase 7 changed the interface a bit, and a refresher is always helpful if you haven’t used Fastcase in a while.

In today’s world, when someone hands you an important document, you might take a picture of it with

your phone. But for \$3.99, iOS users can use the app Scanner Pro⁵ to take a picture of a document that is then converted to an OCR'd PDF file and stored on the cloud storage service you have designated. There are many scanning apps, but Brett Burney is not the only knowledgeable individual who gives Scanner Pro high marks. To me, having the documents off your iPhone and into a designated folder is part of the attraction.

Kenton Brice likes mechanical keyboards with their heavy-duty construction. He noted the MX Mechanical from Logitech (\$169.99). This sturdy keyboard has received positive reviews.⁶

Kenton also reminded iPhone users of the ability to set up a shortcut to either double-click or triple-click on the back of the phone to perform a function. A short, 45-second video on how to set this up on the iPhone is available at <https://bit.ly/3yLD65Z>. One attendee commented that it was a great way to take phone screenshots without having to use both hands.

Kenton also shared some real wisdom in his program "Evaluating Technology Tools | A Toolkit for Legal Professionals." He noted that prior to adopting any significant technology tool, it is very important to understand both the processes and the people involved. "Processes

before purchases" is a great slogan for technology projects and upgrades. Thinking that a process is messed up and so you need some technology to fix it is often reverse thinking.

"The first rule of any technology used in a business is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency," is Bill Gates's oft-quoted observation.

But if you want to improve your client intake process, you must outline every step of the process

of bringing in a new client, including how file opening and billing setup processes work. Then you ask all the people involved in the process what problems they see or improvements they suggest. Then ask a sampling of clients. Then the tech evaluation and, hopefully, purchase. It sounds time consuming, and potentially is, but not as expensive as a stalled or failed technology project or one that had a successful installation but didn't address the two main problems with the system.

"The first rule of any technology used in a business is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency," is Bill Gates's oft-quoted observation.



I updated my article titled “Client: ‘Can My Parents Pay for My Attorney Fees?’; Lawyer: ‘Yes, but...’”⁷ from several years ago and updated the language to include credit card refunds in my template agreement for use when parents are paying for their child’s divorce and similar situations. The template is a good starting place for you to draft your firm standard agreement. Some others suggest this language should be contained in the fee agreement. But I prefer a brief standalone agreement between attorney, client and litigation funder. If you don’t use one of these agreements and should or haven’t updated yours in a while, please review the article and template.

Do you use a VPN (virtual private network) for additional security either on the road or working from home? If you are looking for a VPN, Brett Burney suggests you check out TunnelBear.⁸ It is a VPN with a cute name and good rates. There is a free trial plan, and then unlimited plans start at \$3.33 per month.

If you use PowerPoint, Julie Bays has a couple of tips for you. First, you may have already noticed the improved design feature of PowerPoint that automatically suggests designs for your PowerPoints. Julie was working on a slide that included the word “hat,” and when she looked for design suggestions, royalty-free images of hats were suggested. She also noted an improvement in the PowerPoint audio recording feature that now allows you to record your own voice narration with the audio saved slide-by-slide instead of one large continuous audio file.

One tip all the presenters agreed on was the need for the use of a password manager and multifactor authentication as an important security tool. MFA means even if someone learns your password, they still cannot get into your online account because they cannot access the other factor. Kenton suggested OnePassword⁹ as his password manager of choice. More sophisticated authentication and zero trust architecture will replace these tools over

the next few years, but you should definitely now be using multifactor authentication on bank accounts, brokerage accounts and services containing client information.

Thanks to all who spoke at, worked at and attended this year’s conference. We will let you know the date of next year’s conference when it is scheduled.

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

ENDNOTES

1. <https://appsinlaw.com>.
2. <https://notability.com>.
3. <https://todo.microsoft.com/tasks>.
4. <https://ams.okbar.org/eweb/DynamicPage.aspx>.
5. <https://readle.com/scannerpro>.
6. “Logitech MX Mechanical Keyboard Review,” *PC Magazine* (June 12, 2022) <https://bit.ly/3yGFdrz>.
7. “Client: ‘Can My Parents Pay for My Attorney Fees?’; Lawyer: ‘Yes, but...’” *OBJ* October 2014, <https://bit.ly/3RF8pYT>.
8. <https://www.tunnelbear.com>.
9. <https://1password.com>.

2022 Solo & Small Firm Conference

Choctaw Casino Resort, Durant | June 23-25, 2022



Left: Speaker Mark Robertson of Oklahoma City discusses estate planning with Solo & Small Firm Conference attendees during a CLE presentation.



Middle: OBA President Jim Hicks of Tulsa kicks off the 2022 Solo & Small Firm Conference with a keynote address discussing attorney wellness immediately before the first conference session, "60 Tips in 60 Minutes."



Right: OBA Practice Management Advisor Julie Bays, OBA MAP Director Jim Calloway and conference speakers Brett Burney and Kenton Brice host the final conference session on Saturday afternoon.



Above: Flapper glitz and glamour was the order of the evening at the Great Gatsby dinner during this year's conference.

Left: OBA MAP Director Jim Calloway and Solo & Small Firm Conference Planning Committee Chair Ashley Forrester of Oklahoma City enjoy the Great Gatsby dinner on Friday evening.



Visit the OBA Facebook page to see more Solo & Small Firm Conference photo highlights online!
<https://bit.ly/3PmAbHN>

Attorney Disqualification... Simplified?

By Richard Stevens

LAST YEAR, THE OKLAHOMA Supreme Court clarified the standard to be used in proceedings to disqualify a lawyer and law firm based on a former client conflict. In the case of *Board of County Commissioners v. Association of County Commissioners*,¹ the court was presented with the trial court's determination that a lawyer and the lawyer's entire firm were not disqualified from representing the board because that lawyer had previously represented the association.

The underlying dispute involved a liability protection agreement entered into between the parties. The board asserted a breach of contract by the association, and professional negligence/malpractice by a law firm hired by the association to represent the sheriff of Harmon County. An attorney representing the board entered an appearance, and six months later, the association filed a motion to disqualify that attorney and his entire firm. The association sought disqualification because the attorney had, four years earlier, represented the association in an almost identical matter.

The trial court held a disqualification hearing and denied the motion to disqualify. The trial court noted that while the decision was a "close call," disqualification



was not required. The association appealed, and the Supreme Court retained the appeal and rendered its opinion on April 6, 2021.

The court noted that review of an order denying disqualification is immediately appealable because it affects the substantial rights of a party. The court reviewed the trial court's findings of fact for clear error and examined the decision *de novo*. The court stated that three rules of the Oklahoma Rules of Professional Conduct were implicated:

- 1) ORPC 1.9, which prohibits a lawyer who, or a lawyer whose former firm, has formerly represented a client

from representing another person in the same or a substantially related matter if that person's interests are materially adverse to the interests of the former client, absent informed consent;

- 2) ORPC 1.10, which prohibits any lawyer associated with a firm from representing a client when any lawyer associated with the firm would be prohibited from representing the client if practicing alone;
- 3) ORPC 1.6, which prohibits a lawyer who, or a lawyer whose former firm, has formerly represented a client

from representing another person in the same or a substantially related matter if that person's interests are materially adverse to the interests of the former client.

The court found that, while the subsequent matter was very similar to the previous matter the attorney had handled, the attorney was not disqualified because while the evidence showed the attorney had access to general information about the association's policies, there was no showing of access to confidential information.

The court concluded that if the lawyer was not disqualified because he had not received confidential information, then neither was the law firm.

The court's decision notes the evidence in this case fell short of showing the lawyer had gained knowledge of any material or confidential information that would jeopardize the integrity of the judicial process. The court further clarified that more than the "appearance of impartiality" standard (which applies to judicial disqualification) is required to preclude a party's representation by

the attorney of their choice. I think a review of this case would be helpful to anyone seeking or contesting an attorney disqualification.

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

ENDNOTES

1. Bd. of County Comm'rs V. Assoc. of County Comm'rs of Okla. Self-Insured Group, 2021 OK 15.

MANDATORY CONTINUING LEGAL EDUCATION CHANGES

OK MCLE RULE 7, REGULATION 3.6

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



Meeting Summaries

The Oklahoma Bar Association Board of Governors met March 21, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended meetings with the Oklahoma Center for Nonprofits to finalize membership survey questions, Solo & Small Firm Conference Planning Committee meeting, Lawyers Helping Lawyers Assistance Program Committee meeting and meetings with leadership to discuss the Women in Law initiative and other various bar-related matters. He also prepared a list of nominees for appointment to the Domestic Violence Fatality Review Board, monitored OBA committee and section activity and obtained a speaker for the Annual Luncheon in November.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he attended a meeting of the Oklahoma County Bar Association *Briefcase* Committee and authored an article for the *Briefcase*, prepared for OBA Day at the Capitol and authored a corresponding article for the *Oklahoma Bar Journal*, presented a legislative update for the Luther L. Bohanon American Inn of Court and attended meetings with leadership to discuss the Women in Law initiative and other various bar-related matters.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended the Board of Governors orientation, a meeting of the Membership Engagement Committee, Oklahoma Bar Foundation Board of Trustees meeting, ABA Bar Leadership Conference in Chicago and several meetings with Executive Director Williams on the association's strategic plans for 2023. He also worked on the final draft of the OBA Membership Survey and provided input to President Hicks on potential appointments.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended meetings of the Legal Internship Committee, Membership Engagement Committee and Legislative Monitoring Committee, including preparing for OBA Day at Capitol. He also attended the Bar Leadership Institute on March 16-18 and led the OBA Annual Meeting planning meeting.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended the Lawyers Helping Lawyers Assistance Program Committee meeting.

BOARD MEMBER REPORTS

Governor Bracken reported by email he attended the Oklahoma County Bar Association YLD

Chili Cook-Off. **Governor Conner** reported he attended the Garfield County Bar Association meeting, where he announced and requested participation in the OBA Membership Survey. He also said he will be attending the OBA Awards Committee meeting on March 25. **Governor Dow** reported she attended the OBA Family Law Section meeting as well as the Cleveland County Bar Association meeting. **Governor Edwards** reported he coordinated with the Pontotoc County Law Day chair to schedule a local "Ask A Lawyer" hotline. **Governor Garrett** reported she attended the Lawyers Helping Lawyers monthly discussion group in Tulsa and worked with OBA staff to coordinate the Cannabis Law Committee meeting schedule. **Governor Hilfiger** reported he met with Law Day Chair Ed Wunch and is planning to attend a campaign fundraiser for a district attorney candidate in his local area. **Governor Rochelle** reported he attended a retirement party for Judge Gerald Neuwirth. **Governor Smith** reported she has reached out to the chairs of the committees for which she has been appointed the Board of Governors liaison and will attend the OBA Diversity Committee meeting on March 22. She also submitted recommendations to President Hicks for consideration for appointment to the Domestic Violence Fatality Review Board and participated as a panelist in the OCU Law "High Ideas" panel for potential incoming law

students. **Governor White** reported he attended the Legal Internship Committee meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he was unable to attend the March 8 Access to Justice Committee meeting and the March 11 Solo & Small Firm Conference Planning Committee meeting due to work commitments. The YLD is not meeting in March. YLD members have been encouraged to attend OBA Day at the Capitol.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the OBA has been named as a defendant in two civil lawsuits, one of which has a pending petition for writ of *certiorari* to the U.S. Supreme Court. She also reported from Feb. 1 to Feb. 28, her office received 10 formal grievances and 49 informal grievances. These numbers compare with 19 formal grievances and 55 informal grievances respectively during the same time period last year. As of Feb. 28, there were 175 grievances pending investigation for future presentation to the Professional Responsibility Commission. In addition to the pending investigations, there are two grievances awaiting a private reprimand, one grievance awaiting a letter of admonition and nine grievances to be filed as formal charges with the Oklahoma Supreme Court.

BOARD LIAISON REPORTS

Governor Ailles Bahm reported by email the **Bench and Bar Committee** last met on Feb. 15. Governor Conner reported the **Awards Committee** will meet March 25. President-Elect Hermanson reported the **Membership Engagement Committee** held its initial meeting in which its members discussed and approved committee aims and objectives as well as the creation of a short video to encourage participation in the membership survey. Past President Mordy reported the **Lawyers Helping Lawyers Assistance Program Committee** met and recommends that monthly discussion groups should be expanded across the state. Governor Hilfiger reported the **Law Day Committee** met March 10 and shared that more than 1,300 student contest entries were received this year. Governor Garrett reported the new **Cannabis Law Committee** will meet in April. Committee appointments and an OBA Communities page are to come. Governor White reported the **Legal Internship Committee** met March 3 and is continuing its discussions on how best to facilitate its planned Legal Intern of the Year Award, including the number of awards, nomination process and timing. Discussion of deadlines for applying to the program are also being discussed. Vice President Pringle reported the **Legislative Monitoring Committee** is hosting OBA Day at the Capitol on March 22.

Governor Smith reported the **Diversity Committee** meets March 22.

PRESIDENT'S APPOINTMENTS

The board passed a motion to approve the submission of three names to the attorney general for consideration and appointment of one term to the Oklahoma Domestic Violence Fatality Review Board with a term expiring June 30, 2024: Leah Terrill-NesSmith, Lawton; Matthew Ryan Price, Muskogee; and Julie Lynn Goree, Tulsa.

REPORT ON LEGISLATIVE SESSION

An update was provided on the current legislative session that began in February. Topics discussed were legislative deadlines and bills that may impact access to justice and regulation of the practice of law. Vice President Pringle, who chairs the Legislative Monitoring Committee, encouraged participation during OBA Day at the Capitol, to be held March 22. OBA members will meet with legislative staff to introduce themselves and offer assistance in drafting legislation. He also reiterated that the OBA does not take positions on any legislation except for that which affects the administration of justice.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including OBA Day at the Capitol on March 22, the swearing-in

ceremony for new admittees on April 19, Ask A Lawyer on April 28 in conjunction with Law Day, various county Law Day celebrations on or around May 1, the OBA/OBF joint board event at the Harn Homestead on May 19 and the OBA Annual Meeting Nov. 2-4 in Oklahoma City.

The Oklahoma Bar Association Board of Governors met April 22, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended OBA Day at the Capitol and the Solo & Small Firm Conference Planning Committee meeting. He also participated in discussions with Executive Director Williams related to survey results, drafted his monthly column for the *Oklahoma Bar Journal*, planned an address to be presented during the Seminole County Law Day Forum and made appointments to the Professional Responsibility Tribunal and the Committee on Judicial Elections.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he attended a social meeting of the Financial Institutions and Commercial Law Section, chaired the OBA Day at the Capitol event, drafted an article for the *Oklahoma Bar Journal* related to Legislative Monitoring Committee activities and was interviewed by KFOR-TV on the topic of virtual currencies. He also attended the Board of Governors has-been party.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended OBA Day at the Capitol and met with legislators. He also attended meetings of the District Attorneys

Council board and Technology Committee, Oklahoma District Attorneys Association board and Oklahoma Attorney Mutual Insurance Company Board of Directors training and meeting. He virtually attended the Membership Engagement Committee meeting as well as an Oklahoma Bar Foundation meeting on a pending grant proposal. He also met with OBA Executive Director Williams to review the president-elect planning materials and attended the Board of Governors has-been party.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended OBA Day at the Capitol events, Membership Engagement Committee meetings, monthly OBA staff celebration, Payne County memorial events for Judge Worthington and Judge Hert and the Board of Governors has-been party. He reviewed the President's Book with President-Elect Hermanson and participated in a CLE on the topic of Corporation Commission e-filing.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended the Board of Governors has-been party, OBA Day at the Capitol and the Lawyers Helping Lawyers Assistance Program Committee meeting.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended an OUJI Committee meeting and read to Adams Elementary students through the OCBA Lawyers for Learning program. **Governor Bracken** reported by email he attended the Oklahoma County Bar Association board meeting. **Governor Conner** reported by email he attended

the Awards Committee meeting and the Garfield County Bar Association meeting. **Governor Davis** reported he attended the Law Schools Committee meeting and the Bryan County Bar Association meeting. **Governor Dow** reported she attended the Cleveland County Bar Association monthly meeting, OBA Family Law Section meeting, OBA Day at the Capitol and the Board of Governors has-been party. **Governor Edwards** reported he attended OBA Day at the Capitol and the Clients' Security Fund Committee meeting. **Governor Garrett** reported she attended the Board of Governors has-been party and OBA Day at the Capitol, and she chaired the inaugural Cannabis Law Committee meeting. **Governor Hilfiger** reported he attended the Muskogee County Bar Association meeting where Eric Strocen was selected as its new president. **Governor Rochelle** reported he attended OBA Day at the Capitol and the Board of Governors has-been party. **Governor Smith** reported she attended meetings of the Diversity Committee and Awards Committee. **Governor Vanderburg** reported he attended OBA Day at the Capitol and distributed letters to various legislative officials. He also attended the International Municipal Lawyers Association Working Group virtual meeting on Climate Change, "Hot Topic Roundtable" meeting, Spring Conference of the Oklahoma Association of Municipal Attorneys, Oklahoma Municipal Judges Conference and Oklahoma Association of Municipal Attorneys Board of Directors meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended OBA Day at the Capitol,

Governor Davis reported the Law Schools Committee conducted its final site visit to the state's three law schools and will soon be meeting to prepare its report. He noted that among the issues the committee is discussing is lowered U.S. News and World Report rankings for all three schools, as well as the recent low passage rate on the bar exam.

Access to Justice Committee planning meeting and an OU Law Young Alumni board meeting. He also ran the April Access to Justice Committee meeting, where OBA Law Day Committee Chair Ed Wunch spoke about volunteer opportunities for Ask A Lawyer phone banks and previewed some of the Law Day Q&A video content the committee has created that will be shared digitally.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the U.S. Supreme Court denied *certiorari* in a recent case wherein the OBA was the named defendant. In other pending litigation filed in Lincoln County, the OBA has a motion to dismiss pending. She also reported renewals for out-of-state attorney registrations are ahead of budget and that from March 1 to March 31, the Office of the General Counsel received 10 formal grievances and

85 informal grievances. These numbers compare with 20 formal grievances and 58 informal grievances respectively during the same time period last year. As of March 31, there were 183 grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission.

BOARD LIAISON REPORTS

Governor Erwin reported the Access to Justice Committee heard a presentation on Ask A Lawyer volunteer opportunities from the Law Day Committee chairperson. He also reported the Solo & Small Firm Conference Planning Committee is busy promoting the June conference. Governor Davis reported the Law Schools Committee conducted its final site visit to the state's three law schools and will soon be meeting to prepare its report. He noted that among the issues the

committee is discussing is lowered U.S. News and World Report rankings for all three schools, as well as the recent low passage rate on the bar exam. He said a discussion point is how online learning driven by the pandemic may be impacting passage rates. Governor Edwards reported the Clients' Security Fund Committee met to evaluate claims that will soon be presented to the Board of Governors. President-Elect Hermanson reported the Membership Engagement Committee has met twice to discuss and establish its aims and objectives, as well as proposed updates to the OBA Social Media Policy that will advance to the Board of Governors for approval. Governor Hilfiger reported the Law Day Committee discussed and approved an advertising budget aimed at promoting its annual Ask A Lawyer activities to the public. Governor Garrett reported the Lawyers Helping Lawyers Assistance Program Committee met to discuss the issue of secondary trauma for legal practitioners as well as its continued efforts to expand meetings to smaller local bar associations. She also reported the Cannabis Law Committee held its first meeting and is identifying potential committee members. The committee will meet at noon on the first Wednesday of each month.

UPDATE ON STATUS OF OBA SURVEY RESULTS

Executive Director Williams discussed demographical trends in survey participation and announced survey findings will be presented to the Board of Governors in May.

SOCIAL MEDIA POLICY UPDATE

The board passed a motion to approve updates to the OBA Social Media Policy presented by Membership Engagement Committee Co-Chairperson April Moaning.

PRESIDENT'S APPOINTMENTS

The board passed a motion to approve the appointment or reappointment of the following members to the Professional Responsibility Tribunal with terms expiring June 30, 2025: Bryan C. Dixon, Edmond; William C. Kellough, Tulsa; Malinda S. Matlock, Oklahoma City; Kendall Anne Sykes, Oklahoma City; and Linda G. Scoggins (reappointment), Oklahoma City.

The board passed a motion to approve the following appointments to the Committee on Judicial Elections: Bruce E. Roach Jr., Tulsa, to complete the unexpired term of Malcolm M. Savage with a term expiring Dec. 31, 2023; and Graydon Dean Luthey Jr., Tulsa, to complete the unexpired term of Laura McConnell-Corbyn with a term expiring Dec. 31, 2027.

EXECUTIVE SESSION

The board passed motions to go in and out of Executive Session.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the swearing-in ceremony for new admittees on April 26, annual Ask A Lawyer event in observance of Law Day on April 28, numerous other Law Day events on or around May 1, OBA/OBF Joint Event at Harn Homestead in Oklahoma City on May 19, Sovereignty Symposium 2022 in Oklahoma City June 8-9, OBF Diamonds & Disco 75th anniversary event in Oklahoma City on June 10 and the Solo & Small Firm Conference in Durant June 23-25.

The Oklahoma Bar Association Board of Governors met May 20, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended the New Admittee Swearing-In Ceremony at the Oklahoma Judicial Center; the

Pittsburg County Law Day event in Krebs; the Tulsa County Law Day Luncheon; the Oklahoma County Law Day Luncheon; and provided the keynote address during the Seminole County Law Day event. He also reviewed results of the OBA membership survey, consulted with Executive Director Williams on various bar business matters and contacted appointees for the Executive Director Search Committee.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he attended the Oklahoma County Bar Association Law Day Luncheon, OBA Ask A Lawyer event held in conjunction with Law Day and the OCBA *Briefcase* Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended a criminal law working group meeting related to Oklahoma Uniform Jury Instructions; the National Victims' Rights Program at the Capitol;

Governor Ailles Bahm reported the Bench and Bar Committee met and discussed the impact of legislation currently being discussed by the Oklahoma Legislature and is considering the ongoing need for a public education initiative regarding an independent judiciary.

virtually attended the OBF Court Grant Committee meeting; and chaired the Justice Assistance Grant board meeting. He also attended the District Attorneys Council board meeting and a meeting of its Technology Committee, as well as the Oklahoma District Attorneys Association board meeting and taught at the District Attorneys Councils Prosecution Boot Camp. He also attended the OBF Board of Trustees meeting and OBA/OBF joint dinner. He worked on setting up the OBA Budget Committee and communicated with potential members. He also met and participated in phone calls with legislators.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Seminole County Law Day event and presented a CLE. He also attended the Tulsa County Law Day Luncheon, YLD board meeting and Access to Justice Committee meeting, where he was invited to discuss various issues. He met with the Center for Nonprofits to discuss finalizing the OBA membership survey and participated in conferences with the auditor for the 2021 audit and with counsel regarding the status of litigation. He also attended the joint OBA/OBF event at the Harn Homestead and reviewed video content for a possible domestic violence program in October.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Bench and Bar Committee meeting and discussed the opportunity for public education related to the Judicial Nominating Commission. She also attended the OCBA Law Day Luncheon. Additionally, she worked on legislative issues and sent an educational email to all the members of the Professional

Responsibility Tribunal, some of whom are laypersons. **Governor Bracken** reported he attended the OCBA board meeting and Law Day event. He participated in educational opportunities related to legislation. **Governor Conner** reported he attended the Garfield County Bar Association meeting and spoke with his local legislators. **Governor Davis** reported by email he spoke at the Bryan County Bar Association meeting and discussed legislative topics. **Governor Dow** reported she attended the Oklahoma County Bar Association Family Law Section meeting, OBA Family Law Section meeting and Cleveland County Bar Association monthly meeting. **Governor Garrett** reported she chaired the monthly Cannabis Law Committee meeting. **Governor Rochelle** reported he attended the Comanche County Bar Association Luncheon and Law Day picnic as well as the OBA Board of Governors has-been party. **Governor Smith** reported she attended the OCU Law Alumni Awards Dinner and is planning to attend the OBA Diversity Committee's meeting scheduled for May 24. **Governor Vanderburg** reported he attended the Oklahoma Association of Municipal Attorneys board meeting, the International Municipal Lawyers Association Climate Change Task Force meeting and the Oklahoma Municipal Judges Association seminar and meeting, where he was elected treasurer.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended the April YLD meeting as well as the ABA YLD Mid-Year meeting in Atlanta and also attended the April Access to Justice meeting, where the Summer Pro Bono Challenge

was discussed. He reported that discussion during the April OBA YLD meeting centered around service projects and organizational goals, and a plan to accomplish the agreed-upon goals will be discussed at the next meeting, where Melissa Brooks, Legal Aid Pro Bono coordinator, will speak. He also reported that four OBA members represented the YLD at the ABA YLD meeting.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported that from April 1 to April 30, the Office of the General Counsel received 10 formal grievances and 85 informal grievances. These numbers compare with four formal grievances and 66 informal grievances respectively during the same time period last year. As of April 30, there were four disciplinary cases and one reinstatement awaiting decisions from the Supreme Court, and there were 174 grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission.

BOARD LIAISON REPORTS

Governor Erwin reported the **Access to Justice Committee** met and heard from Executive Director Williams and Oklahoma Access to Justice Foundation Executive Director Katie Dilks. He also said the **Solo & Small Firm Conference Planning Committee** had received an update from OBA Management Assistance Program Director Jim Calloway. Governor Ailles Bahm reported the **Bench and Bar Committee** met and discussed the impact of legislation currently being discussed by the Oklahoma Legislature and is considering the ongoing need for a public education initiative regarding an independent judiciary. Governor

Garrett reported the **Audit Committee** has met and is conducting a survey. She also reported the **Cannabis Law Committee** has met and is recruiting members. Vice President Pringle reported the **Legislative Monitoring Committee** is planning its annual Legislative Debrief.

EXECUTIVE SEARCH COMMITTEE

The board passed a motion to approve the appointments of the following members to the Executive Search Committee: William Grimm, Susan Shields, Charles Chesnut, Judge Linda Thomas, Kim Hays, Judge Jon Parsley and April Moaning (YLD member), along with President Hicks, President-Elect Hermanson and Vice President Pringle as *ex officio* members.

APPLICATION TO SUSPEND FOR FAILURE TO PAY 2022 DUES

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

APPLICATION TO SUSPEND FOR FAILURE TO COMPLY WITH 2021 MCLE REQUIREMENTS

The board voted to approve the list of members who have not complied with 2021 MCLE requirements.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NON-PAYMENT OF 2021 DUES

The board voted to approve the list of members who did not reinstate after suspension for nonpayment of 2021 dues.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NON-COMPLIANCE WITH 2020 MCLE REQUIREMENTS

The board voted to approve the list of members who did not reinstate after suspension for noncompliance with 2020 MCLE requirements.

PRESIDENT'S APPOINTMENTS

The board passed a motion to approve the appointments to the Clients' Security Fund: Mary Pointer, Oklahoma City, to complete the unexpired term of Jon Vorndran, Shawnee, to a term expiring Dec. 31, 2022.

BUDGET COMMITTEE APPOINTMENTS

The board passed a motion to approve the appointments made by President-Elect Hermanson:

Members of House of Delegates (5) – Alissa Dawn Preble Hutter, Norman; Linda G. Morrissey, Tulsa; Jimmy Dale Oliver, Stillwater; Jan Meadows, Norman; M. Courtney Briggs, Oklahoma City; and Cody Jarrett Cooper, Oklahoma City.

Board of Governors (3) – Miles T. Pringle, Nichols Hills; Robin Rochelle, Lawton; Angela Ailles Bahm, Oklahoma City; and Dylan Erwin, Oklahoma City.

Attorney Members (3) – D. Kenyon Williams, Tulsa; John B. Gelders, Edmond; and Jason Matthew Hicks, Duncan.

OBF INTEREST ON LAWYERS TRUST ACCOUNTS (IOLTA) RULE 1.15 SAFEKEEPING PROPERTY

The board passed a motion to show support for a proposed rule change that would require banks that offer IOLTA to provide IOLTA account rates that compare favorably to its own products,

known as "non-discrimination of IOLTA accounts." Oklahoma Bar Foundation IOLTA Task Force Chair Patrick O'Hara noted that Rule 1.5 currently does not address banks' requirement to offer interest rates comparable to other interest-bearing banking products within its own offerings; however, 38 states require rate comparability.

REPORT ON LEGISLATIVE SESSION

Executive Director Williams described the status of the current legislative session as well as the status of select bills the OBA is monitoring.

STATE COUNCIL FOR INTTESTATE JUVENILE SUPERVISION

Executive Director Williams reappoints Blake Edward Lynch, McAlester, to a term expiring July 1, 2025.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the 2022 Sovereignty Symposium, June 8-9, Skirvin Hotel, Oklahoma City; OBF Diamonds & Disco 75 Event, June 10, First Americans Museum, Oklahoma City; the Annual Solo & Small Firm Conference, June 23-25, Choctaw Casino & Resort, Durant; and the OBA Women in Law Conference, Sept. 30, Civic Center Music Hall, Oklahoma City.

The Oklahoma Bar Association Board of Governors met June 23, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he coordinated with Executive Director Williams on issues related to staffing and Annual Meeting planning.

He also reviewed a proposed contract with the Oklahoma Center for Nonprofits related to the Executive Search Committee and attended a meeting of the committee. He reported the executive director role description is being discussed, and the committee is planning to have the job posted by mid-July. He also attended the Louisiana State Bar Association Annual Meeting and registered for annual meetings of the ABA and the National Conference of Bar Presidents.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported by email he chaired the Legislative Monitoring Committee meeting, worked on planning the upcoming Legislative Debrief and attended a meeting of the Executive Search Committee.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended the Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala as well as the Oklahoma Attorneys Mutual Insurance Company board meeting and annual meeting. He also attended the District Attorneys Council board meeting and a meeting of its Technology Committee, as well as the Oklahoma District Attorneys Association board meeting and special budget meeting. He discussed Law Day planning with Law Day Committee Chair Ed Wunch and virtually attended the Membership Engagement Committee meeting. He provided the OBA welcome at the Sovereignty Symposium and spoke on a panel related to *McGirt* issues. He also spoke on those issues during a Ponca City Chamber of Commerce "Ponca Politics" meeting and

had numerous discussions with legislators. He participated in numerous conversations with Executive Director Williams and worked on 2023 meeting locations and committee appointments. He also prepared a CLE presentation for the Solo & Small Firm Conference.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended meetings of the Legislative Monitoring Committee and the Membership Engagement Committee. He spoke at the Tri-County Bar Association Law Day dinner in Idabel and coordinated with presenters and prepared text copies of all bills discussed for the Solo & Small Firm Conference. He coordinated and attended the OBA monthly staff celebration and completed staff evaluations. He also notified the Board of Governors that Administration Director Combs has announced his upcoming retirement.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended the Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Oklahoma County Bar Association Law Day Luncheon and the joint board dinner with the Oklahoma Bar Foundation at the Harn Homestead. **Governor Bracken** reported he attended an OBA Legislative Monitoring Committee meeting, Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala and the joint board dinner with the OBF at the Harn Homestead. **Governor Conner** reported he attended the Garfield County Bar Association monthly meeting. **Governor Davis** reported he attended the Bryan County Bar Association monthly meeting. **Governor Dow** reported she attended Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala and the joint board dinner with the OBF at the Harn Homestead. **Governor Garrett** reported she attended

The board passed a motion to show support for a proposed rule change that would require banks that offer IOLTA to provide IOLTA account rates that compare favorably to its own products, known as "non-discrimination of IOLTA accounts."

Governor Garrett said the Lawyers Helping Lawyers Assistance Program Committee is continuing its efforts to establish monthly meetings in non-metro areas and is also discussing plans to regularly submit mental health-related articles to the *Oklahoma Bar Journal*.

Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala. She also recorded a new segment for the OBA CLE video series "Between Two Weeds: The Joint Sessions." **Governor Hilfiger** reported he attended the Muskogee County Bar Association monthly meeting. **Governor Rochelle** reported he attended Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala. **Governor Smith** reported she attended an OBA Diversity Committee meeting and the Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala. **Governor White Jr.** reported by email he attended the Oklahoma Bar Foundation's 75th anniversary Diamonds & Disco gala.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin thanked those who traveled to this meeting on behalf of the Solo & Small Firm Conference Planning Committee and invited the board to attend the YLD hospitality suite. He reported the YLD held its monthly meeting on May 21. At the YLD meeting,

Melissa Brooks from LASO spoke about volunteer opportunities, and the YLD Board of Directors signed up to be part of the Pro Bono Challenge. He also had the opportunity to speak to a group of high school sophomores who were part of the Hugh O'Brien Youth Leadership class about what it's like being an attorney and what makes a good leader. That event took place on June 4.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported from May 1 to May 31, the Office of the General Counsel received 14 formal grievances and 67 informal grievances. These numbers compare with 18 formal and 59 informal grievances respectively the same time period last year. As of May 31, there were six disciplinary cases and two reinstatements awaiting decisions from the Supreme Court. Between May 1 and May 31, the Supreme Court issued one Order of Dismissal and one Order of Indefinite Suspension. As of May 31, there were 172

grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission. In addition to the pending investigations, there is one grievance awaiting a private reprimand and seven grievances to be filed as formal charges with the Oklahoma Supreme Court. Furthermore, upon the successful completion of the Attorney Diversion Program, participating attorneys are to receive private reprimands involving 19 grievances and letters of admonition involving nine grievances.

BOARD LIAISON REPORTS

Governor Erwin welcomed board members to Durant on behalf of the **Solo & Small Firm Conference Planning Committee** and said that planning for the 2023 conference will begin soon. Governor Conner said the **Awards Committee** will meet in August to decide on its recommendations for 2022 OBA Awards and that award nominations are due July 1. President-Elect Hermanson said the **Membership Engagement**

Committee met and discussed a planned campaign to increase usage of the Fastcase legal research member benefit. Governor Hilfiger said the **Law Day Committee** recently met and will be presenting its report during this meeting. Governor Garrett said the **Lawyers Helping Lawyers Assistance Program Committee** is continuing its efforts to establish monthly meetings in non-metro areas and is also discussing plans to regularly submit mental health-related articles to the *Oklahoma Bar Journal*. She also said the **Cannabis Law Committee** is planning a day-long CLE this fall or winter. Executive Director Williams reported on behalf of Vice President Pringle that the **Legislative Monitoring Committee** will meet next week. Governor Smith reported the **Diversity Committee** met and discussed speakers for various upcoming events. A monthly article in the *Oklahoma Bar Journal* is also being discussed. Also being discussed is planning for the Diversity Dinner to be held in conjunction with Annual Meeting. Governor Bracken said he has been involved in discussions with the **Military Assistance Committee** to resume regular meetings. President Hicks reported the **Strategic Planning Committee** met and discussed the search for the new OBA executive director.

OBA AWARDS

The board passed a motion to approve recommendations and findings of the Awards Committee presented by Chairperson LeAnne McGill, who reported that the committee recommends no changes to awards or customary practices in 2022.

LAW DAY REPORT

The board was briefed on the results of the association's 2022 Law Day activities by Chairperson Ed Wunch. He discussed how this year's updates included a video content plan embracing digital communications methods that resulted in a dramatic increase in video views and significant reduction in cost per view compared to previous years. He also reported the committee received the highest number of schoolchildren's art and writing contest entries in its history.

JUDICIARY IN OKLAHOMA UPDATE

Governor Angela Ailles Bahm delivered an informational presentation on behalf of the Bench and Bar Committee outlining the current state of the judiciary in Oklahoma along with a historical analysis of the state's current method of judicial selection. She said the committee has identified a need for greater public education related to the Oklahoma Judicial Nominating Commission to share factual information aimed at maintaining judicial competency and independence in the state.

CLE ANNUAL REPORT

Educational Programs Director Janet Johnson presented an executive summary related to the current state of the OBA CLE Department, which continues to serve as the state's leading provider of continuing legal education. A key highlight of her report noted that while there is still an appetite for in-person events, more members than ever prefer virtual and online learning even when in-person events are available. She also noted that although the department provided a significant amount of CLE without charge in 2021, the department was still able to record positive income for the year.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the Oklahoma Judicial Conference, July 14, Embassy Suites Downtown Medical Center, Oklahoma City; Board of Governors joint board event with the Tulsa County Bar Association, Aug. 18, Tulsa; Boiling Springs Legal Institute, Sept. 20, Woodward; swearing-in ceremony for new admittees, Sept. 27, Oklahoma Judicial Center, Oklahoma City; OBA Women in Law Conference, Sept. 30, Civic Center Music Hall, Oklahoma City; and the OBA Annual Meeting, Nov. 2-4, Oklahoma City Convention Center, Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in July, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, Aug. 19 at the offices of the Tulsa County Bar Association.

Sold-out Event Celebrates 75 Years of OBF Impact

THE OBF CELEBRATED 75 years of impact at a sold-out event on June 10 at the First Americans Museum in Oklahoma City. Over \$125,000 has been raised in honor of the OBF's 75 years, which all goes to OBF Grantee Partners to provide legal aid, education and access to justice services for Oklahomans.

Guests dressed in cocktail attire with sparkle and modern disco flare to fit the theme of Diamonds &

Disco. The event started with self-guided tours through the Tribal Nations and Mezzanine galleries at the First Americans Museum. Modern Indigenous-inspired cuisine and cocktails were served by the chefs at Thirty Nine Restaurant, located inside the museum.

The program, emceed by Bob Burke, included stories from three clients who received life-changing legal services from OBF Grantee Partners. First, Maria Esther, a

victim of human trafficking and domestic violence, told her story via a prerecorded video of how she became a client of Catholic Charities of the Archdiocese of Oklahoma City. Maria received immigration legal services and is now a citizen of the U.S. and a business owner. Second, Qais, a new neighbor to the Spero Project and a refugee from Afghanistan, shared his story of hope and how the Spero Project staff are helping



Sang Rem, a client of OBF Grantee the Spero Project, shares her journey of hope.



Maria Esther, a client of OBF Grantee Catholic Charities of the Archdiocese of Oklahoma City, stands to be recognized after she tells her story via a prerecorded video.

Top: Guests watch Maria Esther's story during the program.

him with citizenship and English classes and continue to serve as a resource as he settles into a new life in America. Third, Sang Rem, a refugee from Myanmar, told her journey of hope and how the Spero Project welcomed her and calmed her uneasy feelings about

being in a new country. The staff at the Spero Project also helped Sang with the process of citizenship and worked with her to speak English more comfortably. Two years later, she began working for the Spero Project as a student support specialist – this role allowed

her to pay her way through college. Last month, Sang graduated with a master's degree in family life education from the University of Central Oklahoma.

After the program, guests enjoyed Magic Mirror Photobooth and the Take Cover band for the disco portion of the evening.

Among the many guests were OBF Grantee Partners from across the state who impact their local communities by providing legal services for children and families, domestic violence victims, first-time juvenile offenders, court ordered diversion, mental health, civil legal aid and law-related education. Event proceeds go to OBF Grantees during the allocation process for program funding.

There is still time to donate in support of our amazing Grantees through Diamonds & Disco 75! Give now at diamondsanddisco.swell.gives.

OKLAHOMA BAR FOUNDATION PRESENTS

Diamonds & Disco 75

THANKS TO YOU WE RAISED

\$125,000

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- OBA Business & Corporate Law Section
- OBA Family Law Section
- OBA Workers Compensation Section
- OG&E
- OU College of Law
- TU College of Law

Service to the Community is True Professionalism

By April Moaning

IT SEEMS LIKE JUST A FEW weeks ago we welcomed a new slate of young lawyers to the legal profession. The most important lesson I have learned as a young lawyer is that with great power comes great responsibility. In our profession, that responsibility includes service to those who are marginalized, underrepresented or have just fallen on hard times. As stated by Justice Ruth Bader Ginsburg, "If you want to be a true professional, you will do something outside yourself. Something to repair tears in your community. Something to make life a little better for people less fortunate than you."

Service to the community is the overarching goal of the Oklahoma Bar Association Young Lawyers Division. We lead with a servant's heart. This includes advocating for a wide array of individuals in our community and developing ways to expand access to the justice system. We have participated in community service events all throughout the state of Oklahoma, but I am sure there are counties and communities we have yet to serve. The best way to reach the masses is to ensure we have diverse representation on the YLD Board of Directors. Thus, we need YOU to join our team and share your insight about the needs of your community.



Election results will be announced at the Young Lawyers Division November meeting to be held in conjunction with the OBA Annual Meeting in Oklahoma City Nov. 2 - 4, 2022.

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

NOMINATING PROCEDURE

Article 5 of the division bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The

petition must be signed by at least 10 members of the OBA YLD and must be submitted by Friday, Aug. 12 at 5 p.m. A separate petition must be filed for each opening, except a petition for a directorship shall be valid for one-year and two-year terms and at-large positions. A person must be eligible for division membership for the entire term for which elected.

ELIGIBILITY

All OBA members in good standing who were admitted to the practice of law 10 years ago or less are members of the OBA YLD. Membership is automatic – if you were first admitted to the practice of law in 2012 or later, you are a member of the OBA YLD!!

ELECTION PROCEDURE

Article 5 of the division bylaws governs the election procedure. In September, a list of all eligible candidates will be published in the *Oklahoma Bar Journal*. Ballots will be emailed Oct. 3 to all YLD members at the email address in the official OBA roster. All members of the division may vote for officers and at-large directorships. Only those members with OBA roster addresses within a subject judicial district may vote for that district's director. The members of the Nominating Committee

shall only vote in the event of a tie. Please see OBA YLD Bylaws for additional information at www.okbar.org/yld/bylaws.

DEADLINE

Nominating petitions, accompanied by a photo and bio of 350 words or less for publication in the *Oklahoma Bar Journal*, must be forwarded to me at april@moaninglaw.com no later than 5 p.m. Friday, Aug. 12. Results of the election will be announced at the YLD meeting at the OBA Annual Meeting Nov. 2-4 at the Omni Hotel in Oklahoma City.

TIPS FROM THE NOMINATING COMMITTEE CHAIRPERSON

- A sample nominating petition is available at <https://bit.ly/3yL2mcB>. This will help give you an idea of the format and information required by OBA YLD Bylaws (one is also available from the Nominating Committee). Email april@moaninglaw.com or derwin@holladaychilton.com

to request a nominating petition.

- Obtain signatures (electronic signatures are permitted) on your nominating petition from at least 10 lawyers who were first admitted to practice law in the state of Oklahoma within the past 10 years. Signatures on the nominating petitions do not have to be from young lawyers in your own district (the restriction on districts only applies to voting).
- Take your petition to local county bar meetings or the courthouse and introduce yourself to other young lawyers while asking them to sign – it's a good way to start networking.
- You can have more than one petition for the same position and add the total number of original signatures.
- Don't wait until the last minute – I will not accept petitions that are scanned and emailed after the deadline.

- Membership eligibility extends to Dec. 31 of any year that you are eligible.
- Membership eligibility starts from the date of your first admission to the practice of law, even if outside of the state of Oklahoma.
- All candidates' photographs and brief biographical data are required to be published in the *Oklahoma Bar Journal*. All biographical data must be submitted by email, with no exceptions. Petitions submitted without a photograph and/or brief bio are subject to being disqualified at the discretion of the Nominating Committee.
- More information is available at <https://bit.ly/3IW5M0K>.

ABOUT THE AUTHOR

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

2023 YLD BOARD VACANCIES

OFFICERS

Officer positions serve a one-year term.

Chairperson-Elect: Any member of the division having previously served for at least one year on the OBA YLD Board of Directors. The chairperson-elect automatically becomes the chairperson of the division for 2024.

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

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

BOARD OF DIRECTORS

Board of Directors members serve a two-year term.

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

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

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

At-Large: All counties



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FOR YOUR INFORMATION



Judge Timothy Downing

NEW JUDGE APPOINTED TO OKLAHOMA COURT OF CIVIL APPEALS

Judge Timothy Downing was appointed to the Court of Civil Appeals by Gov. Kevin Stitt in May. His appointment fills the vacancy created by the resignation of Trevor Pemberton, effective Oct. 18, 2021.

Judge Downing was the first assistant attorney general of Oklahoma, where he served as the chief executive for the attorney general. He is also an appellate military judge for the Oklahoma Military Court of Appeals,

a position appointed by the governor and confirmed by the Oklahoma Senate. Previously, he served as the 25th U.S. attorney for the Western District of Oklahoma. Prior to his appointment as U.S. attorney in 2019, Judge Downing served as counselor to the Oklahoma secretary of state. From 2016 to 2018, he served in the Oklahoma House of Representatives, where he was an assistant majority floor leader, assistant majority whip and vice chair of the Judiciary Committee. He received his bachelor's and master's degrees from Oral Roberts University and his J.D. from the Regent University School of Law.

BEWARE OF NEW SCAMS

The FBI is warning about a new scam targeting attorney trust accounts. The scam promises high-dollar commissions on medical equipment purchases and has resulted in approximately \$2 million in losses to date. To reduce the chances of becoming a victim, verify the validity of any payment method and wait for funds to clear, especially checks, before depositing or utilizing the funds. For more information, visit <https://bit.ly/3Ps1C2O>.

The OBA Management Assistance Program regularly tracks scams aimed at lawyers to help keep you safe from financial predators. Visit www.okbar.org/map/scams to learn more.



OBJ BACK PAGE: YOUR TIME TO SHINE

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.



SAVE THE DATE! LEGISLATIVE DEBRIEF IS AUG. 11

Join the OBA Legislative Monitoring Committee from 2-4:30 p.m. Thursday, Aug. 11 for the 2022 Legislative Debrief. The debrief will feature "60 Bills in 60 Minutes," with presenters sharing bills they believe have the most impact on the subject area of the practice. Following the presenters will be a 30-minute legislative panel. This event is approved for 2.5 hours of MCLE. For more information and to register online, visit www.okbar.org/legdb.

OBA MEMBER RECEIVES MEDAL OF HONOR

Oklahoma City lawyer Dwight W. Birdwell received the Medal of Honor, the nation's highest medal for valor in combat, on July 5. President Biden presented the medal to Mr. Birdwell for acts of gallantry and intrepidity above and beyond the call of duty while serving with Troop C, 3rd Squadron, 4th Cavalry, 25th Infantry Division, in the Republic of Vietnam on Jan. 31, 1968.

That day, a large enemy element initiated an assault on the Tan Son Nhut Airbase near Saigon. They disabled or destroyed many of the unit's vehicles and incapacitated Specialist Five Birdwell's tank commander. Under heavy enemy small-arms fire, Specialist Five Birdwell moved the tank commander to safety and fired its weapons at the enemy force. Afterward, he dismounted and continued fighting until receiving enemy fire to his face and torso. He refused evacuation and led a small group of defenders to disrupt the enemy assault until reinforcements arrived. He then aided in evacuating the wounded until he was ordered to seek attention for his own wounds. He was honorably discharged on Dec. 29, 1968. Read more online at <https://bit.ly/3uTnQ5F>.



Dwight W. Birdwell

IMPORTANT UPCOMING DATES

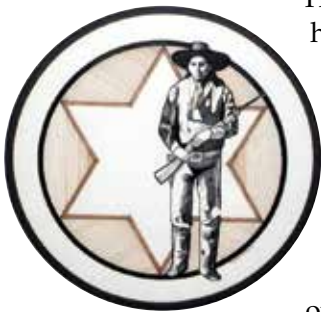
The Oklahoma Bar Center will be closed Monday, Sept. 5 in observance of Labor Day. Also, be sure to docket the 2022 OBA Annual Meeting in Oklahoma City Nov. 2-4.

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.

A SPECIAL ANNOUNCEMENT FROM THE SOVEREIGNTY SYMPOSIUM



The 35th annual Sovereignty Symposium will be held Sept. 7 at the Skirvin Hotel in Oklahoma City. The one-day symposium will begin at 8 a.m. and will serve as a replacement for the 2020 Sovereignty Symposium. This unique event will feature a special keynote speaker who will be announced later in the summer. There will also be panels on ethics by Justice John Reif and water law, moderated by John Hargrave. Register online at www.thesovereigntysymposium.com.

ON THE MOVE

Andrew E. Henry and **Stacy A. Schauvliege** were named directors and shareholders of Crowe & Dunlevy. Mr. Henry, a director in the firm's Oklahoma City office, practices commercial litigation in state and federal courts. He is a barrister in the Luther Bohanon American Inn of Court and has served as a volunteer attorney for Oklahoma Lawyers for Children. Ms. Schauvliege is a director in the firm's Tulsa office, where she is a member of the Aviation & Commercial Space, Banking & Financial Institutions and Real Estate practice groups. She advises clients on complex aircraft purchase and sale transactions, Federal Aviation Administration compliance, mergers and acquisitions, real estate acquisitions, commercial leasing, corporate governance and commercial banking law.

Robert J. Troester was reappointed by the United States District Court as the U.S. attorney for the Western District of Oklahoma. Chief U.S. District Judge Timothy D. DeGiusti administered the oath of office. Mr. Troester has served in the Department of Justice since 1995 and has held multiple managerial positions in the U.S. Attorney's Office, including acting U.S. attorney on four occasions, first assistant U.S. attorney, executive assistant U.S. attorney and chief of the Civil Division.

Erin J. Rooney was named senior attorney at Gungoll, Jackson, Box & Devoll PC. Mr. Rooney joined the firm in 2019 after working with an Oklahoma City insurance defense firm. He practices primarily in

the areas of insurance, bad faith, transportation and civil litigation. He received his J.D. from the OU College of Law in 2012 and is a member of the Oklahoma County Bar Association.

Adrienne M. Martinez has joined the Wallis Law Group in Edmond as an associate attorney. She received her J.D. from the OCU School of Law in 2019 and practices in the areas of estate planning, trust administration, probate, guardianships, business formation and corporate law.

Thomas H. Gayle was named a partner of the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds. He joined the firm in 2018 and practices in the area of civil litigation, defending against claims of medical negligence, general liability and claims arising from motor vehicle accidents. Mr. Gayle received his J.D. from the Loyola University Chicago School of Law in 2007 and began his legal career in Chicago representing employees, and later employers, in workers' compensation bench trials, civil appeals and before the Illinois Appellate Court.

Drew A. Cunningham has joined Crowe & Dunlevy. He is a director in the firm's Oklahoma City office and a member of the Real Estate Practice Group. Mr. Cunningham's commercial real estate practice includes commercial acquisitions and dispositions, ground-up development, build-to-suit leasing, landlord and tenant representation and finance.

Dr. Trisha Wald was selected as the associate dean of Southwestern Oklahoma State University's Everett Dobson School of Business and Technology in Weatherford. Dr. Wald began teaching at SWOSU in 2008 after practicing law. She has taught classes in business law, tax law and accounting. She was awarded the Outstanding Accounting Educator Award from the Oklahoma Society of Certified Public Accountants in 2014 and the Bernhardt Academic Excellence Award in 2017. She has also served as the chair of the SWOSU Department of Business since January 2022.

Jillian Mershon has joined the Norman law firm of Worden & Carbitcher. The firm is now located at 115 E. Gray St., Norman, 73069 and can be contacted at 405-360-8036.

Brooke Henderson has joined Heritage Trust, a subsidiary of Argent Financial Group, as vice president, relationship manager. She will be responsible for assisting clients in a variety of areas, including trusts, probate and estate planning and administration. Ms. Henderson previously served as an associate attorney at Berman & Rabin PA, where she focused on consumer debt collection.

Emily Ramseyer has joined the Oklahoma City office of GableGotwals as an associate. She advises clients in estate planning, including guardianships, probate and trust administration. Prior to joining the firm, she practiced at an Oklahoma City law firm focused on estate planning.

Melissa R. Gardner has joined the Title Law Group in Oklahoma City. She practices in the area of oil and gas law, with an emphasis on oil and gas title opinions, mineral management, due diligence and curative work. Ms. Gardner previously worked in-house at a Fortune 500 oil and gas company and as a shareholder at a private, full-service law firm in Oklahoma City. She is a member of the Oklahoma City Mineral Lawyers Society, Oklahoma City Association of Petroleum Landmen and Oklahoma City Real Property Lawyers Association.

Lisa Black has joined the Title Law Group in Oklahoma City. She has spent her legal career working on title-related issues. In addition to preparing oil and gas title opinions, she has extensive experience as a division order analyst. Ms. Black's practice also includes assisting individual and corporate clients in quiet title actions. Prior to joining the firm, she worked in land brokerages, private law firms in Oklahoma and in-house at various oil and gas companies.

Elise Schuller Barajas has joined the Dallas office of BakerHostetler as a partner in the firm's Business Practice Group and a member of the Healthcare Industry team. Ms. Barajas advises clients on healthcare matters, including state and federal regulatory compliance issues, particularly in the healthcare space. She regularly guides clients through transactions, with a primary focus on healthcare mergers and acquisitions on behalf of both financial and strategic buyers and sellers. She also assists companies as they navigate the federal Anti-Kickback Statute, Stark Law, Texas Illegal Remuneration Act, ACA, HIPAA and HITECH Act.

Dwight L. Smith has joined the Tulsa law firm of Robinett Swartz & Duren as of counsel. Mr. Smith has spent the past 19 years of his 40-plus-year career practicing law as a sole practitioner. He may now be reached at 624 S. Boston Ave., Ste. 900, Tulsa, 74116; 918-592-3699; DSmith@robinettlawfirm.com.

Heath W. Garwood has joined the Oklahoma City office of Phillips Murrah. Mr. Garwood is a civil litigation attorney who practices primarily in the areas of oil and natural resource law, commercial insurance defense, complex commercial disputes and property law. He also represents individuals and entities with transactional and general counsel services. He received his J.D. from the OU College of Law, where he was selected as an Anadarko Petroleum Corporation Scholar and earned an American Jurisprudence Award for wind energy law.

AT THE PODIUM

Paul R. Foster, of Paul Foster Law Offices PC in Norman, presented "Dynamic Interactive Question and Answer," a panel of banking regulators from the Federal Reserve and OCC, during the Community Bankers Association of Oklahoma's Winter Leadership Conference in Fort Worth, Texas. Conference attendees were from Iowa, Missouri, Oklahoma, Tennessee and Texas.

HOW TO PLACE AN ANNOUNCEMENT:

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

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

Submit news items to:

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

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

Craig L. Box has become a Fellow of the American College of Trial Lawyers. He was inducted during the college's spring meeting in Coronado, California. Founded in 1950, the college is composed of the best of the trial bar from the United States, Canada and Puerto Rico. Fellowship is extended by invitation only, and lawyers must have a minimum of 15 years of trial experience before they can be considered. Mr. Box is a shareholder at Gungoll, Jackson, Box & Devoll PC, where he has practiced for 38 years.

Judge Amy J. Pierce has received the 2022 Graduate of Distinction in Agricultural Communications from OSU. This award was presented for outstanding service, leadership and professional accomplishments in agricultural communications and for bringing honor and recognition to the field of agriculture. Judge Pierce is the presiding district court judge for the Choctaw Nation of Oklahoma and a 1996 graduate of OSU's agricultural communications program.

Riggs, Abney, Neal, Turpen, Orbison & Lewis celebrated its 50th anniversary in May. Founded by four TU College of Law graduates, the firm opened its doors at 1640 S. Boston in Tulsa in May 1974. Today the firm has grown to include offices in Oklahoma City and Englewood, Colorado. The more than 80 attorneys at the firm provide broad-based legal counsel and representation in all aspects of the law.

Stephen W. Ray was elected president and managing partner of Hall Estill. He will be only the fifth managing partner in the firm's 56-year history. Previous managing partner **Mike Cooke** is retiring after 20 years at the firm's helm. Mr. Ray, who has been with the firm since 1992, will continue serving clients in the business and tax sectors, specifically dealing in business organizations and transactions, commercial finance, health care, executive compensation and securities, as well as trust and estate work.

Sarah Hansel and **Steve Soulé** have joined Hall Estill's executive committee. Ms. Hansel practices in the corporate and commercial and intellectual property sectors. Mr. Soulé, serving for the second time on the executive committee, practices in the areas of bankruptcy litigation and transactions, workouts, reorganizations and creditor's rights. He also handles general business and commercial transactions for clients.

Sarah Miller, Moira Watson and **Ken Williams** were elected to Hall Estill's Board of Directors. Ms. Miller joined the firm's Energy and Natural Resources Practice Group in 2017. Her current practice is focused on commercial contracting, primarily in the energy industry. Ms. Watson joined the firm in 2016 and practices primarily in the areas of banking and commercial finance. Mr. Williams is a 40-year business defense attorney with expertise in environmental, municipal law, natural resources, real estate and renewable energy law.

Michael C. Turpen of Oklahoma City was elected chairman of the Oklahoma State Regents for Higher Education board. Also elected to the board as vice chairman was retired Oklahoma Supreme Court Chief Justice **Steven W. Taylor** of McAlester. Appointed to the State Regents in 2009 and reappointed in 2018, Mr. Turpen is a partner at the Oklahoma City law firm of Riggs, Abney, Neal, Turpen, Orbison & Lewis. He served as Muskogee County district attorney from 1977 until 1982 when he was elected Oklahoma attorney general. Retired Justice Taylor, who was appointed in 2019, previously served as an associate district judge and chief judge of the 18th Judicial District. In over 20 years as a trial judge, he presided over more than 500 jury trials, including the state trial of the Oklahoma City bombing. He is a former mayor of McAlester and served in the U.S. Marine Corps as a prosecutor, defense counsel and ultimately as a special court-martial judge. The new officer team will lead the nine-member board throughout the 2022-23 fiscal year, which ends June 30, 2023.

Sharon Voorhees was reappointed by Mayor David Holt and the Oklahoma City Council as a Trustee for the Oklahoma City Water Utilities Trust, with a term ending July 31, 2026. Ms. Voorhees is the founding partner of the Oklahoma City law firm of Voorhees & Voorhees PC, where she practices with her husband. The firm's practice includes probate, guardianship, real estate, estate planning and small business matters. Ms. Voorhees received her J.D. with honors from the OU College of Law in 1991.

Emily Fagan was named a recipient of the fifth John Marshall Award in the participation in litigation category by Attorney General Merrick B. Garland. This is the U.S. Department of Justice's highest award offered to attorneys, recognizing them for their contributions and excellence in specialized areas of legal performance.

Shannon B. Cozzoni, Ryan M. Roberts and **Douglas E. Snow** were named recipients of the second Exceptional Service in Indian Country Award, which recognizes extraordinary efforts by those who demonstrated the Department of Justice's commitment to fighting crime in Indian country. The 69th Annual Attorney General's Awards recognize Department of Justice employees and partners for extraordinary contributions to the enforcement of our nation's laws. This year, 298 employees received awards, while 54 non-department individuals are also being honored for their work.

Leah Farish has launched *Conversation Balloons*, a podcast that explores generational issues like multi-generational workplaces, end-of-life matters, Millennials' political leanings and cyberbullying among kids. It is available at leahfarish.com and on Apple Podcasts and Spotify.

Susan Shields, an attorney at McAfee & Taft, earned a Band 1 top ranking as one of the state's leading private wealth lawyers. The firm's Tax & Family Wealth Group received top marks among Oklahoma law firms in the Private Wealth Law category in the just-released 2022 edition of *Chambers High Net Worth*. For nearly 35 years, Ms. Shields has practiced in the areas of tax and family wealth law, focusing on wealth transfer tax planning for high-net-worth families and individuals, business planning for closely held family businesses and estate and trust administration. She is an elected Fellow of the American College of Trust and Estate Counsel and a past president of the OBA.

IN MEMORIAM

Jose L. Blanco of Oklahoma City died June 25. He was born Sept. 2, 1976, in Rio Piedras, Puerto Rico. Mr. Blanco earned his bachelor's degree from the University of Texas, where he played guitar in a band with his brother. He received his J.D. from the Western Michigan University Cooley Law School and worked at Legal Aid Services. In 2016, he was named Public Servant of the Year by the National Association of Social Workers Oklahoma. He was also an active member of St. John the Baptist Catholic Church in Edmond, where he was a Fourth Degree Member of the Knights of Columbus. Memorial contributions may be made to the Blanco Children Education Fund at the Oklahoma City Allegiance Credit Union.

Mack Muratet Braly of Broken Arrow died March 17. He was born April 16, 1939, in Ada. Mr. Braly earned his bachelor's degree from OU in 1961. He was a member of the Sigma Phi Epsilon fraternity and was selected as one of four members of the OU Academic Team, appearing on the nationally televised General Electric College Bowl. In 1970, Mr. Braly received his J.D. from the New York University School of Law. He began his legal career at Sullivan & Cromwell, one of the oldest Wall Street law firms, where he worked for about eight years before opening his own practice in Tulsa. He was an accomplished equestrian and an active member and participant of the Tulsa Polo Club and Harvard Fox Hunt Club.

William C. Brining of Tonkawa died May 8. He was born April 30, 1939. **Upon graduating**

from OU with a bachelor's degree in finance, Mr. Brining served as a captain in the Korean Conflict. He then accepted a position with the U.S. Treasury in Reno, Nevada, as a federal estate and gift tax attorney. In the early 80s, he returned to Tonkawa, where he practiced law and worked on his family's farm. He also served as a quartermaster and mentor to young men at the VFW Post 2855 in Blackwell. Memorial contributions may be made to the Tonkawa First Presbyterian Church.

Jerry Lynn Brown of Park Hill died April 12. He was born June 8, 1932, in Tulsa. Mr. Brown received his J.D. from the TU College of Law in 1959. He spent his professional life in the aerospace and defense industries as a program director for Martin Marietta, Control Data and Northrop Grumman. In retirement, he focused on building the Republican Party in Cherokee County, receiving a lifetime achievement award for his efforts. He also served as chairman of the Cherokee County Election Board for six years. Memorial contributions may be made to the Oklahoma Biomedical Research Foundation.

Freda May Collier of Edmond died March 23. She was born Sept. 5, 1940, in Minnesota. After graduating from Southwestern Oklahoma State University, she taught fifth grade at Rockwood Elementary in Oklahoma City. In 1974, she enrolled in night law school, where she was a member of the *Oklahoma City Law Review*. Ms. Collier received her J.D. from the OCU School of Law in 1978. She then joined the Hennessey law firm of Collier, Mesis and Collier with

her husband and their friend. Later, she moved to Edmond, where she worked as an attorney in the Social Security Office of Hearing and Appeals for 22 years before retiring.

William R. Devilliers of Oklahoma City died March 24. He was born Feb. 21, 1952. Mr. Devilliers received his J.D. from the OU College of Law in 1977.

David D. Dixon of Oklahoma City died May 28. He was born March 31, 1956. An active member of the Bahá'í community since he was 17, Mr. Dixon served as a teacher in Suriname in 1974 and at the Bahá'í World Congress in 1992. He was also instrumental in getting Bahá'í marriages recognized in Oklahoma. Mr. Dixon graduated from the University of Central Oklahoma and received his J.D. from the OCU School of Law in 1988. He spent more than five years as a forensic serologist for the Oklahoma State Bureau of Investigation and nearly 30 years as a judicial assistant for Oklahoma Supreme Court Justice Hodges and Justice Colbert. He also served as a member of the Sovereignty Symposium board and continuously advocated for the independence of tribal nations.

Richard Frazier Farley of Del City died Aug. 17, 2021. He was born Dec. 1, 1952. Mr. Farley received his J.D. from the OU College of Law in 1979.

Richard Dean Ford of Park Hill died June 5. He was born Aug. 2, 1946, in Liberal, Kansas. **In 1970, Mr. Ford enlisted and served with the 45th Infantry Division of the Oklahoma Army**

National Guard. He earned his bachelor's degree in accounting from OSU. He then worked as an accountant for several years and opened General Business Services in Enid, where he was awarded the fastest-growing business in his first year. Mr. Ford received his J.D. from the OCU School of Law in 1980. He practiced law in Enid, Hinton, Geary, Guymon and Oklahoma City and served as a municipal judge in Dover. He was an avid fisher, bow hunter and white tail guide and served as president of the Oklahoma Rocky Mountain Elk Foundation. Memorial contributions may be made to Reel Recovery.

William Lee Ford of Midwest City died May 10. He was born March 7, 1949. Mr. Ford received his J.D. from the OCU School of Law in 1992.

James L. Gullett of Oklahoma City died June 14. He was born Dec. 16, 1930, in Clinton. **Mr. Gullett served in the U.S. Air Force during the Korean War.** He received his J.D. from the OCU School of Law in 1961 and went into private practice. In 1966, he was appointed a U.S. commissioner and served the Western District of Oklahoma until 1971, when he became an assistant attorney general. He resigned from this position when he was selected as one of a group of 30 national court administrator trainees. He later served as the trial court administrator for Oklahoma and Canadian counties. In 1978, he was appointed Oklahoma County district judge and held that position until his retirement in 1994. Memorial contributions may be made to St. Stephen's Presbyterian Church.

Nathan Drew Hendrickson of Muskogee died Feb. 14, 2021. He was born July 2, 1976, in Muskogee. Mr. Hendrickson received his J.D. from the TU College of Law in 2009.

Richard Alvin Robinson of Oklahoma City died May 3. He was born June 28, 1947, and graduated from Classen High School, where he placed in the national debate tournament as a junior. Mr. Robinson earned bachelor's degrees in sociology and urban planning from Yale University and did graduate work in sociology at OU. He received his J.D. with highest honors from the OCU School of Law in 1981 and was named to the Order of Barristers and National Moot Court team. Memorial contributions may be made to Positive Tomorrows.

John Bruce Jarboe of Tulsa died May 1. He was born March 28, 1940, in Tulsa. Mr. Jarboe received his J.D. from the TU College of Law in 1965, where he graduated first in his class and was named outstanding law student. **He participated in the Attorney General's Honor Program with the U.S. Department of Justice in Washington, D.C., until 1966, when he was drafted into the U.S. Army as a private first class. He served at Fort Polk, Louisiana, for two years and was awarded the Army Commendation Medal for Meritorious Service for his work in the Legal Department. He was discharged in 1968 with the rank of specialist fifth class.** In 1970, Mr. Jarboe started his own law firm, where he practiced until December 2021. He was a member of Southern Hills Country Club and Summit Club and served as general

counsel for the Catholic Diocese of Tulsa and Eastern Oklahoma from 1985 until 2016. Memorial contributions may be made to Catholic Charities of Eastern Oklahoma.

Kirk Edward Johnson of Norman died June 7. He was born Dec. 8, 1972, in Ada. Mr. Johnson graduated from Ada High School in 1991, where he was a member of the varsity golf team. He received his J.D. from the OU College of Law in 1998 and practiced law in Ada and Las Vegas before becoming assistant general counsel for Chickasaw Nation Industries in 2006. In 2011, he was named general counsel of CNI and was serving in that role at the time of his death. Memorial contributions may be made to the Oklahoma Fellowship of Christian Athletes or the McFarlin Memorial United Methodist Church.

Annelle S. Lanford of Tulsa died April 24. She was born Oct. 14, 1927, in Tulsa. After earning her bachelor's and master's degrees from OU, Ms. Lanford received her J.D. from the University of Texas School of Law in 1957 – she was one of six women in her class. She began her legal career at the Tulsa law firm of Farmer, Woolsey, Flippo and Bailey, and she later went into practice with her brother. Ms. Lanford was a member of the Tulsa chapters of Pilot Club International and Business and Professional Women. Memorial contributions may be made to the First Presbyterian Church Foundation.

Jack W. Lawter of Oklahoma City died May 18. He was born March 18, 1928, in Frederick.

Mr. Lawter served in the U.S. Navy from 1946 to 1948 and as a first lieutenant and finance officer in the U.S. Army in Korea from 1951 to 1953. He also served in the Oklahoma National Guard from 1955 to 1958 as a captain in the Judge Advocate General Corp. He received his J.D. from the OU College of Law in 1955. Early in his legal career, he was the assistant Oklahoma insurance commissioner and legal counsel for the insurance commissioner. He also served as president of Commonwealth Life Insurance Co., president and chairman of Cattlemen's Life Insurance Co., director of Union Mutual Insurance Co. and two terms as president of the Oklahoma Association of Life Insurance Companies. He was active in the Oklahoma City Chamber of Commerce and served as president of the Southwest American Livestock Foundation.

Antony Cole Link of Duncan died May 3. He was born Aug. 29, 1947, in Chickasha. Mr. Link received his J.D. from the OU College of Law in 1973 and had a distinguished 47-year legal career. In 2011, his son joined his legal practice, Link & Link Law.

Paul V. McGivern Jr. of Tulsa died June 12. He was born Oct. 23, 1930, in Tulsa. **After graduating from high school, Mr. McGivern enlisted in the U.S. Air Force, serving at Johnston Island in the Pacific Ocean during the Korean War.** He received his J.D. from the TU College of Law in 1961 and built a prestigious law firm focused on workers' compensation and insurance defense. Memorial contributions may be made to Catholic

Charities of Eastern Oklahoma or Family & Children's Services.

Jerry F. Muskrat of Greensburg, Pennsylvania, died Feb. 27. He was born Oct. 2, 1941, in Evanston, Illinois. Mr. Muskrat received his J.D. from Harvard Law School in 1972. He served as an associate law professor at the OU College of Law before accepting an appointment as an appeals judge for the Department of the Interior Board of Indian Appeals. He later served as an administrative law judge in San Diego until his retirement. He was a member of the First Family of the Cherokee Nation and was very active in Native American affairs throughout his career. **Mr. Muskrat also served as an officer in the U.S. Army, assigned to the staff of the commanding general in Fort Sill.** Memorial contributions may be made to Americans for Indian Opportunities.

W. DeVier Pierson Jr. of Chevy Chase, Maryland, died April 12. He was born Aug. 12, 1931, in Pawhuska. **After graduating from OU, he served in Korea for two years.** Mr. Pierson received his J.D. from the OU College of Law in 1957 and started a litigation practice in Oklahoma City. In 1965, he moved to Washington, D.C., and became chief counsel to a special Senate-House committee to improve the functioning of Congress. In 1967, President Lyndon B. Johnson appointed Mr. Pierson as special counsel to the president and counselor of the White House, where he participated in the implementation of the Great Society and the Civil Rights Act of 1964. He then spent more than 40 years practicing at the Washington law firm of Pierson Semmes & Bemis. He was lead counsel in matters before the U.S.

Supreme Court, five federal courts of appeals, several federal and state trial courts and an international tribunal at The Hague. He also served as lead plaintiff counsel in *Occidental v. Chevron*, which was settled for a judgment of \$775 million, the largest awarded in Oklahoma history. In 2002, Mr. Pierson was inducted into the Oklahoma Hall of Fame.

Gloria E. Trout Preston of Norman died May 11. She was born July 6, 1952, in Ponca City. Ms. Preston received her J.D. from the OU College of Law in 1989 and had a private practice in Oklahoma City for many years. Memorial contributions may be made to Second Chance Animal Sanctuary.

Eric Craig Reynolds of Oklahoma City died June 10. He was born April 18, 1960. Mr. Reynolds graduated from the University of Central Oklahoma with a bachelor's degree in art and held a variety of jobs, including pizza cook, private security guard, box manufacturer, long-distance trucker, night club manager, mortician's assistant and salmon canner in Alaska. He received his J.D. from the OCU School of Law in 2002 and practiced criminal defense and bankruptcy law until his death. **He also served six years as a communications specialist in the Oklahoma National Guard.** Memorial contributions may be made to the Yukon Historical Society or Legal Aid Services of Oklahoma.

Gabriel Rivera of Moore died June 10. He was born May 3, 1957, in Fort Polk South, Louisiana. As part of a U.S. Army family, he grew up all over the world, including in Panama, Okinawa Island and Germany. After graduating from Moore High School, he earned his

bachelor's degree in zoology from OU in 1980. Mr. Rivera received his J.D. from the OU College of Law in 1992. He began his legal career at the U.S. Trustees Department and clerked for a federal judge in the Western District of Oklahoma. Later, he transitioned to private practice in bankruptcy law.

Sarah Carmack Spencer of Santa Fe, New Mexico, died Aug. 13, 2021. She was born March 4, 1949, in Tulsa. Ms. Spencer attended OU, where she majored in journalism and was editor of the *OU Daily*. After graduating, she worked for *The Norman Transcript* and the *Southwestern Bell Telephone* in Oklahoma City. She received her J.D. from the OCU School of Law. Memorial contributions may be made to the Espanola Humane Animal Shelter.

Fred L. Staggs of Oklahoma City died Nov. 23, 2021. He was born Oct. 22, 1955, in Enid. Mr. Staggs graduated from Hennessey High School and earned his bachelor's degree from OSU. He received his J.D. from the OU College of Law and practiced criminal law.

Martin Raymond Steinmetz of Bristow died March 30. He was born Oct. 5, 1951. Mr. Steinmetz received his J.D. from the TU College of Law in 1990.

James D. Stevens of Nappanee, Indiana, died Sept. 2, 2021. He was born April 3, 1945, in Sullivan, Missouri. Mr. Stevens received his J.D. from the University of Missouri School of Law in 1969. **He enlisted in the U.S. Air Force, where he honorably served for more than 28 years – 24 of which were in the reserves. During Desert Storm, he helped service men and women in California with**

their legal paperwork before their deployments to Iraq. He also served as an attorney in Aviano, Italy, while enlisted in the reserves. After being honorably discharged as a lieutenant colonel in 1974, he moved to Tinker Air Force Base as a procurement attorney. He then worked for the Oklahoma Employment Security Commission and later for the Missouri State Public Defenders office until his retirement in 2007. Memorial contributions may be made to any women and children's shelter.

J. Scott Stonehocker of Norman died June 23. He was born Dec. 22, 1966, in Lawton. After earning his bachelor's degrees in economics and political science from Southern Methodist University, Mr. Stonehocker received his J.D. from the OU College of Law in 1992. He practiced corporate and transactional law for most of his career. Memorial contributions may be made to Wildwood Community Church.

Keith Alan Taggart of Mustang died April 27. He was born March 25, 1957, in Miami, Oklahoma. Upon graduating from Weatherford High School, he earned his bachelor's degree in music composition from OU. Mr. Taggart received his J.D. from the OU College of Law in 1981 and his LL.M. from the Boston University School of Law. After practicing real estate law in Oklahoma City, he moved to Boston and practiced law there and in New York City for the next two decades. In 2001, he returned to Oklahoma City, founded Taggart Law and concurrently served as managing broker and general counsel for a real estate brokerage until his death. He was named Oklahoma Realtor of the Year and was a recipient of the Oklahoma

Association of Realtors President's Award. He also founded and served as director of the NTRKers Foundation, a nonprofit that advocates for access to cancer testing, treatment and research.

John Lee Walkup of Weatherford died Jan. 25. He was born March 14, 1967. Mr. Walkup received his J.D. from the OCU School of Law in 2005.

Merl A. Whitebook of Tulsa died June 4. He was born March 15, 1953. Mr. Whitebook received his J.D. from the TU College of Law and practiced at the Tulsa law firm of Whitebook, Holtz, Gaddis and Powers. He also served as a municipal judge. Memorial contributions may be made to the Dorothy Whitebook Memorial Youth Fund at Temple Israel.

Thomas R. Williams of Sheridan, Wyoming, died May 16. He was born Jan. 13, 1928, in Gilroy, California. Mr. Williams earned his bachelor's degrees in mathematics and music from San Francisco State University and was a music teacher before being drafted into the Korean War. **He served in Korea as a member of a United Service Organizations group, entertaining the troops at various locations throughout the country.** He then attended night school at the OCU College of Law while traveling between Texas and Oklahoma as a landman. He received his J.D. in 1961. Mr. Williams practiced law in Guthrie for more than 30 years and became well known throughout Oklahoma for his work advising school boards, banks and individuals on a wide variety of legal issues.

A black and white portrait of a middle-aged man with short, dark hair, smiling slightly. He is wearing a dark suit jacket, a light-colored dress shirt, and a patterned tie. The background is a plain, light color.

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Celebrating the 70-Year Career of Attorney Charles Albert Shadid

By Peter Alexander Shadid

CHILDREN OFTEN DREAM

About what they want to be when they grow up; whether it's the fantasy of cowboy, astronaut or rock star – or the more realistic dream of doctor, lawyer or banker.

I grew up the son of a dentist. My older brother, along with several other family members, later became dentists. If there was one profession I knew I absolutely did *not* want to be when I grew up, it was a dentist. In the same vein, from a very young age, I always had the insatiable urge to be an attorney. I just never really knew *why*.

Maybe it was my cantankerous attitude toward most everything in life, or maybe it was my love for reading and writing, or maybe it was my guilty pleasure of watching shows like *Judge Judy* during the summertime as a teenager. When I was accepted at the OU College of Law, it finally dawned on me: I wanted to be an attorney because my grandfather, Charles Albert Shadid, was an attorney.

My grandfather, whom I affectionately refer to by the Arabic translation as “Jiddy,” is a first-generation Lebanese American, born in 1929 to Albert and Raefa Shadid in Snyder. To most everyone else, he is known as “Charlie.” He has been practicing law in Oklahoma for over 70 years and has inspired the careers of many attorneys, some of whom were Lebanese Americans of later generations. That includes three of his grandsons: Travis Charles Smith, a 13-year lawyer who works alongside Jiddy in a variety of ways; Charles Otto Walker, a first-year student at the OU College of Law; and myself, who began practicing law in 2018.

While studying law at OU, Charlie would hitchhike from Norman to



The author's “Jiddy”: 70-year attorney Charles “Charlie” Shadid during an Oklahoma County Bar Association ceremony recognizing milestone OBA membership anniversaries.

Oklahoma City, help his mother in her grocery store and then hitchhike back to Norman for class the next week. After graduating in 1952, Charlie went into the United States Army, where he joined the 13th Class of the Judge Advocate General's School. He had so much success defending his fellow officers that his assignment was moved to prosecution, where he remained until he completed his Army duties in 1955.

Charlie then moved into private practice. In 1972, Charlie bought and remodeled the Victoria Building, a former theater located at 18th and Classen

in Oklahoma City, where he continues to work today at the age of 93. Over his career, he would periodically rent out office spaces to other attorneys, one of whom was future Oklahoma Supreme Court Justice Marian P. Opala.

Along with his partner, Farris Shanbour, Charlie bought, owned, operated and fought to protect over 10 theaters. He argued before the Oklahoma Supreme Court multiple times against Oklahoma City's urban renewal plans.

My Jiddy had career-defining influences on me that I did not realize until much later in my life. Through my brief four years of practice, I have experienced what he went through as a trial attorney. Like my Jiddy, I have spent countless hours formulating trial strategy, not only from a legal perspective but also – and arguably more important – from the perspective of a juror. Similar to the many stories he has told me in the past, I have felt the fear of unfavorable jury questions, the fulfillment of success, the pain of defeat and everything in between. Even during the worst times, my Jiddy has always told me to “keep it up.”

Throughout his many years of practice, Charlie never hesitated to take a meeting with anyone. He would speak to any person who came through his door, no matter who they were or where they came from – you treat every person with respect. That mantra lasted throughout his seven-decade journey and continues to have a lasting effect on me as I have begun my practice of law.

Peter A. Shadid is an assistant district attorney for the Oklahoma County District Attorney's Office.

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Original Program Date: March 25, 2022 - MCLE 1/0

E-FILING WITH THE OKLAHOMA CORPORATION COMMISSION

Original Program Date: March 31, 2022 - MCLE 1.5/0

LOGIC SERIES: CONVINCE ME

Original Program Date: April 5, 2022 - MCLE 1/0

LOGIC SERIES: KEY ELEMENTS OF SUPERPOWER PERSUASIVENESS

Original Program Date: April 22, 2022 - MCLE 1/0

BRACKEEN V. HAALAND

Original Program Date: April 26, 2022 - MCLE 2/0

SELF-CARE FOR THE LEGAL PROFESSIONAL: UNDERSTANDING BURNOUT, COMPASSION FATIGUE, AND SECONDARY TRAUMATIC STRESS

Original Program Date: May 5, 2022 - MCLE 1/1

SELF-CARE FOR THE LEGAL PROFESSIONAL: UNDERSTANDING CLIENT TRAUMA

Original Program Date: May 12, 2022 - MCLE 1/1

SELF-CARE FOR THE LEGAL PROFESSIONAL: ADVERSARIAL CULTURE AND DECREASED LIFE SATISFACTION

Original Program Date: May 19, 2022 - MCLE 1/1

SELF-CARE FOR THE LEGAL PROFESSIONAL: HEALTHY SUPPORT SYSTEM

Original Program Date: May 26, 2022 - MCLE 1/1

UPDATES ON EMERGING LGBTQ+ ISSUES

Original Program Date: June 3, 2022 - MCLE 6/1



OKLAHOMA BAR ASSOCIATION



BAR BENEFITS

**You make a difference.
OBA member benefits
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DID YOU KNOW?

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

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