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THE OKLAHOMA BAR Journal

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Sail On

By Jim Hicks

AS WE SAIL ACROSS THE SEAS OF CHANGE, the unexpected can occur. The waters are not always calm. The winds are not always favorable. Our direction may be disrupted by unexpected challenges that cannot be overcome by staying the course. As a profession, we must work together and keep traveling into the future uncharted waters. Now that the COVID-19 pandemic seems to be subsiding and life is returning to "normal," our profession and the delivery of legal services must not regress. Great strides in technical innovation were made over the past two years out of necessity. Now is not the time to return to outdated notions of providing legal services. Simply put, justice must continue forward with the great strides made via the integration of necessary technologies that enabled our citizens' and our clients' legal needs to be met during the pandemic.

The articles in this issue of the *Oklahoma Bar Journal* focus on the future of energy law and how emerging topics and trends are fundamentally changing energy law practices. The last several years have been transformative for our society, the environment and the way we practice law. COVID-19 and the growing frequency of intense weather events attributed to climate change have brought greater attention to the need for action by governments and companies as well as greater engagement by the public and NGOs. From remote work to the supply chain to regulatory changes and the growing role of corporate social responsibility, the past few years' events have fundamentally changed how the nation does business, protects the environment and engages diverse stakeholders. In response, the practice of environmental, energy and resources law has been evolving as practitioners refocus their practices and innovate to better address their clients' changing needs.

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In order to help our members adjust to the reopening of normal life, the Solo & Small Firm Conference is back! After a two-year hiatus, it is bigger and better than ever. Mark your calendars for June 23-25 at the Choctaw Casino Resort in Durant. As always, the conference provides 12 hours of CLE. Every lawyer needs to understand basic e-discovery, and Brett Burney will teach a two-part session on e-discovery and how to collect, preserve and produce text messages from mobile devices. OU College of Law Professor Emeritus Robert Spector will address recent family law developments and how to deal with custody modifications. Other noted speakers will address resources available to entrepreneurs; technology innovations; cybersecurity; basics of estate planning and business formation and nuances of tax-exempt organizations. Not to be missed will be "This is BS! Burnout and Stress" with Scott Goode and Sheila Naifeh. Plus, bring your family to this beautiful resort and celebrate the summer! Leisure activities include a spa, amazing swimming pools, music venues, dining and arcade games. Register online at www.okbar.org/solo.

Finally, May will see the celebration of Law Day by the OBA and various county bar associations across the state. The theme "Toward A More Perfect Union: The Constitution In Times of Change" allows our profession to celebrate the Constitution as a dynamic document. As our nation's history makes clear, it is neither a perfect nor exhaustive document. Legislation, court rulings, amendments, lawyers and "we the people" have built upon those original words across generations to adapt to modern life. That effort continues today as contemporary leaders and everyday citizens raise their voices as loud as ever to fulfill the promise of the Constitution. Defining and refining those words of the Constitution might be our oldest national tradition. Moreover, we continue to "sail on" with the self-evident truths that all men are created equal, are endowed by their creator with certain inalienable rights – that among those rights are life, liberty and the pursuit of happiness. I hope to see you at the Choctaw Casino in June!

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Back to the Future: Current Interpretations of the PRSA

By Chuck Knutter and Brady L. Smith

THE OKLAHOMA PRODUCTION REVENUE STANDARDS ACT (PRSA), which was enacted in 1980 and is currently codified at 52 O.S. §570 *et. seq.*, addresses the payment of proceeds from oil and gas production in Oklahoma. Over the 40 years since its enactment, various portions of the PRSA have faced countless arguments over its interpretation. However, the recent decision of *Cline v. Sunoco* has provided the greatest clarity to date on the interpretation and implementation of the PRSA. This decision, coupled with a new generation of policymakers, has brought about calls to alter the PRSA.[1] This article is intended to provide a look at the original underlying purpose of the PRSA and the current status of interpretation of the PRSA to all stakeholders involved and any future discussions regarding any proposed future amendments to the PRSA.

THE INTEREST OWNER/ OPERATOR RELATIONSHIP

Under Oklahoma law, mineral owners subject to an oil or gas lease or a pooling order are entitled to receive a cost-free portion of the proceeds from the sale of oil or gas produced from their mineral interests. The oil and gas company responsible for operating the well is normally in charge of marketing production from the well and distributing production proceeds to the non-operating owners in the well. While other arrangements, like gas balancing agreements, have been used by non-operating working interest owners to separately market their own share of production, the vast majority of non-operating owners have their share of oil and gas marketed by the operator of the well. In some instances, the first purchaser of oil or gas production takes on the responsibility of remitting proceeds to non-operating owners, which the PRSA specifically addresses.[2] Further, as production units continue to grow in size, increasing the total number of owners in any given well, this arrangement seems likely to become even more prevalent in the future. But this seemingly simple arrangement between the operator and non-operating owners has become more tedious. External forces have incentivized oil and gas companies to delay payment, and the evolution of the oil and gas industry has increased the work an operator must do in order to satisfy their duty.

THE HISTORICAL PROBLEM

The legislative purpose for the PRSA has been well documented by courts since the statute's enactment. "In enacting [the PRSA], the Legislature has expressed its intent that it shall be the public policy in Oklahoma for royalty owners to receive prompt payment from the sale of oil and gas products."[3] "The obvious overriding purpose of the Act is to ensure that royalty owners are timely paid their share of the proceeds."[4] The PRSA's payment timelines were aimed at remedying historical abuses by operators that refused to pay proceeds to royalty owners in a timely fashion while the operator reaped benefits (including high interest rates) during the interim. "For decades, oil and gas producers or first purchasers would for various reasons delay or decline to distribute the proceeds from the first sale to interest owners and use those funds for their own purposes until

they were ultimately distributed, if at all."[5] One reason for such behavior arose "in the inflationary times of the late 1970s and early 1980s when the prime interest rate soared to 21.5%, there was a great incentive to delay royalty payments" and "many producers routinely suspended royalties and delayed payment for many months and even years to take advantage of the interest earned during the float between the receipt of sales proceeds and disbursement of royalties."[6] Such practices deprived owners of the time value of their money and led to an increase in lawsuits by various interest owners against operators engaged in such practices.[7]

THE STATUTORY SOLUTION

To curb these abuses, the PRSA imposed specific time periods within which the holder of proceeds had to fulfill its duty to the interest owners by paying each of them their share of production proceeds.[8] It provided that "proceeds from the sale of oil or gas production" must be paid "to persons legally entitled thereto" within "six (6) months after the date of first sale" and "thereafter not later than the last day of the second succeeding month after the end of the month within which such production is sold."[9]

To incentivize compliance with these time periods – or at least to provide non-operating owners with commercially reasonable compensation should its terms be violated – the PRSA provides that when all or a portion of the proceeds are not timely paid, "that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum to be compounded annually, calculated from the end of the month in which such production is sold until the day paid."[10] The PRSA also provides that if the holder of proceeds is not paying the non-operating owner because title to its interest is not marketable, the statutory interest rate applied to the proceeds is the prime interest rate as reported in the *Wall Street Journal*.[11] This language makes up the core of the PRSA as it incentivizes holders of proceeds to pay non-operating owners in a timely fashion and assist interest owners who may have a title defect in taking the steps necessary to cure the defect so that it may be paid its share of production proceeds.

While often framed as a one-sided statute aimed at punishing holders that fail to timely pay proceeds, the PRSA contains various provisions designed to protect holders. For example, Section 570.10(B)(3) includes longer time periods for payment when the amount owed to the interest owners is small. Amounts between $10 and $100 may be remitted annually, so long as certain notice is provided to owners.[12] Amounts less than $10 do not have to be remitted to the owners entitled them until the well ceases producing.[13] Further, while rarely used, the PRSA provides holders with a way to cut off their liability for interest entirely.

A factual scenario that arises for holders is their inability to pay proceeds in a timely fashion because the non-operating owner does not have marketable title to these interests. This scenario is clearly addressed by the current version of the PRSA. Section 570.10(D)(2)(b) provides:

> Where marketability has remained uncured, or the holder has not been provided acceptable affidavit of death and heirship in conformity with Section 67 of Title 16 of the Oklahoma Statutes, for a period of one hundred twenty (120) days from the date payment is due under this section, any person claiming to own the right to receive proceeds which have not been paid because of unmarketable title may require the holder of such proceeds, or *the holder of such proceeds may elect, to interplead the proceeds and all accrued interest into court for a determination of the persons legally entitled thereto. Upon payment into court the holder of such proceeds shall be relieved of any further liability for the proper payment of such proceeds and interest thereon.*

This provision is important because it provides the holder a way to avoid paying interest while holding the proceeds and gives the non-operating owner a means of protecting proceeds held by the holder. Rather than the holder suspending proceeds indefinitely because of a marketable title defect – thereby incurring interest until the title is cured and the proceeds can be paid – the holder may choose to interplead the proceeds into court for a determination of their ownership. Likewise, a non-operating owner may determine it does not want the holder sitting on its proceeds and has the option to require the holder to interplead the proceeds into court.

NEW CHALLENGES

On its face, the rules set out in the PRSA seem pretty straightforward, and the only real changes to the PRSA since its inception have been for the benefit of holders. These authors are often asked the question of why, over 40 years after its enactment, holders have difficulty complying with it. To us, the answer has less to do with the language of the PRSA and more to do with the modern realities of the oil and gas industry.

First, some operators and purchasers are aware of their duty under the PRSA but simply ignore it or make a calculated business risk to not automatically pay interest. A recent federal case highlighted that many of the abuses the PRSA was meant to curb still persist in the industry. In *Cline*, Sunoco was the purchaser and distributor of production proceeds, and the case dealt with its failure to pay interest on late-paid proceeds. Sonoco knew the PRSA mandated that it pay interest but "adopted a policy only to pay if the well owner requests an interest payment."[14] Rather than comply with its obligations under the PRSA, "Sunoco simply [kept] the money for its own use, knowing two things: that most owners will not request interest, and that eventually the owners' potential claims will die at the hands of the statute of limitations. And when that happens, Sunoco will have irrevocably pocketed the money."[15]

Second, it is easy to paint the duty of the operator to pay proceeds to interest owners in simplistic terms. Over the years, however, practical challenges of meeting the duties codified by the PRSA have grown more difficult. The complexity of this task is driven by at least three factors. First, as technology has improved, particularly with the advent of horizontal drilling, the area developed with a single wellbore has greatly increased. In the past, vertical wells were commonly assigned drilling and spacing units of 40, 80 or even 160 acres. Now, with the advent of horizontal drilling, 640 and 1,280-acre production units are now the norms.

Third, the continuous fractionalization of oil and gas interests means the number of parties entitled to receive a portion of the proceeds of production from any given acre of minerals is also growing. Shortly after statehood, each section of land in Oklahoma was generally held by a handful of parties, with many parties having received grants or allotments of 160-acre tracts. Over the last century, these tracts have become subdivided into increasingly smaller parcels. In addition, the descent and distribution of non-operating interests has also played a large role in expanding the number of interest owners in Oklahoma. Since the fractionalized ownership of minerals presents fewer complications than the fractionalized ownership of the surface estate, the passage of minerals through descent and distribution has exponentially expanded the number of owners in many tracts of minerals in the state. Since many mineral interest owners lease their minerals to working interest owners who partner with the operator in the development of the acreage, the number of working interest owners has also expanded.

As any oil and gas title attorney will tell you, the increasing number of owners (each with their own distinct chain of title) makes the task of identifying each owner and their precise interest in a modern horizontal well increasingly time consuming, costly and difficult. Similarly, the job of keeping track of the changes in ownership of so many interests has also become increasingly difficult.

Last, operators have increased their use of Oklahoma's force pooling statute, 52 O.S. §87.1. Historically, the relationship between the operator and other parties entitled to production from the well was governed by private contracts. Mineral owners

To curb these abuses, the PRSA imposed specific time periods within which the holder of proceeds had to fulfill its duty to the interest owners by paying each of them their share of production proceeds.[8]

usually executed the oil and gas leases with an oil company, which increased the odds of a well's operator having a good address for the mineral owners. Similarly, the minerals owners, generally having recently executed an oil and gas lease, were incentivized to keep the operator notified of their current address. Joint operating agreements – historically used to govern the relationship between the operator and other working interest owners – are relics of a bygone age in Oklahoma, as operators rarely, if ever, attempt to enter into a joint operating agreement prior to initiating force pooling proceedings.

However, with pooling orders, the situation can be quite different. The operator sends well proposal letters to all the addresses it can locate either through title records or digital means of locating owners. If the operator does not receive a response to these proposals, they generally use the same address for notice of the pooling proceeding, which is supplemented with publication notice. Whether the non-operating owner actually receives the notice or just ignores it, its interest will be pooled without them having to take specific action to establish communications with oil the company about their current and future addresses. This lack of communication is exacerbated over time as a particular well may change hands from one operator to another. The proceeds attributable to this owner are likely to be held in suspense until the operator locates the interest owner, chooses to interplead the proceeds or, more likely, escheats these funds to the appropriate authority.

These three issues demonstrate that as the work required by an operator to fulfill its duty to the non-operating owners has grown, it has created more opportunities for errors, as well as more incentives for operators to delay the timely payment of production proceeds. However, better practices incorporating technology can be used to solve this problem. Compared to 1980, when the PRSA was enacted, advancements in computer technology, the development of specialized software and the internet have made all these problems easily surmountable by operators who are simply willing to devote the resources in technology and manpower necessary to fulfill their obligations under the PRSA.

INTERPRETATION OF THE PRSA

The PRSA was enacted "to ensure that those entitled to royalty payments would receive proceeds in a timely fashion."[16] In passing the PRSA, the Legislature made clear that Oklahoma has a public policy "for royalty owners to receive prompt payment from the sale of oil and gas products."[17]

Recently, multiple lawsuits, both individual cases and class actions, have been filed against operators and first purchasers, highlighting the continued abuse of suspense accounts and violations of the PRSA. The most notable of these lawsuits, and the focus of this article, is *Cline v. Sunoco, Inc.* In *Sunoco*, the Eastern District of Oklahoma awarded 1) actual damages of over $75 million in unpaid interest as well as $75 million in punitive damages based on Sunoco intentionally withholding that interest "until … the owner finally asked for the interest."[18] While the award in *Sunoco* is eyepopping, the rulings the court made regarding interpretation of the PRSA have far-reaching consequences for operators and non-operating owners alike.

TIMING OF INTEREST PAYMENTS

Sunoco raised an oft-asked question regarding interpretation of the PRSA: When is interest on payments of oil and gas proceeds due? Cline argued that Sunoco was required to pay interest on a late payment at the time the principal payment was made.[19] Sunoco, on the other hand, claimed it was liable for interest when late payments were made but argued the PRSA did "not require it to pay that interest at the same time it makes the late payment."[20]

The *Sunoco* court ruled, "The plain language of §570.10 of the PRSA requires Sunoco to pay interest at the same time it makes a late payment."[21] It reasoned that, "In §570.10, the Oklahoma Legislature … set forth a deadline for Sunoco to pay proceeds to interest owners" and that "requiring automatic payment of statutory interest give full force and effect to the remaining provision of §570.10, which set forth a timeframe to pay proceeds and a consequence for paying the proceeds late."[22]

UNMARKETABLE TITLE

Under the PRSA, all untimely payments accrue 12% interest "unless the reason for nonpayment is because the title is unmarketable."[23] If the title is unmarketable, proceeds earn interest at a lower interest rate.[24] However, for many years, defendants in cases alleging that interest is owed under the PRSA have sought to force plaintiffs to demonstrate that their title was marketable prior to agreeing that 12% interest was warranted. However, when Sunoco raised this argument, the court relied on Oklahoma's rules for statutory interpretation to hold that the PRSA considered 12% interest the default interest rate to be applied to proceeds not timely paid, and the lower interest rate was an exception to this general rule.[25] Having recognized that unmarketability of title to an interest is the method for triggering an exception to the 12% interest rate, the court also recognized, "Unmarketability is, in essence, an affirmative defense."[26] Since the burden of proving affirmative defenses rests with the defendant raising them, the court reasoned that the burden of proving that a title to an interest is unmarketable and the lower interest rate category applies falls on the holder of the proceeds rather than the royalty owner attempting to collect them.[27]

DIVISION ORDER NOT REQUIRED FOR PAYMENT

Sunoco also brought to light another common misconception about the PRSA. Over the years, many operators have refused to pay proceeds to owners who have failed to return division orders. Similarly, Sunoco had refused to pay Cline because Cline had not signed a division order.[28] However, the *Sunoco* court recognized this was not an excuse because the Oklahoma Supreme Court has already ruled, "The requirement that lessors execute division orders before receiving royalty payments conflicts with the spirit and letter of the [PRSA] and is violative of the public policy intended to be promoted through its enactment – prompt payment to royalty owners of proceeds from the sale of oil or gas."[29]

The argument raised by Sunoco and others has always been to shift the burden of determining a royalty owner's decimal interest to the royalty owner. This is not an inconsequential burden shift. In order for a non-operating owner to properly certify a decimal interest, it must have the following information: net acres of leasehold/mineral interest, net revenue interest, unit size and, in the case of multi-unit wells, the wellbore allocation percentage from final orders of the Oklahoma Corporation Commission. All of this information is easily accessible to a holder but can be difficult for some non-operating interest owners to obtain. It makes practical sense to place this burden on the holder of proceeds as, "The disparities in economic power between oil producers or first purchasers and royalty or mineral interest owners is often very wide."[30]

WRITTEN INTEREST DEMAND REQUIRED

Sunoco also clarified that interest under the PRSA is due automatically on late payments without any requirement that a non-operating owner demands it. This notion that a demand is required before interest is owed has been batted around in the court system for many years. Holders who have failed to automatically pay interest have faced both individual and class action claims seeking unpaid interest. In *Sunoco*, the court held, "The PRSA does not require interest owners to demand payment to receive royalty proceeds."[31] The court relied heavily on the Oklahoma Supreme Court's opinion in *Pummill v. Hancock Exploration, LLC*, quoting it for the proposition that, "The plain language of this statute imposes an obligation to include interest on late payments *regardless of whether the royalty owners make demand for such interest*." However, the *Sunoco* court did not simply accept the Oklahoma Supreme Court's decision on its face. It also recognized that evidence was presented at trial that over 1.5 million late payments were at issue, yet Sunoco did "not get many requests for interest each year."[32] Sunoco, like most holders, knew that most owners will never know to request interest and will end up keeping this money for its own use.[33]

HOW COMPOUND INTEREST IS CALCULATED

If a holder fails to make payment within the time period provided for in the PRSA, the interest is "to be compounded annually, calculated from the end of the month in which such production is sold until the day paid."[34] However, Sunoco claimed that once it made a late payment to an interest owner, statutory interest

stopped accruing.[35] The idea being that once the principal had been paid, even without interest, the unpaid interest sum could not bear interest.[36] Sunoco, like many defendants before it, referred to this category of Cline's damages as "interest on interest."[37]

The court cut this argument down by recognizing that Sunoco was simply mischaracterizing compound interest.[38] It explained, "Compound interest is a common feature in investments and means simply that interest becomes part of the principal and therefore earns interest."[39] This recognition that the interest owed to the royalty owner becomes a part of the principal means it is also entitled to interest under the PRSA. Finally, the court pointed out it had already decided this issue in a prior case, quoting its own opinion in *Cockerell Oil Props*, 2020 U.S. Dist. Lexis 77967, that held, "The plain language of the PRSA 'provides for compounding interest until the full amount – the proceeds due *and the accrued interest* – are paid in accordance with the terms of the statute.'"

THE FUTURE OF THE PRSA

Sunoco is the latest case to interpret the PRSA, and the clarifications it made to the understanding of the PRSA will have lasting impacts on royalty owners and the holder of oil and gas proceeds alike. Such clarifications have already brought calls to change the PRSA, which will undoubtedly continue. As the oil and gas industry of this state evolves, so too does the relationship between oil and gas operators and their royalty owners. However, it is important that we never forget the historical abuses that led to the enactment of the PRSA, as changes are considered by the Legislature.

ABOUT THE AUTHORS

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ENDNOTES

1. *See* Senate Bill 1524.
2. 52 O.S. 570.10(E)(1).
3. *Hull v. Sun Refining & Mktg. Co.*, 1989 OK 168, ¶14, 789 P.2d 1272, 1279.
4. *Krug v. Helmerich & Payne, Inc.*, 2015 OK 74, ¶20, 362 P.3d 205, 214.
5. 2015 OK AG 6, ¶2 (*citing* Si M. Bondurant, "To Have and to Hold: The Use and Abuse of Oil and Gas Suspense Accounts," 31 *Okla. City U. L. Rev.* 1, 4 (2006)).
6. *Id.*
7. For the purposes of this article the terms "non-operating interest owners" and "non-operating owners" mean all parties, other than the operator, who are entitled to receive production from an oil or gas well. This term encompasses the owners of royalty interest, overriding royalty interests, non-operating working interest owners and any party entitled to a portion of oil or gas proceeds created by any other conveyance or instrument.
8. *See* 52 O.S. §570.10(B)(1).
9. *Id.*
10. *Id.* §570.10(D).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Cline v. Sunoco, Inc.*, 479 F. Supp. 3d 1148, 1154 (E.D. Okla. 2020).
15. *Id.*
16. *Hull v. Sun Ref. & Mktg. Co.*, 1989 OK 168, ¶14, 789 P.2d 1272, 1279.
17. *Id.*
18. *Cline*, 479 F. Supp. 3d 1148, 1178, 1181.
19. *Cline v. Sunoco, Inc.*, 2019 U.S. Dist. LEXIS 212587, at *9.
20. *Id.*
21. *Id.* at *12.
22. *Id.* at *15.
23. 2015 OK AG 6; *Hull v. Sun Ref. & Mktg. Co.*, 1989 OK 168, ¶10, 789 P.2d 1272, 1277.
24. 52 O.S. §570.10(D)(2)(b).
25. *Cline v. Sunoco, Inc.*, 479 F. Supp. 3d 1148, 1171.
26. *Id.*
27. *Cline v. Sunoco, Inc.*, 479 F. Supp. 3d 1148, 1172.
28. *Cline v. Sunoco, Inc.*, 479 F. Supp. 3d 1148, 1160.
29. *Hull v. Sun Refining and Mktg. Co.*, 789 P.2d 1272, 1279 (Okla. 1989).
30. 2015 OK AG 6, ¶9.
31. *Cline*, 479 F. Supp. 3d at 1180.
32. *Cline*, 479 F. Supp. 3d at 1180.
33. *Cline*, 479 F. Supp. 3d at 1155.
34. 52 O.S. §570.10(D)(1).
35. *Cline*, 479 F. Supp. 3d at 1175.
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*

Out With the Old, In With the New

Is it Time to Modernize the Oklahoma Oil and Gas Royalty Clause?

By Chaille G. Walraven

IN A 1948 SPEECH TO THE HOUSE OF COMMONS, British Prime Minister Winston Churchill warned, "Those who fail to learn from history are condemned to repeat it."[1] This certainly rings true in the context of royalty litigation. History has shown us that royalty clauses based on subjective standards are prone to litigation. Yet rather than abandon subjective standards altogether, the general industry approach is to add new language to the old standard. The theory, it would seem, is that adding new language will resolve old issues.[2] In the words of Professor Merrill, the result of this approach is, "The crazy old structure remains, like a house which has been built onto, time and again."[3] Given the history of Oklahoma royalty litigation over the last two decades alone, it may be time to consider laying a new foundation.

Many years ago, the average royalty owner signed an oil and gas lease prepared by the producer with little to no substantive negotiation.[4] But times are changing. There is a growing trend of royalty owners who are better informed about the gas marketing process, negotiate for certain clauses in their oil and gas leases and actively monitor how their royalties are reported. Royalty owners today want to understand how their royalties are calculated and paid. Unfortunately, the expectation of being well informed often goes unmet. Because royalty owners are not involved in the marketing process, they have no way to verify whether they are being paid correctly (let alone *how* they are being paid) based solely on their check detail. Perhaps the number one complaint from royalty owners today is a simple lack of transparency. As more royalty owners begin to question how their royalties are being paid, the concern is that royalty litigation, especially individual actions, will only continue to increase in the coming years.

Most royalty clauses today are tethered to a marketable product standard, yet what precisely constitutes a "marketable product" has been a topic of fierce debate.[5] In addition to being subjective, this standard also creates inherent conflict between royalty owners and producers.[6] It is worth remembering the oil and gas lease was meant to create a mutually beneficial relationship between mineral owners and producers.[7] In order to restore this relationship and improve trust between the parties, we should consider anchoring royalty valuations to an objective standard. The question we must ask ourselves is whether we can draft a royalty provision that will not only provide an objective standard for royalty calculations but that is also acceptable to both sides.[8] Given the proliferation of litigation on this issue, the long-term benefits of structuring a new royalty clause are worth considering.

WHILE NATURAL GAS MARKETING EVOLVED, ROYALTY CLAUSES REMAINED STAGNANT

Prior to the deregulation of interstate pipelines and natural gas sales prices, producers generally sold natural gas to pipeline companies at the lease premises

for the maximum lawful price.[9] However, the Natural Gas Policy Act of 1978 and the Natural Gas Wellhead Decontrol Act of 1989 revolutionized the markets by removing many of the constraints that limited how producers could market natural gas.[10] Yet while the natural gas market rapidly evolved, royalty lease language continued to remain relatively static.[11]

Following this industry change, the Oklahoma Supreme Court issued a series of opinions articulating the marketable product standard that governs most royalty litigation today.[12] While virtually all producers and a growing number of royalty owners have heard of *Mittelstaedt*, disagreement continues as to what precisely constitutes a marketable product. While the court in *Mittelstaedt* did not provide a definition for "marketable product," it did note that certain processes were usually necessary to obtain a marketable product: "It is common knowledge that raw or unprocessed gas usually undergoes certain field processes necessary to create a marketable product. These field activities may include, but are not limited to, separation, dehydration, compression, and treatment to remove impurities."[13]

In today's deregulated market, many producers enter into contracts with midstream companies that provide for the gathering, compressing and processing of natural gas. The costs associated with gathering, compressing and processing (namely, who *pays* for those costs) are the root of the problem. This is compounded by the fact that *how* these costs are paid can vary from producer to producer. Contracts with midstream companies can be structured on a fee basis, where midstream companies charge the producer a certain fee for each MMBtu that is gathered, compressed and/or processed.[14] These contracts can also be structured on a percent-of-proceeds (POP) basis, where the midstream company retains a percentage of the proceeds as compensation for its services.[15] Oftentimes, such contracts also provide for a percentage of gas volumes to be used by the midstream company as fuel for its equipment in the field or the plant. While these contracts may seem fairly straightforward in and of themselves, when they intersect with a producer's obligation to produce a marketable product, controversy abounds. Many producers take the position that the raw gas stream is sold at or near the lease under the midstream contract, and the producer has therefore discharged its duty to obtain a marketable product upon delivering the raw gas to the midstream company. Most royalty owners take the position that irrespective of midstream contract terminology, the raw gas is still raw gas at or near the lease and raw gas is not a marketable product. These competing views have only added more fuel to the litigation fire.

DOES THE ROYALTY CLAUSE CREATE A DUTY TO TRANSFER TITLE OR PRODUCE A SPECIFIC PRODUCT?

Many producers take the position that the entire stream of raw, unprocessed gas is sold at or near the lease under a contract with a midstream company. As support for this argument, the producer frequently relies on the argument that title to the gas stream passes at or near the lease to the midstream company.[16] Not surprisingly, royalty owners take the position that the actual sale is not completed until the final volume and value is determined, which often is at a point downstream of the lease.[17]

To illustrate this conflict, let's say that the O.K. Corral Well is

While virtually all producers and a growing number of royalty owners have heard of *Mittelstaedt*, disagreement continues as to what precisely constitutes a marketable product.

located in rural western Oklahoma and produces lean natural gas that is saturated with water vapor and low in pressure. Two different producers, Earp and Ringo, market their share of the gas under the well. Producer Earp contracts with a midstream company to gather the gas, compress it, dehydrate it and then deliver the gas to the ANR Pipeline. The midstream company charges Producer Earp $20 for these services. Producer Earp then sells the gas on the ANR Pipeline for $100. Producer Earp and the royalty owner both agree the gas was actually sold for $100, and midstream costs were incurred in the amount of $20. Under royalty clauses tied to the marketable product standard, Producer Earp must satisfy the *Mittelstaedt* factors before any of the $20 costs may be shared with the royalty owner. And if the royalty clause expressly limits (or allows) certain midstream costs, the $20 is also subject to those royalty provisions.

Producer Ringo, however, takes a more creative approach. Producer Ringo enters into a contract with the same midstream company for its share of the same gas stream. But Producer Ringo structures its contract on a POP basis. The midstream company takes custody of the gas at the lease, gathers the gas, compresses it, dehydrates it and then sells the gas on the ANR Pipeline for $100. However, in addition to taking custody of the gas at the lease, the midstream company is also bestowed with "title" to the gas. The midstream company retains $20 as compensation for its services and remits the remaining $80 of proceeds to Producer Ringo. However, unlike Producer Earp, Producer Ringo disagrees with the royalty owner that the gas was actually sold on the ANR Pipeline for $100. Rather, Producer Ringo claims the gas was sold back at the lease for only $80. Producer Ringo further claims there were no midstream costs incurred at all because the gas was sold at the lease. According to Producer Ringo, the gas was sold under a "wellhead sales contract."[18] Consequently, Producer Ringo claims the *Mittelstaedt* factors do not apply to the $20 retained by the midstream company. Even more concerning, Producer Ringo claims that because there were no midstream costs, royalty clauses that expressly limit the sharing of midstream costs also do not apply.

Far from being an ideology war, these "wellhead sales contracts" have a real economic impact on the royalty owner. Royalty owners under the first scenario 1) have a reported gross sales value of $100, 2) are not subjected to the midstream costs expressly disallowed in their royalty clause and 3) are afforded greater transparency in how their royalties are calculated. Contrast that with the royalty owners under the second scenario who 1) have a reported gross sales value of only $80, 2) are subjected to midstream costs, even if those midstream costs are expressly disallowed in their royalty clause and 3) are often afforded no transparency at all since midstream costs are not reported on the check detail.

These midstream contracts have a direct impact on how the royalty owner gets paid. Yet the royalty owner is not privy to this contract and has no input on the terms of such contract. Royalty owners often find themselves at the mercy of how the producer elects to structure the midstream contract. Oil and gas leases are also generally assignable, so royalty owners have little control over which producer they may eventually end up with. Because many royalty clauses are tied to a marketable product standard or specifically identify midstream costs that cannot be shared with the royalty owner, the "wellhead sales contract" necessarily invites litigation.

Other courts have recognized the potential abuse in allowing producers to move the point of sale by relying on the midstream contract. Recently, the North Dakota Supreme Court analyzed this type of transaction in *Newfield Expl. Co. v. State ex rel. North Dakota Brd. of Univ.*[19] In *Newfield*, the producer alleged it properly calculated royalties "based on the gross amount paid to [it] by the midstream company because the gas was sold at the wellhead.[20] However, the North Dakota Supreme Court held that no actual sale took place at the wellhead, irrespective of attempts to transfer title at the well: "While title to the gas passes at the well, the transaction is not complete, and full value of the consideration paid to Newfield is not determined until Oneok has incurred the cost of making the gas marketable and subsequently sold the marketable gas."[21]

When interpreting the midstream contract, the North Dakota Supreme Court found it compelling that "consideration paid to [the lessee] is not determined until" after midstream services had been completed.[22] Likewise, the 5th Circuit Court of Appeals found this distinction controlling. In *Piney Woods*,[23] the 5th Circuit recognized the potential abuse of focusing on the passage of title under the midstream contract:

> The lessors had no say in Shell's choice of where to put the passage of title. Their interests were either irrelevant or adverse to Shell's. Shell and its buyers wanted to avoid state pipeline regulations; but their decision to do so had the effect

> of placing the "point of sale" on the lease, thereby avoiding Shell's obligation to pay royalties based on market value. The opportunity for manipulation is apparent. Harmon, for example, counsels producers to "attempt to obtain appropriate contract amendments which would move the sales point onto the premises of each lease from which gas delivered under the contract is produced" to avoid payment of market value royalty.[24]

The Supreme Court of Wyoming also reached the same result in *State v. Davis Oil Co.*[25] In *Davis*, the court held that for purposes of the oil and gas lease, the "passage of title does not determine whether gas is sold 'at the wells'[.]"[26] As long as midstream contracts continue to impact how payment is calculated under the standard royalty clause, both producers and royalty owners must recognize the fact that a court (or jury) may ultimately be interpreting the royalty clause for them.

THE ENHANCEMENT LEASE: JUST WHAT ARE THE OTHER PRODUCTS?

Adding another layer of complexity to the debate is the fact that many royalty owners today are negotiating for changes to the standard lease form the producer provides. A growing number of royalty owners refuse to accept lease forms that expressly allow the producer to charge the royalty owner for all costs incurred in making a marketable product. This has led to a dramatic increase in the number of enhancement royalty clauses in recent years. The interpretation of the enhancement clause was recently litigated in a case out of the 4th Circuit, *Corder v. Antero Resources Corp.*[27] In *Corder*, the royalty clause was the standard enhancement royalty clause used in many leases today, to wit:

> It is agreed between the Lessor and Lesee (sic) that notwithstanding any language herein to the contrary, all oil, gas or other proceeds accruing to the Lessor under this lease or by state law shall be without deduction, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing the oil, gas and other products produced hereunder to transform the product into marketable form; however, any such costs which result in enhancing the value of the marketable oil, gas or other products to receive a better price may be deducted from Lessor's share of production so long as they are based on Lessee's actual cost of such enhancements. However, in no event shall Lessor receive a price that is less than, or more than, the price received by Lessee.[28]

The enhancement clause essentially distinguishes two categories of costs: 1) those that are transformative in nature and 2) those that are enhancing in nature.[29] Costs that "transform" the oil, gas and other products are prohibited, but costs that "enhance" such products are allowed if all of the other conditions precedent are met. Of course, neither the royalty owner nor the producer could agree on which products were included in the phrase "oil, gas and other products" or what "transform the product into marketable form" meant:

> Although the parties clearly intended to differentiate between these costs, the Market Enhancement Clause fails to indicate when Antero's efforts become enhancing rather than transforming. This transition hinges on what the parties intended to include as "oil, gas, and other products," and when those products become marketable...To Antero, NGLs are not "other products" and the Plaintiffs' raw gas is marketable. To the Plaintiffs, NGLs are "other products" and only residue gas and NGLs are marketable. Whether the parties intended to include NGLs as "other products" within the Market Enhancement Clause for which Antero bears the manufacturing costs, or intended to exclude NGLs as "other products" and thereby require the Plaintiffs to share the cost of extracting and fractionating NGLs, are material questions of fact that remain unclear.[30]

To the royalty owners, the phrase "transform the product into marketable form" refers to the specifically enumerated services that transform raw gas into residue gas and NGLs. To the royalty owners, residue gas and NGLs were the intended products they bargained for under their enhancement clause. Of course, producers disagree. This resolution will turn on what products the parties were intending when they entered into the royalty clause.

While the duty to obtain a marketable product has been extensively litigated, it is important to remember this duty was based on the premise that royalty owners have no say in the negotiation of post-production services.[31] What the Oklahoma Supreme Court recognized roughly three decades ago was that the royalty owner has no input or involvement in the marketing decisions undertaken by the producer. Yet it is often

such marketing decisions that drive royalty payment disputes. In order to avoid more litigation, any new royalty clause should offer the royalty owner a substantial ability to understand and verify how royalties are being calculated and paid.

INDEX-BASED PRICES MAY PROVIDE THE SOLUTION

History has taught us that when royalty calculations are left to subjective terms, differing opinions will inevitably follow. If subjectivity is a root cause of conflict between mineral owners and producers, it seems logical to turn to an objective standard. This can be accomplished by tying royalties to an objective measurement, such as index-based prices. A reliable royalty clause can generally be distilled into two components: value and volume. At the end of the day, the royalty owner wants to know 1) how much gas was produced and 2) how that gas was valued.

One way to provide certainty and objectivity to a royalty clause is to provide a fixed dollar amount per MMBtu of gas or barrel of oil. A few (very) old lease forms utilized this approach. Of course, one need only be a casual observer of the oil and gas industry to understand the pitfalls of a static price. Given that in the last two years alone the price of oil has gone from less than $0 a barrel to over $130 a barrel, the deficiencies in a fixed-price valuation are self-evident. Any objective standard must take into account the volatility of the energy market – hence the appeal of anchoring royalty valuation to an index price.

A royalty clause that provides for the payment of royalty on MMBtus of gas produced from the leased premises multiplied by an agreed-upon index price provides an objective measurement standard. First, both producers *and* royalty owners can ascertain what an average index price is for any given month. Second, it does not require any subjective component to calculate. For example, the parties could select the NYMEX-Henry Hub as a starting point.[32] The parties could agree to a price based on the NYMEX-Henry Hub to anchor the value of the gas.[33] The parties would then negotiate the percentage discount off the index price to reflect the different market locations.

The agreed-upon price can then be multiplied by the number of MMBtus that flow through the custody transfer meter.[34] At this point, the royalty clause becomes purely objective. The gross value for royalty purposes can be calculated with mathematical certainty: MMBtus x [NYMEX-Price x % discount]. This gross value is then multiplied by the royalty owner's decimal share to calculate gross royalty due before taxes. There is no need to determine which midstream costs are allowable under the royalty clause when gas becomes a marketable product or which costs are transformative as opposed to enhancing. There is no need to calculate the monetary value of gas volumes consumed as field fuel or plant fuel. From a purely administrative standpoint, calculating royalties in this manner would be fairly straightforward.

The royalty owner can also independently verify how their royalties are calculated. Unlike pricing under midstream contracts, the index price is publicly available for any royalty owner to confirm. This simple transparency alone could prevent untold future litigation. Further, the royalties do not change when the producer moves to a POP contract, a fee-based contract or even a percent-of-index contract. While the industry has generally been resistant to index-based royalty clauses, it is worth considering the cost of future litigation that will result from subjective-based royalty clauses. As with any change, there would certainly be a learning curve. The lease would also have to identify an alternative index or another agreed-upon

royalty formula in the event the selected index becomes unavailable in the future. But if royalty owners and producers could both agree upon an objective royalty clause, both sides would benefit in the long run. In order for royalty disputes to become history (and not our future), we should all take another look at the benefits of an objective royalty clause.

ABOUT THE AUTHOR

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ENDNOTES

1. https://bit.ly/3uhYxKU.
2. Maurice Merrill, *The Oil and Gas Lease-Major Problems*, 41 *Neb. L. Rev.* 488, 491-92 (1962) "Instead, words are added. New phrases, clauses, sentences or sections are added. The crazy old structure remains, like a house which has been built onto, time and again."
3. *Id.*
4. Owen L. Anderson, *Royalty Valuation: Should Royalty Obligations Be Determined Intrinsically, Theoretically, or Realistically?*, 36 NRJ 611, 611-612 (1997).
5. *See Pummill v. Hancock Expl. LLC*, 2018 OK CIV APP 48, ¶28, 419 P.3d 1268, 1276 "Unfortunately, the Court did not define the meaning of 'marketable product,' nor has it done so since."
6. Byron C. Keeling & Karolyn King Gillespie, "The First Marketable Product Doctrine: Just What is The 'Product?'" 37 *St. Mary's L.J.* 1, 3-4 (2005).
7. For purposes of this article, the term "producer" is used to refer to the lessee, and "mineral owner" or "royalty owner" is used to refer to the lessor.
8. The focus of this article is calculating royalties on natural gas production.
9. John Shepherd & Tina Van Bockern, *Relationship Between Transportation, Marketing, and the Royalty Clause*, 3 RMMLF-INST 8, 8-1 (2018).
10. *Id.*
11. *See* Michael Irvin, *The Implied Covenant to Market in the Deregulated Natural Gas Industry*, 42 RMMLF-INST 18, §18.01 (1996).
12. *Mittelstaedt v. Santa Fe Minerals, Inc.*, 1998 OK 7, 954 P.2d 1203; *Wood v. TXO Prod. Corp.*, 1992 OK 100, 854 P.2d 880; *Howell v. Texaco Inc.*, 2004 OK 92, 112 P.3d 1154.
13. *Mittelstaedt*, 1998 OK at ¶21, 954 P.2d at 1208.
14. *See Pummill v. Hancock Expl. LLC*, 2018 OK CIV APP 48, ¶14, fn. 6, 419 P.3d 1268, 1272; *Naylor Farms v. Chaparral Energy, LLC*, 923 F.3d 779, 783, fn. 2 (10th.Cir.2019); ONEOK, Inc., *10-K Annual Report*, March 1, 2022, pg. 9; Enable Midstream Partners, LP, *10-K Annual Report*, Feb. 24, 2021, pp. 12-13; DCP Midstream, LP, *10-K Annual Report*, Feb. 18, 2022, p.8; Enlink Midstream, LLC, *10-K Annual Report*, Feb. 16, 2022, p. 48.
15. *Id.*
16. *Naylor Farms* at 783, fn. 2; *Newfield Expl. Co. v. State ex rel. North Dakota Board. of Univ.*, 2019 ND 193, ¶3, 931 N.W.2d 478, 479; *Piney Woods Country Life Sch. V. Shell Oil Co.*, 726 F.2d 225, 232 (5th Cir. 1984); *State v. Davis Oil Co.*, 728 P.2d 1107 (Wy. 1986).
17. *Id.*
18. *See Naylor Farms* at 785, "And neither party suggests *Mittelstaedt* involved (or even contemplated, for that matter) the type of wellhead sales contracts that Chaparral allegedly utilized here."
19. 2019 ND 193, 931 N.W.2d 478.
20. *Id.* at ¶4.
21. *Id.* at ¶11.
22. *Id.*
23. *Piney Woods Country Life Sch. v. Shell Oil Co.*, 726 F.2d 225 (5th Cir. 1984) (although *Piney Woods* addressed a market value lease, the court still found that passage of title to a midstream company does not discharge the duties owed to the royalty owner under the lease).
24. *Id.* at 232 (internal citations omitted).
25. 728 P.2d 1107 (Wy. 1986).
26. *Id.* at 1109.
27. 2021 WL 1912383 (N.D.W. Va. 2021).
28. *Id.* at *3.
29. *Id.*
30. *Id.* at *7-9 (internal citations omitted).
31. *Wood* at ¶11, 882-83.
32. *See* https://bit.ly/3rm0CUc.
33. The parties could agree to a number of different arrangements, including the price on the first day of the month, the last day of the month or the arithmetic average of the daily per MMBtu settlement prices during a set period, for example.
34. If the gas is processed, the parties could approach the royalty clause in two ways. First, the parties could apply the index price to all the MMBtus that flow through the custody transfer meter. In such an event, the royalty owner would forgo any potential liquid uplift. This should be reflected in the royalty owner taking a smaller discount on the index price. Second, rather than applying the index price to all the MMBtus that flow through the custody transfer meter, the index price could be applied to these MMBtus less shrink.

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Public Utility Ratemaking 101 for Non-Regulatory Lawyers

By Jennifer Castillo

THE NEWS HAS BEEN FULL OF STORIES detailing the impact of unforeseen events, such as worldwide pandemics, extreme weather events and international conflicts on particular industries. For example, a CNN business article dated March 13 discusses the impact of the conflict between Ukraine and Russia on American gasoline prices. "Why are US gas prices soaring when America barely uses Russian oil?" asks Julianne Pepitone, CNN Business. But have you ever stopped to consider the impact of similar events on your electric utility bills?

In contrast to prices charged by private, non-regulated companies for their products and services, prices charged by public utilities must be reviewed and approved by the state regulatory agency whose responsibility it is to oversee prices, called rates, charged by public utilities. In Oklahoma, the Oklahoma Corporation Commission is the regulatory agency charged with the general authority to review and approve the costs charged by a public utility operating in Oklahoma.[1] The purpose of this article is to provide a brief description of public electric utility rate cases, the legal framework behind them, the public policy supporting them, as well as an overview of the ratemaking process, including a note on the specific circumstances that led to the filing of rate cases to recover the extreme costs incurred by public utilities during Winter Storm Uri in February 2021.

THE OKLAHOMA CORPORATION COMMISSION HAS AUTHORITY TO REVIEW AND APPROVE PUBLIC UTILITY RATES

"Utilities are given the privilege of providing services on an essentially monopolistic basis and are therefore subject to regulation by the Oklahoma Corporation Commission."[2] Specifically, Article 9 of the Oklahoma Constitution grants the Oklahoma Corporation Commission ("Commission" or "Corporation Commission") broad authority to supervise, regulate and control all "public service corporations, including … all gas, electric, heat, light and power companies, and all persons, firms, corporations, receivers or trustees engaged in said businesses, … and all persons, firms, corporations, receivers and trustees engaged in any business which is a public utility."[3] Art. 9, Section 18 also grants the Corporation Commission the authority to promulgate and enforce rules, regulations and requirements, as well as the authority to prescribe and enforce rates, charges and classifications of traffic. The Corporation Commission's authority to set rates for public utilities "is paramount," and its authority to establish other rules and regulations is subject only to the Legislature's authority as prescribed by statute.[4]

Title 17 of the Oklahoma Statutes governs the Corporation Commission and beginning at Section 151, further delineates the Corporation Commission's jurisdiction and authority over public utilities.[5] Section 152 of Title 17 further defines the Corporation Commission's general supervision and jurisdiction over public utilities and particularly provides that the Corporation Commission, comprised of three commissioners elected to serve six-year terms,[6] has "power to fix and establish

rates and to prescribe and promulgate rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business …"[7]

RATE CASES AND RATEMAKING

The prices regulated electric utilities charge in exchange for providing customers with electricity are determined through an open, public process called a rate case. Rate cases seek to balance the needs of customers and the public electric utility with the specific public policy goal of ensuring Oklahomans have safe, reliable electric service at reasonable rates.[8] During a rate case, the reasonable costs for the public utility to provide electric service are determined, and the amount of money the utility will collect through rates to provide that service in a safe and reliable manner is calculated. This process of establishing rates of payment is known as "ratemaking."

Rate Case Application Package

When a public electric utility operating in Oklahoma wants to increase its rates, it must file an application for a general rate change with the Oklahoma Corporation Commission.[9] Such applications "shall be given immediate attention" by the Corporation

Commission.[10] Along with the application, a public utility seeking a rate change must also submit substantial documentation to establish the utility's costs and to support the rationale behind the requested rate increase "application package."[11] The supporting documentation contained in an application package generally includes the utility's costs of labor; costs of materials, including fuel and purchased power;[12] taxes and depreciation on the plant used to deliver services, as well as the interest for debt issued by the utility to finance construction of that plant and a proposed reasonable return on investment made by the shareholders.[13] These amounts added together are the revenue requirement the public utility wants to collect from its customers in the form of future billings.[14] Only costs determined to be reasonable and prudent by the Corporation Commission are allowed to be included in the revenue requirement.[15]

The application package should also contain supporting documentation of the utility's proposed rate design. The goal is to design a rate that allows the public utility to recover its revenue requirement, is "weather normalized"[16] and appropriately allocates the revenue requirement among the different groups or classes of utility customers, such as residential, industrial and commercial, based on the reasonable cost of such service and in a non-discriminatory manner.[17] Other goals of a particular rate design may be to encourage resource conservation or ensure a rate charged to a particular class of customers is consistent with the costs of providing such service.[18] The goals and reasoning in support of a particular rate design are explained in written testimony included in the application package.

Notice Requirements

Once a public utility has filed an application package seeking a rate increase, it is required to make a "good faith" effort to serve notice of the rate case on all affected utility customers.[19] Notice of any hearing on the application must also be published "once a week for two (2) consecutive weeks at least fifteen (15) days prior to hearing in a newspaper of general circulation published in each county in which are located utility customers affected thereby, unless the Commission directs otherwise."[20]

Represented Interests and Public Involvement

The Public Utility Division staff (PUD staff) of the Corporation Commission has 120 days from the date of filing to complete its examination of the application package.[21] This 120-day examination period is essentially the discovery phase and includes the exchange of data requests and responses between the utility and PUD staff, as well as the filing of testimony responsive to the application package by PUD staff.[22] The utility also has the opportunity to file rebuttal testimony.[23]

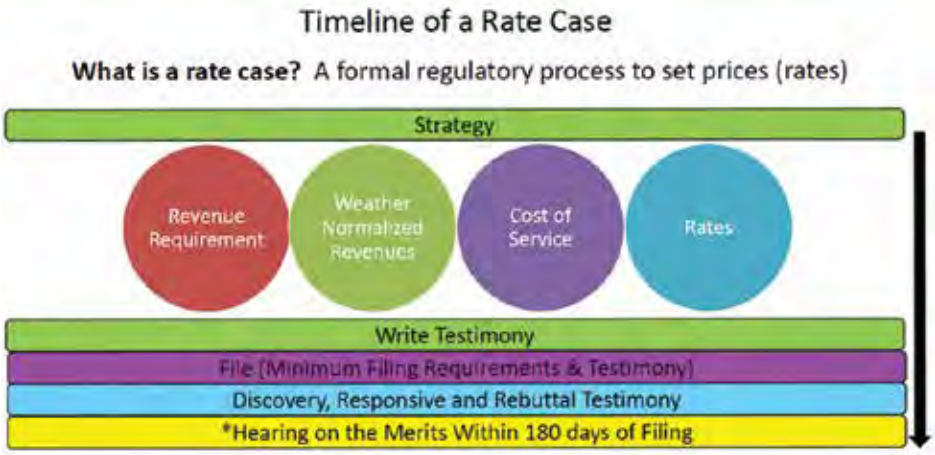
The Office of the Oklahoma Attorney General (AG) is also a party to rate cases and represents the interests of residential customers.[24] During the 120-day period, the AG may request information from the utility regarding the revenue requirement and/or rate design and file written testimony and/or statements of position responding to the application package.[25] Over the past few decades, other parties representing a particular class of customer or special interest group have begun intervening in rate cases, which is permitted by OAC 165: 5-7-61. During the 120-day period, the utility also works actively to resolve as many issues as possible with PUD staff, the AG and intervenors. Customers and the general public are also permitted to file comments voicing concerns.[26]

Public Hearing Requirements and Issuance of a Final Order

If the public utility is unable to resolve all issues with PUD staff, the AG and any intervenors, the Corporation Commission will resolve them in an order to be issued after the public hearing.[27] [28] This public hearing can be handled by an administrative law judge (ALJ) or the commissioners sitting *en banc* and must commence within 45 to 180 days of the end of the PUD staff's examination period.[29] At the public hearing, witnesses who filed written testimony are made available for cross-examination on their positions.[30] Members of the public are also allowed an opportunity to make oral comments.

At the conclusion of the public hearing, when evidence supporting the positions of the various parties has been filed of record and heard, the ALJ issues and files a written report and recommendation with the Commission. The report and recommendation contain the procedural history of a rate case, a summary of each witness's written testimony and cross-examination, findings of fact and the recommended rate to be integrated into the public utility's customer billings. The commissioners sitting *en banc* deliberate and vote on the report and recommendation of the ALJ at an open meeting and ultimately issue an order setting forth the approved rate.

If, however, the Corporation Commission has not completed its examination and issued a final order within the 180-day statutory period, 17 O.S. §152 authorizes a public utility to put into



immediate effect and collect "some or all of the request for changes in rates, charges, and regulations" on an interim basis.[31]

If the Corporation Commission, after completing its examination of the public utility's rates and charges, determines a refund of the interim rate is appropriate and necessary, the Commission "shall order such refund including a reasonable interest at the one-year U.S. Treasury bill rate accruing on that portion of the rate increase being refunded for a period not to exceed ninety (90) days from the date of the rate increase being refunded."[32]

IMPACT OF WINTER STORM URI ON ELECTRIC PUBLIC UTILITY RATES IN OKLAHOMA

Winter Storm Uri is the name given to the widespread winter weather storm that descended across a large part of the United States and into parts of Mexico in February 2021. Uri swept in fast, causing historic winter freezing weather and resulting in winter weather alerts, power outages and North American Electric Reliability Corporation[33] (NERC) reliability events across Oklahoma and other neighboring states, such as Texas and Arkansas.

Specifically, the unprecedented low temperatures and extensive ice storms brought rapid well and pipeline freezes to an extent not seen before, resulting in a shortage of natural gas. The shortage of natural gas deprived the entire natural gas market of large quantities of gas, leading to widespread power curtailments and blackouts in Texas, as well as never before experienced prices across the region. In fact, Uri is credited with causing the largest U.S. power outage since the outage that occurred in the upper Northeast in 2003 that resulted in a blackout affecting an estimated 50 million people.[34] Due to the recurrence of below-freezing temperatures for multiple days, the impact of Uri was felt in Oklahoma from Feb. 13 to Feb. 21, 2021.

Executive Order No. 2021-06

On Feb. 12, 2021, Oklahoma Gov. Kevin Stitt issued Executive Order No. 2021-06, in which he declared a statewide emergency due to "extreme freezing temperatures and severe winter weather including snow, freezing rain, and wind beginning February 7, 2021, and continuing." In his declaration, Gov. Stitt further stated, "There is hereby declared a disaster emergency caused by severe winter weather in all 77 Oklahoma counties that threatens the public's peace, health and safety." The Corporation Commission subsequently entered two emergency orders related to Uri and resulting conditions on limited gas supply, prioritization of electric and gas service for public health, welfare and safety and the need for conservation efforts.

Because demand for natural gas escalated dramatically due to the consequences of Uri, natural gas markets across the region experienced a profound crisis. Wholesale electricity prices also experienced unprecedented increases in cost due to the unusually high natural gas prices. Costs incurred by public electric utilities for fuel and wholesale electricity are normally passed to customers through a Fuel Cost Adjustment Rider (FCA).[35] However, the cost of natural gas during Uri significantly exceeded the entire amount budgeted for fuel and purchased power by some public utilities in 2020, which would have resulted in a burdensome outcome to ratepayers.

Oklahoma Regulated Utility Consumer Protection Act

To address this issue, the Oklahoma Legislature drafted the Regulated Utility Consumer Protection Act,[36] enacted by Gov. Stitt on April 23, 2021. This allowed affected public utilities to securitize the right to recover "extreme purchase costs"[37] associated with Uri from Feb. 7 to Feb. 21, 2021. The act also permits issuance of bonds to enable customers to pay costs associated with Uri at a lower annual over a longer period of time.

Pursuant to the act, several public utilities in Oklahoma requested permission to defer all recovery fuel and purchased power costs as amortized over a longer and more manageable period of time. In response, the Corporation Commission allowed amortization of the extraordinary costs of Uri over a period of 10 years.[38]

CONCLUSION

Winter Storm Uri, which struck a large portion of the United States with freezing precipitation and below-freezing temperatures, caused wellhead and pipe freezing that ultimately resulted in numerous outages, as well as the implementation of curtailment measures. Another result was the extreme increase in natural gas and wholesale electric prices across the region. Rather than simply pass the extraordinary costs caused by Uri through a general rate increase, which would have been a hardship on Oklahoma utility customers, public electric utilities have taken advantage of the Regulated Utility Consumer Protection Act.[39] As a result, Oklahoma consumers will be impacted less due to the ability to amortize the costs of Uri over a longer period of time.

ABOUT THE AUTHOR

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ENDNOTES

1. Public utilities in Oklahoma include Oklahoma Gas and Electric Company, Liberty Utilities (formerly Empire District Electric Co.), Public Service Co. of Oklahoma, Oklahoma Natural Gas, Summit Utilities Oklahoma Inc. and Arkansas-Oklahoma Gas Corp. A complete list of electric, gas, water, cotton gin and telecommunication companies designated as public utilities can be found on the Oklahoma Corporation Commission website at https://bit.ly/3x3pkfz.

2. *Sierra Club v. Corporation Commission*, 2018 OK 31, ¶19, 417 P.3d 1196 (Okla. 2018).

3. Okla. Const., Art. 9, §§18, 34.

4. 2018 OK 31 at ¶21. *See, e.g.*, 17 O.S. §151 *et seq*.

5. Public utilities are defined by Section 151 as "every corporation, association, company, individuals, their trustees, lessees or receivers, successors or assigns … that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly for public use, or may supply any commodity to be furnished to the public. For the production, transmission, delivery or furnishing electric current for light, heat or power." 17 O.S. §151. This definition is consistent with Art. 9, Section 34 of the Okla. Const. that defines "public service corporation" as "all transportation and transmission companies, all gas, electric, heat, light and power companies, and all persons, firms, corporations, receivers or trustees engaged in said businesses, and all persons, firms, corporations, receivers or trustees authorized to exercise the right of eminent domain or having a franchise to use or occupy any right of way, street, alley or public highway, whether along, over or under the same, in a manner not permitted to the general public, and all persons, firms, corporations, receivers and trustees engaged in any business which is a public utility or a public service corporation, at the present time or which may hereafter be declared to be a public utility or a public service corporation."

6. Article 9, Section 15 of the Oklahoma Constitution creates the Corporation Commission "to be composed of three persons, who shall be elected by the people at a general election for State officers, and their terms of office shall be six (6) years."

7. 17 O.S. §152(A).

8. *See i.e., Principles of Public Utility Rates*, J. Bonbright, p. 32-33, 38.

9. 17 O.S. §152.

10. 17 O.S. §152(B)(1).

11. 17 O.S. §152; OAC 165:70 *et seq*.

12. The cost of fuel and purchased power obtained by a public utility must be shown to have been prudently procured at a reasonable cost based on mechanisms available at the time. Prudence inquiries involve a determination of whether the public utility's management made a reasonable decision in light of the circumstances existing at the time of the decision and the knowledge of such circumstances management had or should have had. *Principles of Public Utility Rates*, J. Bonbright, p. 33.

13. OAC 165:70.

14. Ratemakings are prospective only. The rates set today will recover the costs of future service.

15. *Principles of Public Utility Rates*, J. Bonbright, p. 33.

16. Weather normalization adjusts electric energy use so it can be compared to electric energy use in multiple years over a longer period of time.

17. *Principles of Public Utility Rates*, J. Bonbright, p. 33.

18. *Id.*

19. OAC 165:5-7-51.

20. *Id.*

21. 17 O.S. §152(B)(1),(2); OAC 165:70-1-5.

22. OAC 165:70-5-4; 165:5-7-61.

23. OAC 165:70-5-4.

24. 74 O.S. §74-18b.

25. OAC 165:70-5-4; 165:5-7-61.

26. https://bit.ly/37cURkr.

27. While Title 17 provides for a public hearing before the commissioners and requires the issuance of an order, rate cases are legislative rather than judicial proceedings. *Wiley v. Oklahoma Natural Gas*, 429 P.2d 957 (Okla. 1967) (stating, "It is universally recognized that the fixing of rate schedules for public utilities is a legislative process, and that a public service regulatory body acts in a legislative capacity in approving rate schedules. It necessarily follows that a rate order is a legislative enactment and not a judgment of the court.") Because rate making has been designated as a legislative rather than judicial matter, judicial concerns and standards regarding due process notice and hearing requirements are not applicable. *Southwestern Bell Telephone Co. v. Oklahoma Corporation Commission*, 1994 OK 38, 873 P.2d 1001, 1006-1007; *Chickasha Cotton Oil Co. v. Corporation Commission*, 562 P.2d 507, 509 (Okla. 1977).

28. 17 O.S. §152.

29. 17 O.S. 152(B)(3).

30. OAC 165:5-7-61.

31. 17 O.S. §152(B)(4); OAC 165:70-1-5.

32. 17 O.S. §152 (B)(5).

33. NERC is a not-for-profit international regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the electric grid. NERC defines a reliable electric system as one that is able to meet the electricity needs of end users. NERC develops and enforces reliability standards, annually assesses seasonal and long-term reliability, monitors the bulk power system through system awareness and educates, trains and certifies industry personnel. NERC's area of responsibility spans the continental United States, Canada and the northern portion of Baja California, Mexico. NERC is the Electric Reliability Organization (ERO) for North America, subject to oversight by the Federal Energy Regulatory Commission (FERC) and governmental authorities in Canada. NERC's jurisdiction includes users, owners and operators of the bulk power system that serves nearly 400 million people.

34. https://bit.ly/3x4jOJH.

35. OAC 165:50-1-1.

36. 74 O.S. §9070 *et seq*.

37. The act defines "extreme purchase costs" as "expenses incurred for the purchase of fuel, purchased power, natural gas commodity or any combination thereof, whether at spot pricing or index pricing or otherwise with delivery from February 7, 2021 to February 21, 2021." 74 O.S. §9052(3).

38. *See, e.g.,* Order No. 723434 issued in Cause No. PUD 202100076 Application of Public Service Company of Oklahoma for Approval of a Financing Order for the Collection of Increased Costs, Caused by the Extreme Winter Weather and Contained in the Regulatory Asset Authorized by Order No. 717625, Including an Appropriate Carrying Cost, and Such Other Relief as the Commission Deems PSO is Entitled; Order No. 722254 issued in Cause No. PUD 202100072, Application of Oklahoma Gas and Electric Company for a Financing Order Pursuant to the February 2021 Regulated Utility Consumer Protection Act Approving Securitization of Costs Arising from the Winter Weather Event of February 2021.

39. 74 O.S. §9070 *et seq*.

Payment of Proceeds from Production Under the PRSA

The Obligation to Determine Current 'Marketable Title'[1] [2]

By Kraettli Q. Epperson

THERE IS A STATUTORY SYSTEM IN PLACE IN OKLAHOMA that controls how the proceeds from production arising from the extraction of mineral interests are paid by the first purchaser of production (purchaser) to the proper persons (the owners legally entitled thereto). How does it work, and does it work?[3]

The Production Revenue Standards Act (PRSA) requires, *"All proceeds from the sale of production shall be regarded as separate and distinct* from all other funds of any person receiving or holding the same *until such time as such proceeds are paid to the owners legally entitled thereto. Any person* holding revenue or proceeds from the sale of production *shall hold such revenue or proceeds for the benefit of the owners legally entitled thereto.* Nothing in this subsection shall create an *express trust*."[4] However, there is an "implied trust" created.[5]

What "production" is the statute referring to? According to Section 570.2(2) of the PRSA: "'Produce,' 'Producing' and 'Production' mean the physical act of severance of *oil and gas* from a well by an owner and includes but is not limited to the sale or other disposition thereof …" So, the "owner" of a mineral interest, such as the minerals, royalties, working interests, overriding royalty interests, etc. (mineral interests), would be entitled to the proceeds from the "sale or other disposition."

In *Hull*, the Oklahoma Supreme Court explains what must be established to identify who are the "owners legally entitled thereto [to the proceeds of production]": "The lessors have demonstrated the only condition precedent to a recovery under [52 O.S] §540 – *marketable title*."[6] And, by statute, such "marketability of title shall be determined in accordance with the then current title examination standards of the Oklahoma Bar Association."[7]

According to such "current title examination standards of the Oklahoma Bar Association," *"A marketable title is* one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly *deducible of record*."[8]

Practically speaking, the title to any real property interest, including mineral interests, is determined from a review of the local county land records where the subject oil and gas interest is located.[9] The analysis and conclusions derived from this search of the local county land records – relating to mineral interests – are typically set forth in a division order title opinion (DOTO) prepared by a licensed attorney.[10]

In fact, according to the Oklahoma attorney general:

> While the rationale of the previous opinion is incorrect, we adhere to the conclusion expressed in that opinion that the examination of the abstract pursuant to 36 O.S. 5001© *(1981) must be done by a licensed attorney. We reach this conclusion because the examination required by statute would only be useful if the examiner expressed an opinion on the marketability of the title. This constitutes the practice of law by the examiner.*[11]

Hence, the DOTO must be prepared by a "licensed attorney." This DOTO needs to be dated effective after the date of first production to ensure the proper party receives its proceeds. Such

conclusions in a DOTO state: who is the current holder or holders of marketable title to the mineral interests and their specific interest (type and quantity), and who are, therefore, the "owners legally entitled thereto" (*i.e.,* to the proceeds of production).

In advance of drilling and completing a well, the producing party will acquire a drilling title opinion (DTO) by a licensed attorney (to ensure there is a lease or other agreement with everyone holding the right to drill). Thereafter, before distributing proceeds, a DOTO is typically secured to bring the title search current. Then the purchaser can use this information from the DOTO to prepare their "pay decks," which specify the owner and their type and quantum of interest. This information is transferred to a form known as a division order (DO) to be signed by the owner of such production.

As of 1989, the content of such DO was defined (for the first time) by statute:

> A division order is an instrument for the purpose of directing the distribution of proceeds from the sale of oil, gas, casinghead gas or other related hydrocarbons which *[1] warrants in writing the division of interest* and the [2] name, [3] address and [4] tax identification number of each interest owner with [5] a provision requiring notice of change of ownership. A division order is executed to enable the first purchaser of the production or holder of proceeds to make remittance of proceeds directly to the owners legally entitled thereto and does not relieve the lessee of any liabilities or obligations under the oil and gas lease. Terms of a division order which conflict with the terms of any oil and gas lease are invalid, unless previously agreed to by the affected parties. This subsection shall only apply to division orders executed on or after July 1, 1989.[12]

This Oklahoma statutory set of terms for the DO tracks closely with the current standard industry form for a DO.[13]

The majority opinion in the *Hull* case was based on the then-current statute that did not mention a DO and stated, "We find that: 1) because the only condition for which 52 O.S. Supp. 1985 §540 justifies suspension of royalty payments is the existence of unmarketable title, failure to execute a division order is not a defense to an action for the payment of proceeds from oil production".[14]

However, the majority opinion in *Hull* also explains, "We note that 52 O.S. Supp. 1985 §540 was amended effective July 1, 1989 [to define the form and purpose of a DO]. We express no opinion as to how the amendment may affect future causes presenting the issue of execution of division orders."[15]

And the minority opinion in *Hull* notes:

To reach this broad-brush "public policy" result, the majority has apparently interpreted §540 in total isolation, for in its own opinion the majority has acknowledged that: …

> 5) The new 1989 amendment to §540, 52 O.S. Supp. 1989 §540 (B), explicitly provides for the execution of division orders as a prerequisite for payment to royalty owners, from and after the effective date of July 1, 1989.

… Certainly the first purchaser may withhold proceeds when title is not marketable, but *demonstration of marketable title alone is not sufficient* in and of itself to cause an owner to be "legally entitled" to receive payment. Clearly then, under §540, 'causes' other than unmarketable title may exist which make an owner not legally 'entitled' to receive payment for proceeds of production. Failure to execute a division order to purchaser to provide that purchaser with directions for payment and setting forth the terms and conditions for the purchase of royalty oil is one such "cause" under §540 which must be met before a royalty owner would be "legally entitled" to be paid from proceeds.[16]

Both the majority and the minority opinions in *Hull* make it clear that – on a go-forward basis – by amending the PRSA in 1989 to add the definition of the DO, the Legislature has added the requirement for the mineral interest owner to sign a DO *before proceeds are paid*. Who has the obligation to properly make the payment of the proceeds from the sale of production of oil and gas to the owners legally entitled to those proceeds? It is important to note that the payments to the owners of royalty and payments to the working interest owners are not necessarily treated the same. Under the PRSA, to whom is the purchaser required to make payments? The following portion of the PRSA explains that obligation. Section 52 O.S. § 570.10. C. 1. provides:

> 1) A *first purchaser* that pays or causes to be paid proceeds from production to the *producing owner* of such production *or*, at the *direction of the producing owner*, pays or causes to be paid *royalty proceeds* from production *to:*
>
> a. the royalty interest owners legally entitled thereto, or
> b. the operator of the well, shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

The PRSA also contains several definitions critical to the proper application of the PRSA. The definitions are contained in 52 O.S. §570.2 and provide as follows:

> As used in the PRSA:
> 1) "Owner" means a person or governmental entity with a legal interest in the mineral acreage under a well which entitles that person or entity to oil or gas production or the proceeds or revenues therefrom;
> 2) "Produce," "Producing" and "Production" mean the physical act of severance of oil and gas from a well by an owner and includes but is not limited to the sale or other disposition thereof;
> 3) "Producing owner" means an owner entitled to produce who during a given month produces oil or gas for its own account or the account of subsequently created interests as they burden its interest; …
> 12) "Working interest" means the interest in a well entitling the owner thereof to drill for and produce oil and gas, including but not limited to the interest of a participating mineral owner to the extent set forth in Section 87.1 of Title 52 of the Oklahoma Statutes.

Look at this above process and these above definitions to see how the PRSA is to be applied. The purchaser has three ways to pay proceeds from production. First, pay the producing owner all the proceeds attributable to the interest owned by the producing owner. What is meant by this language? Presumably, it means all the interest covered by the oil and gas leases owned by the producing owner. So, if the producing owner has leases on one-fourth of the mineral interest in the well, this would allow payment of one-fourth (25%) of all proceeds to that producing owner. After that payment, the purchaser has no further liability for those proceeds. The producing owner would be then responsible for payment of any royalty interest directly to the party legally entitled thereto. The second way to pay royalty is for the purchaser to make payment of the royalty directly to each of the owners legally entitled thereto. The

The next question to be considered is: After the parties obtain a DOTO and secure DOs based on the ownership that would be represented by the title examiner to include all parties legally entitled to production from the well, what happens if there is a change in ownership of some or all of the mineral interests?

third way to pay royalty is for the purchaser to pay the royalty proceeds to the operator. The operator is then responsible for payment of royalty to the owners legally entitled thereto. Under any of the three payment methods above, the purchaser is obligated to pay the producing owner for the producing owner's share of production. If the purchaser pays the royalty proceeds to the producing owner or the operator, the purchaser "shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production."

The next question to be considered is: After the parties obtain a DOTO and secure DOs based on the ownership that would be represented by the title examiner to include all parties legally entitled to production from the well, what happens if there is a change in ownership of some or all of the mineral interests? In other words, when the purchaser learns of a recorded assignment or deed, how does the purchaser decide whether to change the pay decks to reflect the purported new owner? What information is necessary to change an interest set forth in the original ownership provided in the DOTO? What evidence of title can be relied upon by the party making distribution of proceeds when notice of a change of ownership is received by the party making such distribution?

When changing the payees from such initial set of owners, can the purchaser prepare the pay decks and a transfer order (*i.e.*, a revised DO signed by both the grantee/assignee and the grantor/assignor) based on something less than a proper check of the title in the land records through a supplemental title opinion? This lesser title check might be to rely upon a recorded assignment of a portion of or all "the assignor's/grantor's right, title and interest." If such assignment is by the then-current record holder (or holders) of such specified mineral interest, fine. But if it is from assignors or grantors holding less than such interest "of record," it is clearly inadequate standing alone to identify who holds "marketable record title" to such interest and to change the name of the recipient of the proceeds. Only the original DOTO will show who initially owns 100% of the ownership of record, and only subsequent recorded assignments or deeds from all the then-current record owners, as identified in a supplemental title opinion (by a "licensed attorney"), would support any change in payee.

A DO by its terms typically (see NARO form) requires the owner of production to give notice to the purchaser whenever such title is transferred,[17] and the usual lease terms also call for such notification of a transfer of title.[18] These two requirements might arguably suggest the acquisition of a transfer order[19] signed by both the assignors/grantees (*i.e.*, the initial owners) and the assignees/grantees under a recorded assignment or deed, as such initial owners are shown on the DOTO, purporting to convey a specific interest (or even 100% or all "of the grantor's right, title and interest") would permit the purchaser to change the payee.

But such conclusion would be presuming the recorded assignment or deed was from the true owners. We all know what often happens when we make assumptions without adequate investigation – a "snafu." There could have been a prior recorded assignment or deed from the true owner to a third party other than the grantee on the recorded assignment or deed being offered, so the later recorded assignment or deed conveyed nothing. This is because a person cannot convey an interest they do not own.[20] There is no incentive for the assignor or grantor of a mineral interest to notify the purchaser it has conveyed its interest away to a third party and to thereby prompt the purchaser to halt future payments to the assignor or grantor.

Consequently, 1) if the purchaser makes payments to a new purported owner based solely on the new recorded assignment or deed and a resulting new transfer order (without

a supplemental title opinion) and 2) if a third party was the true assignee under a previously recorded but undisclosed assignment or deed, the purchaser would remain liable to the true owner for missed payments. The purchaser can try to rely on the warranty in the transfer order signed by a non-owner to recover such misapplied monies from such recipient of the funds (assuming there is a "deep pocket" and no lapsed statute of limitation). However, that still leaves the purchaser, as a trustee under an "implied trust," liable to make a duplicate payment to the rightful recipient.

Whenever changing the payee of proceeds from the initial payee under the DOTO and the initial DO based on a new recorded assignment or deed, or whenever a new purchaser takes over purchasing production under a new purchase contract, a prudent step would be to have a supplemental title opinion prepared by a licensed attorney to discover what the public land records reflect about the status of title.

It is certainly true that the purchaser cannot be expected to undertake the enormous burden to *re-check* record title each and every month before making the next monthly payment of proceeds to an owner to ensure title has not been transferred of record. However, the purchaser is still obligated to make the initial due diligence review of the title by securing a DOTO (after the date of first sale of production) and then securing a DO from the then-record owners. Thereafter, if the purchaser is considering changing the recipient of such payments for some reason, such as the receipt of a recorded assignment or deed purportedly from all or some of the initially determined owners, there might be negative consequences upon failure to perform due diligence. Such due diligence may require a supplemental title opinion.

In addition, how can the process be improved? Currently, there is no requirement for the purchaser to place any notice of record in the county records to put owners on constructive notice of the rights of the purchase, and, therefore, this is no way for an owner to determine the purchaser from the county records. The information could be determined by researching records outside of the county records, but such records may not be easy to find, and owners may not know where to look for the information.

A similar problem of records not being recorded and, therefore, not providing constructive notice existed under the pooling statute (52 O.S. §87.1). Owners were being affected by actions of the Oklahoma Corporation Commission in a pooling order, but no notice of the order was required to be recorded in the land records of the county clerk and indexed against the lands involved. In 1993, the pooling statute was amended to require the recording of an affidavit of pooling elections with the pooling order attached.[21] It would be an aid and provide constructive notice to the owners if a similar statute was enacted to require notice by the purchaser be recorded in the land records and indexed against the lands where the production is being produced.

ABOUT THE AUTHOR

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ENDNOTES

1. The author expresses his appreciation for the assistance of Richard K. Goodwin, an attorney from Edmond, for his assistance in drafting this article.

2. Note there is pending before the 2022 session of the Oklahoma Legislature SB1524 that will require (among other changes), for the first time, the signing of a division order before the owner of the proceeds of production will be entitled to receive such proceeds. However, the terms of such bill will not address the topic covered in this article: After having a DOTO and a DO based on such DOTO, when one is changing the payee and the DO due to notice of an assignment of such interest, whether there is a need for a supplemental title opinion.

3. *See* the relevant statute, the Production Revenue Standards Act (PRSA), 52 O.S. Sections 570.1 *et seq.*, and the existing precedential Oklahoma case law, *Hull v. Sun Refining,* 1989 OK 168 (*Hull*).

4. 52 O.S. §570.10.

5. However, as declared by the Oklahoma attorney general: "It is, therefore, the official Opinion of the Attorney General that: The Legislature intended an *implied trust (whether resulting or constructive)* under the provisions of Section 570.10(A) of Title 52. *See Cacy v. Cacy*, 619 P.2d 200, 202 (Okla. 1980); *Littlefield v. Roberts,* 448 P.2d 851, 856 (Okla. 1968); *Bryant v. Mahan,* 264 P. 811, 812 (Okla. 1927). Furthermore, the holder of the revenue or proceeds of oil and gas production is an *implied trustee* who has no rights in or to such revenue or proceeds and who is under a statutory duty to pay the revenue proceeds of oil and gas production to the implied beneficiaries; *i.e., the owners legally entitled thereto.* The holder of the revenue or proceeds of oil and gas production acquires no right, title or interest in such revenue or proceeds." 2008 OK AG 31, ¶22.

6. *Hull v. Sun Refining & Marketing Co.*, 1989 OK 168, ¶18, 789 P.2d 1272, 1280 (note: 52 O.S. §540 became §570.10).

7. 52 O.S. §570.11(D)(2)(a).

8. Oklahoma Title Examination Standard 1.1: Marketable Title Defined.

9. *See* 25 O.S. Sections 10-13, regarding notice, and 16 O.S. Sections 15 and 16, regarding creation of constructive notice. *Also see: Constructive Notice: Oklahoma's Hybrid System Affecting Surface and Mineral Titles* by Kraettli Q. Epperson (89 *OBJ* 40: January 2018).

10. For references to a DOTO, *see* Model Form Operating Agreement (1989) A.A.P.L. Form 610-1982, Article IV, Titles, A. Title Examination; and *Hull,* para. 3, and 789 P.2d page 1274; and *McClain v. Ricks Exploration Co.,* 1994 OK CIV APP 76, FN 12, 894 P.2d 472, FN 12; and *Fleet v. Sanguine, Ltd.,* 1993 OK 76, FN 20(7), 854 P.2d 892, FN 20(7).

11. 1983 OK AG 281, para. 6-7.

12. 52 O.S. §570.11 Division Order Defined.

13. For instance, *see* the NADOA Model Form Division Order (Adopted 9/95 – Amended 1/17).

14. *Hull,* ¶0; the PRSA was subsequently amended in 1989 to define the division order.

15. *Hull,* FN7.

16. *Hull,* minority, ¶¶2 and 5; Note: the court places the duty on the mineral owner to establish that it holds "marketable title" and does not require the holder of production proceeds to prove "unmarketable title."

17. *See* the statutory form at 52 O.S. Section 570.11.

18. *See*, for example, any of the Producers 88 Oil and Gas Leases.

19. Note that a DO and a transfer order are not recorded.

20. *Atkinson v. Barr,* 1967 OK 103, ¶22, 428 P.2d 316, 320 – in the absence of a warranty and after-acquired title, a conveyance can only convey what the grantor owns.

21. 52 O.S. Section 87.4.

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Beware the 'Hook and Lateral'; Using Okla. Stat. Tit. 84, §8 for Outside Leverage

By Zachary J. "Zac" Foster

ON JAN. 1, 2007, THE UNIVERSITY OF OKLAHOMA faced Boise State University in the Tostitos Fiesta Bowl Championship. I will save the OU fans from recalling too much of the weeping and gnashing of teeth endured during, and long after, one of the more memorable "David vs. Goliath" matchups in college sports history. The most memorable and consequential play from this contest, in my opinion, is the fourth down and 18 play call that vaulted Boise State University and its head coach, Chris Petersen, onto the national college football landscape.

With 18 seconds remaining from the 50-yard line, Boise State's quarterback takes the shotgun snap, tiptoes and whips a pass to his slot receiver in the middle of the field near the hash. The slot receiver then pitches to a sprinting Jerard Rabb to the near side, who barrels down the sideline before diving into the endzone and scoring a touchdown. This is the most famous iteration of the classic sandlot football play known as the "Hook and Lateral." If you have not stopped reading this article – and if you have, OU fans, I do not begrudge you – I think I can wheel this one around for an article fit for the *Oklahoma Bar Journal's* Energy Law issue.

So, the question here is what the "Hook and Lateral" has to do with energy law? Against Boise State, OU's defense committed a cardinal sin: losing outside leverage to the sideline. Or, as my dad would say, "Never leave the back gate open." And Okla. Stat. tit. 84, §8 provides what OU's defense did not on the "Hook and Lateral": outside leverage.

THE 'HOOK AND LATERAL'

Consider this fact pattern: In March 2009, "Mama" dies testate in California. Mama left three heirs-at-law, three daughters, two living in eastern Oklahoma, *i.e.*, "Daughter No. 1" and "Daughter No. 2," and one living in California, *i.e.*, "Daughter No. 3."

In 2010, the client, we will call him the "Mineral Buyer," contacts Daughter No. 1, Daughter No. 2 and Daughter No. 3 and offers to purchase their respective undivided interest in and to the oil, gas and other minerals (the "minerals") that Mama owned at the time of her death. In December 2010, Mineral Buyer closes and acquires Daughter No. 1's and Daughter No. 2's respective undivided interest in the minerals, a combined undivided two-thirds interest in the minerals. Both mineral deeds include Daughter No. 1's and Daughter No. 2's exact inherited quantum of acreage under the law of intestate succession under Okla. Stat. tit. 84, §213(B)(2)(a). During this negotiation, purchase and sale, Daughter No. 1 and Daughter No. 2 each claimed an interest in the minerals through intestate succession from Mama; neither Daughter No. 1 nor Daughter No. 2 had any knowledge nor informed or advised the Mineral Buyer that Mama left a last will and testament at the time of her death. And *before* Mineral Buyer contacted Daughter No. 1 and Daughter No. 2, each had leased their respective undivided interest in the minerals. Daughter No. 1 also executed an "affidavit of death and heirship" and attested that Mama died intestate and identified Daughter No. 1, Daughter No. 2 and Daughter No. 3 as Mama's sole surviving heirs-at-law under Okla. Stat. tit. 84, §213.

After attempting to purchase Daughter No. 3's undivided interest while negotiating and closing on the purchase and sale of Daughter No. 1's and Daughter No. 2's undivided interest in the minerals, in January 2011, Daughter No. 3, when Mineral Buyer inquires, informs Mineral Buyer that Mama did, indeed, leave a valid last will and testament at the time of her death in March 2009. But Daughter No. 3, despite Mineral Buyer's requests for a copy of Mama's last will and testament, refused to provide Mineral Buyer with a copy or any record of Mama's last will and testament. But in June 2011, Daughter No. 3 sells, and the Mineral Buyer purchases and acquires an undivided one-third interest in the minerals from Daughter No. 3. This mineral deed also includes the exact inherited quantum of acreage through intestate succession from Mama under Okla. Stat. tit. 84, §213(B)(2)(a), an undivided one-third interest in the minerals.

Here comes the "Hook and Lateral": In September 2011, *more than two years after Mama's death in March 2009*, Daughter No. 3 files and opens a testate probate administration in Oklahoma and includes the minerals in Mama's

Oklahoma testate probate estate inventory. Daughter No. 3 administers Mama's Oklahoma testate probate estate inventory and distributes an undivided two-thirds interest in the minerals to a trust. *Daughter No. 3 is the sole beneficiary of the trust*. Daughter No. 3 then leases the undivided two-thirds interest in the minerals to Operator. Mineral Buyer leases its undivided one-third interest in the minerals to Operator. Operator recognizes and credits Daughter No. 3 with an undivided two-thirds interest in the minerals, the undivided two-thirds interest in the minerals that Mineral Buyer believed it had acquired from Daughter No. 1 and Daughter No. 2 in late 2010. Operator remits to Daughter No. 3 oil and gas production proceeds attributable to an undivided two-thirds interest in the minerals. Operator does recognize Mineral Buyer's undivided one-third interest in the minerals, the undivided one-third interest it acquired from Daughter No. 3 in June 2011. Operator remits to Mineral Buyer oil and gas production proceeds attributable to an undivided one-third interest in the minerals.

THE DEFENSE: OKLA. STAT. TIT. 84, §8

Using Okla. Stat. tit. 84, §8, Mineral Buyer flexes outside leverage against Daughter No. 3 and files a quiet title and declaratory judgment lawsuit for the undivided two-thirds interest in the minerals. This is the text of Okla. Stat. tit. 84, §8:

> The rights of a purchaser or encumbrancer of real property in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise has been duly admitted to probate by a court of this state having jurisdiction to administer upon the estate of the decedent within two (2) years after the death of the decedent, or unless within one (1) year after the death of the decedent a petition to admit said will to probate has been duly filed in the court of this state having jurisdiction to admit said will to probate and the proceedings have been pursued by the petitioner with diligence.

For Okla. Stat. tit. 84, §8 to shelter Mineral Buyer, he must meet these elements:

1) a purchaser purchases real property or an encumbrancer encumbers real property;
2) in good faith;
3) for value;
4) from any person claiming an interest in real property through intestate succession;
5) without either actual notice or constructive notice of a last will and testament for the decedent from whom succession is claimed; and
6) the last will and testament for the decedent is admitted to probate by a court in Oklahoma with jurisdiction *more than two years after* the decedent's death; *or*
7) a petition to admit to probate the last will and testament for the decedent from whom intestate succession is claimed *is not filed* in a court of this state with competent jurisdiction *within one year after the death of the decedent*, or if a petition to admit to probate the last will and testament for the decedent from whom intestate succession *is timely filed*, the proceedings *are not pursued by the petitioner with diligence*.

It is *cliché*, but we lawyers all know the "devil is in the details." To date, as far as this author is aware, there is no published opinion interpreting Okla. Stat. tit. 84, §8 from either the Oklahoma Court of Civil Appeals or the Supreme Court of Oklahoma.

The first element is basic: The "purchaser" or "encumbrancer" must either "purchase" or "encumber" real property owned by the decedent at the time of death. "Real

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property" in Oklahoma includes both the surface estate and the mineral estate. A hurdle is the definition of "encumbrance." *Black's Law Dictionary* defines "encumbrance" as "[a] claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred."[1]

This definition could include a consensual mortgage, judgment lien, oil and gas lease, joint operating agreement, easement or right-of-way, mechanic's and materialmen's lien, oil and gas lien, tax lien, non-participating royalty interest, production payment, restrictive covenant or encroachment or claim of adverse possession.

Elements two and three require definition. Although elements two and three do not include explicit language requiring the absence of actual notice and constructive notice to seek shelter under Okla. Stat. tit. 84, §8, a fair interpretation of elements two and three requires that a "purchaser" or "encumbrancer" under Okla. Stat. tit. 84, §8 either "purchase" or "encumber" real property without both actual notice and constructive notice of the decedent's last will and testament, *i.e.*, meet the standard for a "bona fide purchaser for value" or a "BFP." A comprehensive exposition of the "bona fide purchaser for value" rule in Oklahoma is beyond the boundaries of this article, but the essential elements include the 1) payment of valuable consideration, 2) good faith and the absence of purpose to take an unfair advantage of third persons and 3) with the absence of notice, actual or constructive, of outstanding rights of others.[2]

Elements two and three should concern those seeking shelter under Okla. Stat. tit. 84, §8 (landmen and professional mineral buyers, I am talking to you) after purchasing from or encumbering real property through one claiming an interest in real property by intestate succession from an out-of-state decedent, like Mama. Those of us who practice testate or intestate probate administration or determination of heirship and quiet title litigation run across this decrepit fact pattern: out-of-state decedent leaves a last will and testament (or not), and personal representative (or personal administrator) completes either a testate or intestate probate administration (or not) in the decedent's state of domicile, but personal representative (or personal administrator) does not open an ancillary testate or intestate probate administration here in Oklahoma for the administration of the decedent's Oklahoma estate. Said devisee (or heir-at-law) to the decedent then gripes about retaining legal counsel in Oklahoma for a testate (or intestate) probate administration in Oklahoma to distribute, say, a minuscule undivided mineral interest under the decedent's last will and testament (or by intestate succession under Okla. Stat. tit. 84, §213). Then consider whether a decedent's last will and testament admitted to probate in another jurisdiction, like California or Texas, places the world on either actual notice or constructive notice of the decedent's last will and testament, even though a court of competent jurisdiction in Oklahoma maintains exclusive, plenary jurisdiction over real property in Oklahoma administered and distributed through an intestate or testate probate administration or a determination of heirship and quiet title lawsuit.

For an "out-of-state" decedent or an "in-state" decedent at the time of death, consider the oft-used "affidavit of death and heirship" under Okla. Stat. tit. 16, §§67, 82, and 83 with the decedent's purported last will and testament attached. The OBA *Title Examination Standards Handbook* dictates that a last will and testament is ineffectual to pass title to real property until the decedent's last will and testament is admitted to probate, and the decedent's estate in Oklahoma is administered under the Oklahoma Probate Code.[3]

Codified in 1910, amended in 1967, Okla. Stat. tit. 84, §8 had read like this:

> The rights of a purchaser or incumbrancer of real property in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the county court having jurisdiction thereof or unless written notice of such devise is filed with the county judge of the county where real property is situated, within four years after the devisor's death.

Let us suggest here that Daughter No. 3 recorded a "memorandum of trust" for the trust, the devisee under Mama's last will and testament, within either the one-year or two-year "window" under Okla. Stat. tit. 84, §8. Does this provide the world with constructive notice of a devise included in Mama's last will and testament?[4] Every conveyance entitled to be recorded provides constructive notice under Okla. Stat. tit. 16, §16, but a "memorandum of trust" is not a conveyance.[5] Consider these facts: Daughter No. 3, as lessor, executed and delivered an oil and gas lease to Operator, as lessee, as a "married woman, dealing in her sole and separate property"; consider also that

Daughter No. 3, as grantor, executed and delivered the mineral deed to Mineral Buyer, as grantee, as "a married woman dealing in her sole and separate property," *not as trustee of the trust.*

Suppose that Mama's California estate planning counsel mails a copy of Mama's purported last will and testament and a copy of the trust instrument to Daughter No. 1 and Daughter No. 2 within the one-year window or the two-year window under Okla. Stat. tit. 84, §8. Is this actual knowledge imputed to the Mineral Buyer? Under Mama's scenario, neither provided a copy of Mama's last will and testament to nor notified Mineral Buyer that Mama left a last will and testament at the time of her death. And remember, Mineral Buyer inquired as to the existence of a valid last will and testament for Mama.

Element four rigs a bear trap: from *any* person "*claiming*" through intestate succession. Well, any person can "*claim*" an interest in real property through intestate succession, but it is not until the decedent is, in fact, deceased that a decedent's heirs-at-law are then vested with the decedent's interest in any real property comprising the decedent's purported intestate estate at the time of death subject to the administration of the decedent's estate by a court of competent jurisdiction in Oklahoma. And a decedent's heirs-at-law are not determined until a court of competent jurisdiction finds and decrees the decedent's heirs-at-law under Okla. Stat. tit. 84, §213. Effective application of Okla. Stat. tit. 84, §8 requires a court of competent jurisdiction in Oklahoma first determining the decedent's heirs-at-law under Okla. Stat. tit. 84, §213, and second, a purchaser or encumbrancer qualifying as a "bona fide purchaser for value" or a "BFP."

If one hurdles the first five elements of Okla. Stat. tit. 84, §8, then either element six or element seven remains. Element six is easy; element seven is not. Element six requires that the decedent's last will and testament is admitted to probate in Oklahoma *more than* two years *after* the decedent's death. Or element seven requires a petition to admit to probate the last will and testament for the decedent filed *within one year after* the death of the decedent, but the proceedings *are not pursued by the petitioner with diligence*. For element seven, define the standard for "pursuing a testate probate proceeding with diligence."

A question: Well, what happens *after* the two-year window under Okla. Stat. tit. 84, §8? One could make an argument – not a good one, I do not think – that Okla. Stat. tit. 84, §8 operates like a statute of limitation or a statute of repose for a testate probate administration as applied to an interest in real property. This author is not aware of a statute of limitation or statute of repose for opening, administering and closing either an intestate or testate probate administration in Oklahoma. As discussed earlier, a decedent's real property vests at the time of death, subject to the administration of the decedent's estate. Interpreting Okla. Stat. tit. 84, §8 as a statute of limitation or statute of repose would seem unconstitutional, that is, "theft by legislation."

The better argument is that one who purchases from or encumbers real property through one claiming through intestate succession *after* the two-year window under Okla. Stat. tit. 84, §8 is protected from a devise in a decedent's purported last will and testament. Or the argument is that *after* the two-year window under Okla. Stat. tit. 84, §8, there is an absolute bar against any devise that impairs the rights of a purchaser from or encumbrancer of real property through one claiming by intestate succession under Okla. Stat. tit. 84, §213. I think the argument here is that *after* the two-year window under Okla. Stat. tit. 84, §8, a purchaser or encumbrancer may *presume* the decedent died intestate.

CONCLUSION

With Mama, Daughter No. 3 did not appeal the grant of summary judgment in favor of the Mineral Buyer under Okla. Stat. tit. 84, §8. So, to date, as far this author knows, neither the Oklahoma Court of Civil Appeals nor the Supreme Court of Oklahoma has interpreted Okla. Stat. tit. 84, §8. But, if a mineral buyer or landman purchases a mineral interest or acquires an oil and gas lease from one claiming through intestate succession *within* two years of the decedent's death (or within one year, if a petition for probate is filed for the decedent), said mineral buyer or landman had better have their respective "head on a swivel."

ABOUT THE AUTHOR

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ENDNOTES

1. *See* Encumbrance, *Black's Law Dictionary* (10th ed. 2014).

2. *See Big Four Petroleum Co. v. Quirk*, 1988 OK 21, ¶10, 755 P.2d 632, 634; Okla. Stat. tit. 25, §9 "Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious."

3. *See 2022 Title Examinations Standards Handbook*, Oklahoma Bar Association, at §3.2(D)(3); *Yeldell v. Moore*, 1954 OK 260, ¶10, 275 P.2d 281, 283.

4. *See* Okla. Stat. tit. 25, §§9,10, 11, 12, and 13; *Crater v. Wallace*, 1943 OK 250, 140 P.2d 1018; *Riverbend Land, LLC v. State of Oklahoma, ex rel.*, 2019 OK CIV APP 31, 443 P.3d 588.

5. *See* Okla. Stat. tit. 16, §16 "Every *conveyance* of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is *constructive notice* of the contents thereof to subsequent purchasers, mortgagees, encumbrancers or creditors." (emphasis added).

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Uneven Footing and the Enforcement of Indemnity Provisions in the Oilfield

By Jason L. Callaway and Trevor Hughes

NOT UNLIKE OTHER INDUSTRIES, companies in the oil and gas industry prefer to have their independent contractors sign a lengthy (one might say unwieldy) contract before beginning any work. This contract, frequently referred to as a master service agreement (MSA) or similar title, binds the contractor to perform some currently unspecified work for the company for an unspecified price, all of which is to be agreed upon later through a work order.[1] The purpose of these MSAs is to make it so any future work will be subject to the same general terms and conditions, leaving agreement about specific work to future negotiation.[2] As a result, MSAs tend to be filled with the types of contract provisions that are only ever of interest to lawyers: termination, *force majeure*, waiver, assignment, insurance, etc., etc.

One of these clauses deserves a second look: the indemnity provision. Or, more specifically, the part of the indemnity provision that requires a contractor to indemnify the company for the company's negligent or intentional actions. These provisions are usually written in the finest legalese – sentences that take up half a page, more punctuation than you know what to do with, etc. – but can be boiled down as follows: "Contractor agrees to indemnify Company against all claims for damages asserted against Company that are in any way related to this agreement regardless of who may be at fault and even though Company may have caused the damages."[3]

Before diving into why these indemnity provisions need another look, some brief background is in order. Generally speaking, an indemnity agreement is one where a party "engages to save another from a legal consequence of the conduct of one of the parties, or of some other person."[4] Oklahoma law recognizes the validity of these kinds of agreements.[5] However, the law takes a dim view of any attempt to require one party to indemnify another party for the other's own negligence. Those indemnity provisions are "strictly construed," and "[t]o be enforceable, such an agreement must be 'unequivocally clear from an examination of the contract.'"[6] Additionally, the indemnity agreement must have been made as part of an "arm's-length transaction between parties of equal bargaining power," and the provision cannot violate public policy.[7] If these provisions are so hard to enforce, you may ask yourself, "Why do these indemnity provisions need another look in oilfield MSAs?"

CONFLICTING INTERPRETATIONS

Because they may not be valid at all, that's why – and they're likely in an awful lot of MSAs. Oklahoma, like many states, has a statutory prohibition against these types of indemnity provisions, 15 O.S. §221. That anti-indemnity statute states, "Any provision in a construction agreement that requires an entity … to indemnify … another entity against liability

… which arises out of the negligence or fault of the indemnitee … is void and unenforceable as against public policy."[8] The phrase that should stand out when reading that sentence is "construction agreement." A construction agreement is any agreement "for construction, alteration, renovation, repair, or maintenance of any building, building site, structure, highway, street, highway bridge, viaduct, water or sewer system, or other works dealing with construction, or for any moving, demolition, excavation, materials, or labor connected with such construction."[9]

Here's the rub when it comes to §221: No one can say for sure how it will be applied when it comes to working in the oilfield. There simply aren't that many cases interpreting the statute's language, but there is already some conflict amongst the case law that does exist. On one hand, there seems to be no real dispute the initial building of structures as part of an oil and gas operation fits within §221's meaning.[10] But what about other kinds of work done on a well site, particularly after it is operating? Here is where things get tricky.

On one hand, a federal district court in North Dakota has said that simply servicing an existing well is not covered by §221's exclusion. At issue in *Continental Resources Inc. v. Rink Construction, Inc.* was a contract to "pull apart flowline due to frozen choke/unthaw and unblock flowline/bleedoff casing pressure" at a producing well.[11] In the process of completing the work, one of the defendant's employees was injured, and he subsequently sued Continental, the well's owner and operator.[12] Continental sought indemnity from the defendant, Rink Construction, based on the terms of the MSA; Rink sought to avoid indemnity under §221, arguing the agreement was a "construction agreement."[13] The court agreed with Continental, holding the agreement was for "repair and maintenance on an oil and gas well" and "d[id] not call for any construction activities."[14] It found Colorado's anti-indemnity provision to be similar to Oklahoma's and therefore gave weight to case law interpreting Colorado's provision to exclude operation of a well site from the meaning of "construction agreement."[15] The court's holding in *Rink* represents a likely interpretation of §221 and one that would exclude a substantial amount of work done in the oilfield other than the actual erection of structures.

On the other hand, you have a case like *BNSF Railway Company v. Morrison Grain & Ag Services, Inc.* that dealt with a lease contract, not in the oilfield context. Plaintiff BNSF agreed to lease defendant Morrison Grain a specific parcel of land for the latter's operation of a grain and fertilizer facility.[16] The lease included an indemnity provision requiring Morrison Grain to indemnify BNSF for BNSF's own negligence, a provision that was tested following a fatal train accident involving a Morrison Grain employee.[17] The court, in analyzing the issue, focused on §221's inclusion of the "maintenance of any building, building site, [or] structure" within the meaning of "construction agreement." With that language in mind, the court concluded the lease, which generally required Morrison Grain to keep the property in good condition and permitted it to use and occupy a building, fit within §221.[18] While the court ultimately did not void the indemnity provision in *Morrison Grain*,[19] its interpretation of the statute appears much more liberal than the one in *Rink*. It is not hard to imagine a court following *Morrison Grain* concluding the work done in *Rink*, which could be considered "maintenance" to a "structure" to be within the meaning of "construction agreement" in §221.

Here's the rub when it comes to §221: No one can say for sure how it will be applied when it comes to working in the oilfield.

A WIDER PERSPECTIVE

You may now be asking yourself how other states handle this same issue and if that may shed some light on this issue. The answer is, unfortunately, still complicated. As with so many areas of law, many states have adopted anti-indemnity statutes like §221, but few are identical.[20] A couple of states, such as Illinois and Nebraska, have statutes that are substantially similar to §221.[21]

Looking at decisions from these states offers some potential guidance, though not always uniform. Nebraska case law, for example, teaches that a contract for the repair and repainting of underground storage tanks is subject to that state's anti-indemnity statute,[22] but an ordinary contract for commercial property management is not subject to the statute even where the contract includes building maintenance.[23] Cases applying Illinois's anti-indemnity statute have held that a rental contract for equipment used at a construction site was not within that statute's reach because, "A contract 'for' construction does not mean a contract 'about,' 'related to,' or 'in connection with' construction."[24] The case law of these states may offer some help in case-specific situations, but they are not always useful for extrapolating any type of overarching guidance in the context of the energy industry.

What makes the issue more difficult for Oklahoma's energy companies is that many of the nearby states where exploration and production are occurring have different systems, and one, in particular, deserves special mention. Texas has adopted the Texas Oilfield Anti-Indemnity Act (TOAIA), which states that any provision in "an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral is void" if it would indemnify a party against that party's own liability.[25] However, the TOAIA has a specific exclusion to its operation: It "does not apply to an agreement that provides for indemnity if the parties agree in writing that the indemnity obligation will be supported by liability insurance coverage."[26] In other words, a company *can* require a contractor to indemnify the company for the company's own negligence as long as the parties agree the indemnity is secured by insurance and certain other requirements are met. Interestingly, whether either party obtains insurance appears to be immaterial; what matters is the agreement to obtain insurance.[27]

How this very different statutory structure affects Oklahoma companies and contractors should not be taken lightly. As discussed at the beginning of this article, companies typically draft their MSAs for use with all contractors without specifying where the work will be done. Thus, companies doing work in Texas may choose to take advantage of the TOAIA's exception and require contractors to purchase insurance covering the company's negligence, even though that provision may be void outside of Texas. That, in turn, leads to what is certain to be all of our fondest hopes: pinning a client's position in litigation on the uncertain outcome of the court's conflict of laws analysis. There have now been numerous decisions where various courts have had to address whether Texas law or the law of some other state applies in order to determine whether an indemnity provision is valid.[28] While we could wish for uniformity in the results of these cases, our own review of several of these cases has shown that consensus is decidedly lacking.

AN EXAMPLE

Below is an example of an indemnity provision that likely would not run afoul of §221's provisions:

> Indemnity in Favor of Company, by Contractor:
> To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Company, its agents, consultants, officers, directors, and employees ("the Indemnified Parties") … from and against *any and all claims, damages, losses, and expenses*, of whatever kind or nature, occurring *at any time, including but not limited to attorney's fees, expert fees, and any costs* incident thereto, which the Indemnified Parties may suffer or incur by reason of *bodily injury*, including death, to any person or persons, or by *reason of damage to or destruction of property including the loss of use thereof*, arising out of or connected to the Work to be provided pursuant to this MSA, *except to the extent of any act, omission, or negligence of any of the Indemnified Parties as stated above*.

This language identifies 1) the persons or entities to be indemnified, 2) the risks of loss included, 3) the time frame and 4) the scope or applicability of the provision. Most importantly for purposes of §221, the language specifically excludes from the scope of coverage any damage caused by the negligence of the persons or entities to be indemnified. The authors recognize that very few companies possessing negotiating power over their contractors are

likely to resort to such a "limited" indemnity provision, but it is that very unwillingness that could lead to a complete loss of indemnity if a broader provision is used.

CONCLUSION

So how are we to counsel clients when they ask whether a particular indemnity provision will be void under §221? The answer is carefully, as always. With the law uncertain, the prudent course would be to assume the courts' interpretation will be unfriendly to your client – operators should assume indemnity provisions will always be stricken down, while contractors should assume they will always be upheld. Then, to paraphrase George Will, you will either be proven right or pleasantly surprised.[29]

If truly put under the gun and forced to choose one interpretation or the other in the usual indemnity agreement, we think Oklahoma's courts will eventually adopt a more liberal interpretation of §221 as applied to oil and gas cases. As discussed at the beginning of this article, Oklahoma law requires any agreement to indemnify for the indemnitee's own negligence to be clearly evidenced and subject to strict construction. That evidences a general disapproval of such agreements, and §221 appears to put the Legislature's force behind that disapproval in the context of construction agreements. Given that, we would be unsurprised to see Oklahoma's appellate courts adopt a broader, more expansive interpretation of §221.

In the meantime, we will simply have to live with uncertainty until a few more of these cases work their way through to decision.[30]

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ENDNOTES

1. *Cf. Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778, 787 n.6 (5th Cir. 2009) (noting this type of two-stage agreement is common in the oil and gas industry).
2. *Cf. Higby Crane Servs., LLC v. Nat'l Helium, LLC*, 703 Fed. Appx. 687, 692 (10th Cir. 2017) "The purpose of the MSA is to supply the 'general terms and conditions' governing any future contracts into which the parties may enter."
3. Readers may refer to *JP Energy Mktg., LLC v. Commerce & Indus. Ins. Co.*, 2018 OK CIV APP 14, ¶30, 412 P.3d 121, 130, for two examples of such provisions.
4. 15 O.S. §421.
5. *Fretwell v. Prot. Alarm Co.,* 1988 OK 84, 764 P.2d 149, 153.
6. *Estate of King v. Wagoner Cty. Bd. of Cty. Comm'rs*, 2006 OK CIV APP 118, ¶50, 146 P.3d 833, 844 (quoting *Fretwell*, 764 P.2d at 153).
7. *Am. Energy-Permian Basin, LLC v. ETS Oilfield Servs., LP*, 2018 OK CIV APP 44, ¶18, 417 P.3d 1282, 1287 (quoting *Transpower Constructors v. Grand River Dam Auth.,* 905 F.2d 1413, 1420 (10th Cir. 1990)).
8. 15 O.S. §221(B).
9. *Id.* §221(A).
10. *See, e.g., JP Energy*, 2018 OK CIV APP 14, at ¶30 (discussing contracts to build a new pipeline); *BITCO Gen. Ins. Corp. v. Commerce & Indus. Ins. Co.*, CIV-15-206-M, 2017 WL 835197, at *1 (W.D. Okla. March 2, 2017) (same).
11. *Continental Resources Inc. v. Rink Construction, Inc.,* 352 F. Supp. 3d 928, 934 (D.N.D. 2018).
12. *Id.* at 931.
13. *Id.* at 933.
14. *Id.* at 934.
15. *Id.* at 934-935 (citing *Williams v. Inflection Energy, LLC*, No. CIV.A. 4:15-00675, 2015 WL 4952626 (M.D. Pa. Aug. 19, 2015)).
16. *BNSF Railway Company v. Morrison Grain & Ag Services, Inc.*, Case No. CIV-15-1055-SLP, 2018 WL 11373519 (W.D. Oct. 1, 2018).
17. *Id.* at *3-4.
18. *Id.* at *5.
19. The lease in question predated the passage of §221, and the court found the statute was not retroactive. *Id.* at *6.
20. *See JP Energy*, 2018 OK CIV APP 14, at ¶30 (citing Dean B. Thomson & Colin Bruns, "Indemnity Wars: Anti-Indemnity Legislation Across the Fifty States," 8 *J. Amer. College of Constr. Lawyers* 1, 1 (August 2014)).
21. 740 Ill. Comp. Stat. Ann. 35/1; Neb. Rev. Stat. Ann. §25-21,187.
22. *Anderson v. Nashua Corp.,* 251 Neb. 833, 837, 560 N.W.2d 446, 449 (1997).
23. *Kuhn v. Wells Fargo Bank of Nebraska, N.A.,* 278 Neb. 428, 446, 771 N.W.2d 103, 119 (2009).
24. *Wilda v. JLG Indus., Inc.,* 470 F. Supp. 3d 770, 802 (N.D. Ill. 2020).
25. Tex. Civ. Prac. & Rem. Code Ann. §127.003 (West).
26. Tex. Civ. Prac. & Rem. Code Ann. §127.005 (West).
27. *See Nabors Corp. Servs., Inc. v. Northfield Ins. Co.*, 132 S.W. 3d 90, 96-97 (Tex. Ct. App. – Houston 2004).
28. *E.g., Cannon Oil & Gas Well Servs., Inc. v. KLX Energy Servs., L.L.C.,* 20 F.4th 184, 186 (5th Cir. 2021) (comparing Texas and Wyoming law); *Chesapeake Op., Inc. v. Nabors Drilling USA, Inc.,* 94 S.W.3d 163 (Tex. Ct. App. – Houston 2002) (comparing Texas and Louisiana law).
29. The full quote attributed to Mr. Will is, "The nice part about being a pessimist is that you are constantly being either proven right or pleasantly surprised."
30. It's worth noting that further ambiguity remains for exploration. No case addressing §221 has addressed what the term "structure" means in context, for example. This is particularly relevant in the oilfield, where opinions may differ as to whether something is a "structure" or is, instead, mere equipment or machinery.

NOTICE OF PETITION FOR REINSTATEMENT

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF EMMA ARNETT, SCBD # 7236 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., ch. 1, app. 1-A, that a hearing will be held to determine if Emma Arnett should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **FRIDAY, JUNE 3, 2022.** Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

30th Annual
Patrick A. Williams
CRIMINAL DEFENSE INSTITUTE & OCDLA ANNUAL MEETING

JUNE 23 & 24
HARD ROCK HOTEL & CASINO
TULSA, OK

The ***Oklahoma Criminal Defense Lawyers Association*** proudly presents the **30th Annual *Patrick A. Williams* Criminal Defense Institute & OCDLA Annual Meeting.**

This year, the OCDLA is excited to have nationally recognized trial lawyer, lecturer, and author **LARRY POZNER** as our keynote presenter. Mr. Pozner will present his ***Pozner on Cross - The Chapter Method*** in 2 sections spanning both days of the institute.

The OCDLA awards presentation & Annual Meeting will take place on Thursday evening of the Institute, along with a happy hour. Awards to be given are:

The Clarence Darrow Award, Thurgood Marshall Appellate Advocacy Award & Lord Thomas Erskine Award, Jack D. Pointer Criminal Defense Advocacy Award

Cutoff date for nominations is June 3, 2022 @ 5:00pm.
For OCDLA information, awards criteria & past award winners, please visit **www.ocdlaoklahoma.com**

Please send nominations to:

Mail: **OCDLA**
PO Box 2272
OKC, OK 73101-2272

Email: **bdp@for-the-defense.com**

Fax: **405-212-5024**

2022 CRIMINAL DEFENSE INSTITUTE

(FULL AGENDA AVAILABLE at www.ocdlaoklahoma.com)

THURSDAY, JUNE 30, 2022

- **Use of the Evidence Code** - *Debbie Maddox, Lawton, OK*
- **Overview of Mental Illness & Racial Bias in Mental Health Evaluations**
- **Gathering, Understanding & Use of Military Records** - *Art Cody, Veteran Advocacy NJ*
- **Ethical Issues Arising From Pregnancy & Drug Use/Felony Child Neglect** - *NAW New York*
- **Financial Burdens On Your Client** - *Tim Laughlin, Executive Director OIDS*
- **POZNER ON CROSS-THE CHAPTER METHOD** - *Larry Pozner - Denver, CO*

FRIDAY, JULY 1, 2022

- **POZNER ON CROSS-THE CHAPTER METHOD** - ***Larry Pozner - Denver***
- **McGirt Update** - *Robert Don Gifford, Oklahoma City*
- **DUI Issues & Case Update** - *Edge Law Firm & Hunsucker Legal Group*

Registration Fees (Awards Dinner Included)

-OCDLA Member	_____	$ 275.00
-Non Member	_____	$ 325.00
-Registration after June 24th	_____	$ 300.00 (OCDLA Member)
	_____	$ 350.00 (Non Member)
-Printed Materials	_____	$ 40.00
-	_____	
TOTAL:	_____	

Name: _____ Bar #: _____

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MCLE Credit

- **OK - 13 Hours, includes 2 hour ethics***

LOCATION

The Hard Rock Hotel has a room rate of **$136.00** for the CDI. This rate is good until **May 24th**. For room reservations, please call **1-918-384-7800** or online @ ***www.hardrockcasinotula.com.*** If calling, reference the **Oklahoma Criminal Defense Lawyers Association** or visit OCDLA website for direct link.

Visit *www.OCDLAOKLAHOMA.com* to register or mail this ad with payment to:
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FOR MORE INFO: Email: *bdp@for-the-defense.com* or call the OCDLA: 405-212-5024

Nominate Someone Who Deserves to be Honored

By LeAnne McGill

EACH YEAR AT THE ANNUAL Meeting, the Oklahoma Bar Association proudly recognizes deserving lawyers and organizations that are making a difference in our community. These awards are bestowed upon worthy individuals and entities for their hard work in public service, leadership and service to our profession. **That is where you come in!** I am asking each of you to make it a priority to look among your peers, search your legal associations and contact local bar members to seek out those who should be recognized for their efforts. It only takes a few minutes for you to fill out a nomination form for one of these awards. And I can tell you first-hand how meaningful the awards are to the chosen recipients.

To encourage nominations, the Awards Committee has streamlined the process to make it as simple as possible. The designated awards are listed below, along with a short summary of the original honoree of the award. Anyone can submit a nomination, and anyone can be nominated. No specific form is required, and the nominations can be as short as a one-page letter but cannot exceed five single-sided 8 ½ x 11 pages. You can email, fax or mail the nominations to the Awards Committee at the information below. The deadline for the nominations is Friday, July 1 at 5 p.m. Visit www.okbar.org/awards for more information.

Please spread the word to your colleagues and friends about the awards process and encourage them to submit a nomination. Writing a nomination letter for someone is an act of kindness that will cost you minimal time but will make a meaningful difference to those who are recognized.

ABOUT THE AUTHOR

LeAnne McGill is an attorney in private practice in Edmond. She serves as Awards Committee chairperson.

NOMINATION RULES AND TIPS

The **deadline is 5 p.m. Friday, July 1**, but get your nomination in EARLY! Nominations, complete with all supporting material, MUST be received by the deadline. Submissions or supporting material received after the deadline will not be considered.

Length of nomination is a maximum of five 8 ½ x 11-inch, one-sided pages, including supporting materials and the form, if used. No exceptions.

Make sure the name of the person being nominated and the person (or organization) making the nomination is on the nomination.

If you think someone qualifies for awards in several categories, pick one award and only do one nomination. The OBA Awards Committee may consider the nominee for an award in a category other than one in which you nominate that person.

Submission options (pick one):

1) email: awards@okbar.org (you will receive a confirmation reply);
2) fax: 405-416-7089;
3) mail: OBA Awards Committee, P.O. Box 53036, Oklahoma City, OK 73152.

Visit www.okbar.org/awards for the nomination form if you want to use one (not required), history of previous winners and tips for writing nominations.

AWARDS

OUTSTANDING COUNTY BAR ASSOCIATION AWARD – for meritorious efforts and activities
2021 Winners: Bryan County Bar Association and Tulsa County Bar Association

HICKS EPTON LAW DAY AWARD – for individuals or organizations for noteworthy Law Day activities
Not awarded in 2021

GOLDEN GAVEL AWARD – for OBA committees and sections performing with a high degree of excellence
2021 Winner: OBA Women in Law Committee

LIBERTY BELL AWARD – for nonlawyers or lay organizations for promoting or publicizing matters regarding the legal system
2021 Winner: Carol A. Manning, Oklahoma City

OUTSTANDING YOUNG LAWYER AWARD – for a member of the OBA Young Lawyers Division for service to the profession
2021 Winner: Jordan Haygood Coltrane, Oklahoma City

EARL SNEED AWARD – for outstanding continuing legal education contributions
2021 Winner: Chad Kelliher, Oklahoma City

AWARD OF JUDICIAL EXCELLENCE – for excellence of character, job performance or achievement while a judge and service to the bench, bar and community
2021 Winner: Judge Allen Welch, Oklahoma City

FERN HOLLAND COURAGEOUS LAWYER AWARD – to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession
Not awarded in 2021

OUTSTANDING SERVICE TO THE PUBLIC AWARD – for significant community service by an OBA member or bar-related entity
2021 Winner: Oklahoma City Association of Black Lawyers

AWARD FOR OUTSTANDING PRO BONO SERVICE – by an OBA member or bar-related entity
2021 Winner: Stephen K. Newcombe, Lawton

JOE STAMPER DISTINGUISHED SERVICE AWARD – to an OBA member for long-term service to the bar association or contributions to the legal profession
2021 Winner: David K. Petty, Guymon

NEIL E. BOGAN PROFESSIONALISM AWARD – to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession
2021 Winner: Justice Noma D. Gurich, Oklahoma City

JOHN E. SHIPP AWARD FOR ETHICS – to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest ethical standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession
2021 Winner: James R. Webb, Yukon

ALMA WILSON AWARD – for an OBA member who has made a significant contribution to improving the lives of Oklahoma children
2021 Winner: Mark B. McDaniel, Oklahoma City

TRAILBLAZER AWARD – to an OBA member or members who by their significant, unique visionary efforts have had a profound impact upon our profession and/or community and in doing so have blazed a trail for others to follow.
2021 Winner: Lee Slater, Oklahoma City

INDIVIDUALS FOR WHOM AWARDS ARE NAMED

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

HICKS EPTON – While working as a country lawyer in Wewoka, attorney Hicks Epton decided that lawyers should go out and educate the public about the law in general, and the rights and liberties provided under the law to American citizens. Through the efforts of Mr. Epton, who served as OBA president in 1953, and other bar members, the roots of Law Day were established. In 1961, the first of May became an annual special day of celebration nationwide designated by a joint resolution of Congress. The OBA's Law Day Award recognizing outstanding Law Day activities is named in his honor.

FERN HOLLAND – Fern Holland's life was cut tragically short after just 33 years, but this young Tulsa attorney made an impact that will be remembered for years to come. Ms. Holland left private law practice to work as a human rights activist and to help bring democracy to Iraq. In 2004 she was working closely with Iraqi women on women's issues when her vehicle was ambushed by Iraqi gunmen, and she was killed. The Courageous Lawyer Award is named as a tribute to her.

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

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

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

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

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

Sign up to anonymously answer a pro bono legal question for a low-income Oklahoman. A little bit of your time can make a big difference.

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OKLAHOMA FREE LEGAL ANSWERS IS A PROJECT OF:
Oklahoma Bar Association,
Oklahoma Access to Justice Commission
and American Bar Association

Celebrate Diversity With an Award Nomination

THE DIVERSITY COMMITTEE is now accepting nominations for the Ada Lois Sipuel Fisher Diversity Awards to be presented in November. The three award categories are members of the judiciary, licensed attorneys and organizations that have championed the cause of diversity. All nominations must be received by **Monday, August 1, 2022**.

For additional information, please contact Diversity Committee Chair Telana McCullough at 405-522-9528 or visit www.okbar.org/diversityawards.

SELECTION CRITERIA

One or more diversity awards will be given to an organization that has an office in the state of Oklahoma and has met one or more of the following criteria:

Developed and implemented an effective equal opportunity program as demonstrated by the organization's commitment to the recruitment, retention and promotion of individuals of underrepresented populations regardless of race, ethnic origin, gender, religion, age, sexual orientation, disability or any other prohibited basis of discrimination;
Promoted diversity initiatives that establish and foster a more inclusive and equitable work environment;
Demonstrated continued corporate responsibility by devoting resources for the improvement of the community at large; and
Exhibited insightful leadership to confront and resolve inequities through strategic decision-making, allocation of resources and establishment of priorities.

Two or more diversity awards will be given to licensed attorneys, and an additional award will be given to a member of the Oklahoma judiciary who has met one or more of the following criteria:

Demonstrated dedication to raising issues of diversity and protecting civil and human rights;
Led the development of innovative or contemporary measures to fight discrimination and its effects;
Fostered positive communication and actively promoted inter-group relations among populations of different backgrounds;
Participated in a variety of corporate and community events that promoted mutual respect, acceptance, cooperation or tolerance and contributed to diversity awareness in the community and workplace; and
Reached out to a diverse array of attorneys to understand firsthand the experiences of someone from a different background.

NOMINATIONS AND SUBMISSIONS

Include name, address and contact number of the nominee.
Describe the nominee's contributions and accomplishments in the area of diversity.
Identify the diversity award category (organization, licensed attorney or member of the judiciary) in which the nominee is being nominated.
The submission deadline is Monday, Aug. 1.
Submissions should not exceed five pages in length.
Submit nominations to diversityawards@okbar.org.
Information on past award winners can be found at www.okbar.org/diversityawards.

Ada Lois Sipuel Fisher, Photo Credit: Courtesy Western History Collections, University of Oklahoma Libraries, Ada Lois Sipuel Fisher 3

ADA LOIS SIPUEL FISHER leaves a legacy that impacted the legal profession and the Civil Rights Movement. Born in Chickasha, she graduated in 1945 with honors from Langston University, which did not have a law school. Segregation existed and Black people were prohibited from attending white state universities. Fisher decided to apply for admission to the OU College of Law to challenge the state's segregation laws and to accomplish her life-long goal of becoming a lawyer. State statutes prohibited the college from accepting her. A lawsuit was filed that resulted in a three-year legal battle. After an unfavorable ruling by the Oklahoma Supreme Court, an appeal was filed with the U.S. Supreme Court. Another barrier was erected with the creation of a separate law school thrown together in five days exclusively for her to attend. She refused to attend on the grounds the new school could not provide a legal education equal to OU's law school. A state court ruled against her, and the state Supreme Court upheld the decision. Ms. Fisher's lawyers planned to again appeal to the U.S. Supreme Court, but Oklahoma's attorney general declined to return to Washington, D.C., to argue the case. She was admitted to the OU College of Law on June 18, 1949, and graduated in August 1951.

SOLO RETURNS IN 2022!

JUNE 23-25 | CHOCTAW CASINO RESORT | DURANT

It's back and better than ever! Mark your calendars now for June 23 – 25 when the OBA Solo & Small Firm Conference returns to the Choctaw Casino Resort in Durant. Get all your MCLE (including 2 hours of ethics) for the year during this three-day event in a fun, relaxed and informal setting.

This year's CLE offerings will include more sessions than ever before – all relevant to the solo and small firm practitioner. Plus, celebrate the summer! Bring the family to this world-class resort offering many opportunities for your spouse or other family members. Leisure activities include a spa, two swimming pools, first run movies, bowling and arcade games.

Registration is now open. Visit the conference website at www.okbar.org/solo for the complete schedule plus online conference and hotel registration. Be sure to register using the OBA hotel room block to receive the discounted conference rate.

Don't miss out! The early-bird registration deadline ends June 6. This conference is expected to be booked to maximum capacity, so register today!

OKLAHOMA BAR ASSOCIATION
2022 SOLO
& SMALL FIRM CONFERENCE | YLD MIDYEAR MEETING
JUNE 23-25 | CHOCTAW CASINO RESORT | DURANT

A wide range of substantive law and law practice management CLE sessions are featured, with a focus on tools for and frequent challenges encountered by small firm lawyers. The conference provides social events with plenty of time to meet and network with lawyers from across the state who can provide you with advice, friendship and possible referrals. Held in conjunction with Young Lawyers Division Midyear Meeting.

ONLINE REGISTRATION
www.okbar.org/solo

MAIL FORM
CLE Registrar, P.O. Box 53036
Oklahoma City, OK 73152

FAX FORM
405-416-7092

REGISTRANT INFORMATION

Full Name: _____ OBA #: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Email: _____

Name and city as it should appear on badge if different from above:

_____

GUEST INFORMATION

Guest name: _____

Guest name: _____

Guest name: _____

Guest name: _____

Guest name: _____

FORM CONTINUED ON NEXT PAGE – INCLUDE BOTH PAGES WHEN FAXING/MAILING

STANDARD RATES FOR OBA MEMBERS
admitted before Jan. 1, 2020

	CIRCLE ONE
Early Attorney Only Registration **(on or before June 6)**	**$250**
Late Attorney Only Registration **(on or after June 7)**	**$300**
Early Attorney and One Guest Registration **(on or before June 6)**	**$350**
Late Attorney and One Guest Registration **(on or after June 7)**	**$400**
Early Family Registration **(on or before June 6)**	**$400**
Late Family Registration **(on or after June 7)**	**$450**

SPECIAL RATES FOR OBA MEMBERS OF TWO YEARS OR LESS
admitted on or after Jan. 1, 2020

	CIRCLE ONE
Early Attorney Only Registration **(on or before June 6)**	**$175**
Late Attorney Only Registration **(on or after June 7)**	**$200**
Early Attorney and One Guest Registration **(on or before June 6)**	**$275**
Late Attorney and One Guest Registration **(on or after June 7)**	**$300**
Early Family Registration **(on or before June 6)**	**$325**
Late Family Registration **(on or after June 7)**	**$350**

PAYMENT INFORMATION

Make check payable to the Oklahoma Bar Association and mail registration form to CLE REGISTRAR, P.O. Box 53036, Oklahoma City, OK 73152; or fax registration form to 405-416-7092.

For payment using: ☐ VISA ☐ Mastercard ☐ Discover ☐ American Express

Total to be charged: $ _____ Credit Card #: _____ CVV: _____

Expiration Date: _____ Authorized Signature: _____

REGISTRATION AND POLICIES

CANCELATION POLICY
Cancelations will be accepted at any time on or before June 6 for a full refund; a $50 fee will be charged for cancelations made on or after June 7. **No refunds after June 13.**

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

HOTEL RESERVATIONS
Call 1-800-788-2464, press #1 and give the agent offer code OBA22 for the group rate. The group rate is available through June 6.

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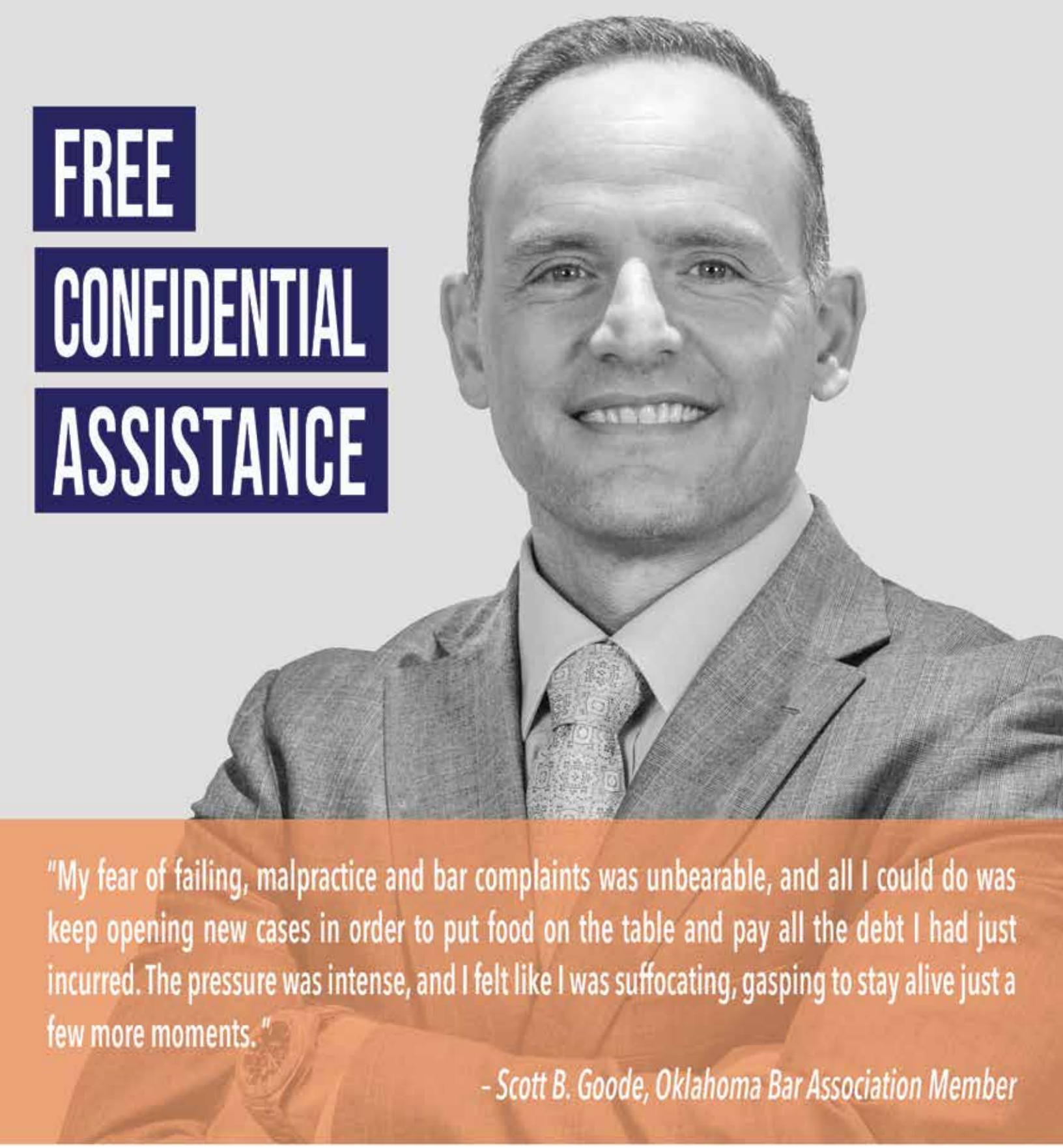
Sponsorship opportunities are still available.
Contact Mark Schneidewent at marks@okbar.org for more information.

FOR MORE INFORMATION AND TO REGISTER ONLINE, VISIT WWW.OKBAR.ORG/SOLO.



FREE CONFIDENTIAL ASSISTANCE

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- Scott B. Goode, Oklahoma Bar Association Member

Get help addressing stress, depression, anxiety, substance abuse, relationships, burnout, health and other personal issues through counseling, monthly support groups and mentoring or peer support.

Oklahoma Bar Association
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THE SOVEREIGNTY SYMPOSIUM 2022

The Earth

Presented by the Oklahoma Supreme Court and the Sovereignty Symposium, Inc.

June 8 - 9, 2022 | Skirvin Hilton Hotel | Oklahoma City, Oklahoma

Reception
June 9, 2022, 6:30 p.m. | First Americans Museum | Oklahoma City, Oklahoma

Wednesday Morning | June 8, 2022

4.0 CLE credits / 0 ethics included

7:30 - 4:30 Registration (Honors Lounge)

8:00 - 8:30 Complimentary Continental Breakfast

10:30 - 10:45 Morning Coffee / Tea Break

12:00 - 1:15 Lunch on your own

8:30 - 11:45 PANEL A: CRIMINAL LAW | GRAND BALLROOMS A-F

CO-MODERATORS:

RETA STRUBHAR, Judge (Ret.), Oklahoma Court of Criminal Appeals

ARVO MIKKANEN, *(Kiowa/Comanche),* Assistant United States Attorney and Tribal Liaison, Western District of Oklahoma

HONORABLE DAVID HILL, Principal Chief of the Muscogee Nation

HONORABLE BILL ANOATUBBY, Governor of the Chickasaw Nation

HONORABLE GARY BATTON, Chief of the Choctaw Nation

HONORABLE LEWIS JOHNSON, Chief of the Seminole Nation

HONORABLE CHUCK HOSKIN JR., Principal Chief of the Cherokee Nation

RYAN LEONARD, Edinger, Leonard & Blakely, Special Counsel to Governor Kevin Stitt

STEPHEN GREETHAM, Senior Counsel to the Chickasaw Nation

SARA HILL, Attorney General of the Cherokee Nation

The Sovereignty Symposium was established to provide a forum in which ideas concerning common legal issues could be exchanged in a scholarly, non-adversarial environment. The Supreme Court espouses no view on any of the issues, and the positions taken by the participants are not endorsed by the Supreme Court.

Artwork: Kenneth Johnson

8:30 - 11:45 PANEL B: SIGHTS, SOUNDS AND SYMBOLS | CENTENNIAL ROOMS 1-3

(THIS PANEL CONTINUES FROM 3:00 - 6:00)

CO-MODERATORS:
WINSTON SCAMBLER, Collector of Native American Art
JAY SCAMBLER, Collector of Native American Art

GREG BIGLER, *(Euchee),* Judge (Ret.), Muscogee (Creek) Nation District Court
JAY SHANKER, Crowe & Dunlevy
VANESSA JENNINGS, *(Kiowa/Gila River Pima),* Artist
JERI RED CORN, *(Caddo),* Artist
KENNETH JOHNSON, *(Muscogee/Seminole),* Contemporary Jewelry Designer and Metalsmith

8:30 - 11:45 PANEL C: AGRICULTURAL LAW | CRYSTAL ROOM

MODERATOR:
JANIE HIPP, *(Chickasaw),* General Counsel, United States Department of Agriculture

ZACH DUCHENEAUX, *(Cheyenne River Sioux)*, Administrator, Farm Service Agency, USDA
HEATHER DAWN THOMPSON, *(Cheyenne River Sioux),* Director, Office of Tribal Relations, USDA
MARTY MATLOCK, *(Cherokee),* Senior Advisor for the Secretary of Agriculture, USDA
BLAKE JACKSON, *(Choctaw),* Attorney/Advisor, United States Department of Agriculture
CARLY GRIFFITH HOTVEDT, Director of Tribal Enterprise, Indigenous Food and Agriculture Initiative, University of Arkansas
LORETTA BARRETT ODEN, *(Citizen Potawatomi),* Chef and Consultant
JERRY MCPEAK, Representative (Ret.), Oklahoma House of Representatives

12:00 TRIBAL LEADERS' AND DIGNITARIES' LUNCHEON | VENETIAN ROOM

(THIS EVENT IS BY INVITATION ONLY)

MASTER OF CEREMONIES: RICHARD DARBY, Chief Justice, Oklahoma Supreme Court
INVOCATION: WILLIAM WANTLAND, (*Seminole, Chickasaw and Choctaw)*, Bishop (Ret.) of the Episcopal Church
GREETING: JAMES R. HICKS, President, Oklahoma Bar Association

Wednesday Afternoon

4 CLE credits / 0 ethics included
2:45 - 3:00 Tea / Cookie Break for All Panels

1:00 - 2:45 OPENING CEREMONY AND KEYNOTE ADDRESS | GRAND BALLROOMS A-F

MASTER OF CEREMONIES: STEVEN TAYLOR, Justice (Ret.), Oklahoma Supreme Court
CAMP CALL: GORDON YELLOWMAN, *(Cheyenne),* Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes
PRESENTATION OF FLAGS
HONOR GUARD: KIOWA BLACK LEGGINGS SOCIETY
SINGERS: SOUTHERN NATION
INVOCATION: KRIS LADUSAU, Reverend, Dharma Center of Oklahoma
INTRODUCTION OF KEYNOTE SPEAKER:
SPEAKER: JANIE HIPP, General Counsel, USDA
WELCOME: RICHARD DARBY, Chief Justice, Oklahoma Supreme Court
PRESENTATION OF AWARDS: YVONNE KAUGER, Justice, Oklahoma Supreme Court
MEMORIAL AND HONOR SONGS: SOUTHERN NATION
CLOSING PRAYER: ROBERT E. HAYES JR., Bishop (Ret.), United Methodist Church

3:00 - 6:00 PANEL A: CRIMINAL LAW | GRAND BALLROOMS A-F

CO-MODERATORS:
RETA STRUBHAR, Judge (Ret.), Oklahoma Court of Criminal Appeals
ARVO MIKKANEN, *(Kiowa/Comanche),* Assistant United States Attorney and Tribal Liaison, Western District of Oklahoma

CASEY ROSS, *(Cherokee),* Director, American Indian Law & Sovereignty Center, Clinical Professor of Law, University General Counsel, Oklahoma City University
JONODEV CHAUDHURI, *(Muscogee),* Ambassador, Muscogee Nation
BOB RAVITZ, Oklahoma County Public Defender
TRENT SHORES, GableGotwals
JACK THORP, District Attorney, District 27
JARI ASKINS, Administrative Director of the Courts
NOMA GURICH, Justice, Oklahoma Supreme Court
LINDSAY ROBERTSON, Faculty Director, Center for the Study of American Indian Law and Policy, University of Oklahoma College of Law
MARTHA BARKER, *(Quapaw/Osage)*
JEAN ANN RAMSEY, *(Quapaw/Osage)*

3:00 - 6:00 PANEL B: SIGHTS, SOUNDS AND SYMBOLS | CENTENNIAL ROOMS 1-3

CO-MODERATORS:
WINSTON SCAMBLER, Collector of Native American Art
JAY SCAMBLER, Collector of Native American Art

MARK PARKER, Dean, Schools of Music & Theatre, Oklahoma City University
JEROD IMPICHCHAACHAAHA' TATE, *(Chickasaw),* Composer and Pianist
ROY BONEY, *(Cherokee),* Language Program Manager, Cherokee Nation
JAMES PEPPER HENRY, *(Kaw/Muscogee)*, Director and Chief Operating Officer, American Indian Cultural Center Foundation
HARVEY PRATT, *(Cheyenne/Arapaho),* Artist, Designer of the Smithsonian's National Native American Veterans Memorial

3:00 - 6:00 PANEL C: AGRICULTURAL LAW | CRYSTAL ROOM

(A CONTINUATION OF THE MORNING PANEL)

3:00 - 6:00 PANEL D: SOVEREIGNTY IN THE 21ST CENTURY: NEXT GENERATION ECONOMIC OPPORTUNITIES | CONTINENTAL ROOM

MODERATOR:
KIRKE KICKINGBIRD, *(Kiowa),* Hobbs, Straus, Dean & Walker

WILLIAM R. NORMAN JR., *(Muscogee),* Hobbs, Straus, Dean & Walker
CHARLES MORRIS, *(Otoe Missouria),* REDWIRE
MATTHEW DUCHESNE, FCC Office of Native American Affairs

THERE WILL BE A SPECIAL CONTINUATION OF THE SIGHTS, SOUNDS AND SYMBOLS PANEL FROM 6:00 P.M. TO 7:00 P.M.

THERE WILL BE A FLUTE CIRCLE LED BY TIMOTHY TATE NEVAQUAYA AND A SPECIAL ART SHOWING OF THE WORKS OF: LES BERRYHILL, BRENT GREENWOOD, NATHAN HART, VANESSA JENNINGS, KENNETH JOHNSON, MIKE LARSEN, TIMOTHY TATE NEVAQUAYA, HARVEY PRATT, JERI RED CORN, PATRICK RILEY, JAY SCAMBLER, D.G. SMALLING, ERIC TIPPECONNIC, JIM VANDEMAN, GORDON YELLOWMAN AND TERRY ZINN.

THE ARTISTS WILL BE HANDLING ANY SALES.

Thursday Morning | June 9, 2022

4.0 CLE credits / 2 ethics included
7:30 - 4:30 Registration
8:00 - 8:30 Complimentary Continental Breakfast
10:30 - 10:45 Morning Coffee / Tea Break
12:00 - 1:30 Lunch on your own

8:30 - 12:00 PANEL A: INTERTWINED ECONOMIC FUTURES | CRYSTAL ROOM

CO-MODERATORS:
RICHARD DARBY, Chief Justice, Oklahoma Supreme Court
JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

JOHN "ROCKY" BARRETT, Tribal Chairman, Citizen Potawatomi Nation
REGGIE WASSANA, Governor, Cheyenne and Arapaho Tribes of Oklahoma
MELOYDE BLANCETT, Oklahoma House of Representatives, District 78
DEBORAH DOTSON, President, Delaware Nation
TIM GATZ, Oklahoma Secretary of Transportation
GEOFFREY STANDING BEAR, Principal Chief, Osage Nation
BILL G. LANCE JR., Secretary of Commerce, Chickasaw Nation
DANA MURPHY, Commissioner, Oklahoma Corporation Commission

8:30 - 12:00 PANEL B: JUVENILE LAW AND CHILDREN'S ISSUES | CENTENNIAL ROOMS 1-3

CO-MODERATORS:
DUSTIN P. ROWE, Justice, Oklahoma Supreme Court
DEANNA HARTLEY-KELSO, Judge**,** Chickasaw Nation District Court

LAUREN VAN SCHILFGAARDE, (*San Manuel Band of Mission Indians),* Tribal Legal Development Clinic Director, UCLA School of Law
MIKE WARREN, Associate District Judge, Harmon County, Oklahoma
ELIZABETH BROWN, Associate District Judge, Adair County, Oklahoma
JENNIFER MCBEE, Special Judge, LeFlore County, Oklahoma
CHRISSI NIMMO, *(Cherokee),* Deputy General Counsel, Cherokee Nation
DEBORAH SHROPSHIRE, Director, Child Welfare Services, Oklahoma Department of Human Services

8:30 - 12:00 PANEL C: HEALTH AND WELLBEING | GRAND BALLROOMS D-F

MODERATOR:

CHRIS ANOATUBBY, Lieutenant Governor, Chickasaw Nation

KENT SMITH, Associate Dean of American Indians in Medicine and Science, Professor of Anatomy, Oklahoma State University Center for Health Sciences

PAUL SPICER, Professor of Anthropology, University of Oklahoma

DOUG WHITE, Executive Director, Oklahoma Emergency Responders Assistance Program

CHRIS TALL BEAR, GHWIC Program Director, Southern Plains Tribal Health Board

JACQUE SECONDINE HENSLEY, Director, Office of American Indians in Medicine and Science, Oklahoma State University Center for Health Sciences

10:00 - 12:00 PANEL D: ETHICS AND A DISCUSSION OF THE CONCERNS OF STATE, FEDERAL AND TRIBAL JUDGES | GRAND BALLROOMS A-C

JOHN REIF, Justice (Ret.), Oklahoma Supreme Court

Thursday Afternoon

4.5 CLE credits / 0 ethics included

12:00 - 1:30 Lunch on your own

3:30 - 3:45 Tea / Cookie Break for All Panels

1:30 - 5:30 PANEL A: JUVENILE LAW | CENTENNIAL ROOMS 1-3

MODERATOR:

NOMA GURICH, Justice, Oklahoma Supreme Court

MIKE WARREN, Associate District Judge, Harmon County, Oklahoma

TRICIA TINGLE, Associate Director, Tribal Justice Support, Office of Justice Services, United States Department of the Interior

BEN BROWN, General Counsel, Oklahoma Office of Juvenile Affairs

PATTI D. BUHL, Director of Juvenile Justice, Office of the Attorney General, Cherokee Nation

1:30 - 5:30 PANEL B: GAMING | GRAND BALLROOMS D-F

CO-MODERATORS:

W. KEITH RAPP, Judge, Court of Civil Appeals, Division IV

MATTHEW MORGAN, Executive Officer/General Counsel, Office of Government Affairs & Partnerships, Chickasaw Nation, Chairman, Oklahoma Indian Gaming Association

E. SEQUOYAH SIMERMEYER, (*Coharie*), Chairman, National Indian Gaming Commission

ERNEST L. STEVENS JR., (*Oneida*), Chairman, National Indian Gaming Association

KYLE DEAN, Associate Professor of Economics, Director of Center for Native American & Urban Studies, Oklahoma City University

ELIZABETH HOMER, *(Osage),* Homer Law

WILLIAM NORMAN, (*Muscogee*), Hobbs, Straus, Dean & Walker

DEAN LUTHEY, GabelGotwals

D. MICHAEL MCBRIDE III, Crowe & Dunlevy

JONODEV CHAUDHURI, (*Muscogee),* Muscogee (Creek) Ambassador

1:30 - 5:30 PANEL C: EDUCATION | GRAND BALLROOMS A-C

CO-MODERATORS:

DEBORAH B. BARNES, Judge, Court of Civil Appeals, Division II

JOHN HARGRAVE, Chief Executive Officer, East Central University Foundation

JOY HOFMEISTER, Oklahoma Superintendent of Public Instruction

JAN BARRICK, Chief Executive Officer, Alpha Plus

FREIDA DESKIN, Founder and CEO, ASTEC Charter Schools

ALLISON D. GARRETT, Chancellor, Oklahoma State Regents for Higher Education

PATRICK RILEY, Artist and Educator

TREY HAYS, Teacher of Mathematics and Art, Tishomingo Elementary School

REGGIE WHITTEN, Whitten Burrage

JEFF HARGRAVE, Whitten Burrage

JOSHUA HINSON, (*Chickasaw*), Director of the Chickasaw Language Revitalization Program

ERIC TIPPECONNIC, *(Comanche),* Artist and Professor, California State University, San Marcos

GREGORY D. SMITH, Chief Judge, U.S. Court of Indian Appeals, Miami Agency**,** Justice, Pawnee Nation Supreme Court

LEORA E. COLEMAN, Educator

DAN LITTLE, Little Law Firm

FRANK WANG, President, Oklahoma School of Science and Mathematics

1:30 - 5:30 PANEL D: INTERTWINED ECONOMIC FUTURES | CRYSTAL ROOM

CO-MODERATORS:

RICHARD DARBY, Chief Justice, Oklahoma Supreme Court

JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

RACHEL MCCORMICK, Canada Consul General, Dallas

LESLIE OSBORN, Oklahoma State Labor Commissioner

MICHAEL D. DAVIS, President and CEO, Oklahoma Finance Authorities

NATHAN HART, *(Cheyenne)*, Executive Director, Department of Business at Cheyenne and Arapaho Tribes

LATASHIA REDHOUSE, *(Dine)*, AIF Director, Intertribal Agriculture Council

TOMIE PETERSON, (*Cheyenne River Sioux Tribe),* AIF Assistant Director, Intertribal Agriculture Council

VALORIE DEVOL, Devol & Associates

WAYNE GARNONS-WILLIAMS, Principal Director at Indigenous Sovereign Trade Consultancy Ltd

This agenda is subject to revision.

The Sovereignty Symposium 2022

June 8 - 9, 2022
Skirvin Hilton Hotel
Oklahoma City, Oklahoma

Name: _____ Occupation: _____

Address: _____

City: _____ State _____ Zip Code _____

Billing Address (if different from above) _____

City: _____ State _____ Zip Code _____

Nametag should read: _____

Other: _____

Email address: _____

Telephone: Office _____ Cell _____ Fax _____

Tribal affiliation if applicable: _____

Bar Association Member: Bar # _____ State _____

16.5 hours of CLE credit for lawyers will be awarded, including 2.0 hours of ethics. **NOTE:** Please be aware that each state has its own rules and regulations, including the definition of "CLE." Therefore, certain portions of the program may not receive credit in some states.

# of Persons		Registration Fee	Amount Enclosed
_____	Both Days	$295.00 *($325.00 if postmarked after May 23, 2022)*	_____
_____	June 9, 2022 only	$195.00	_____
		Total Amount	_____

We ask that you register online at **www.thesovereigntysymposium.com**. This site also provides hotel registration information and a detailed agenda. If you wish to register by paper, please mail this form to:

THE SOVEREIGNTY SYMPOSIUM, INC. The Oklahoma Judicial Center, Suite 1 2100 North Lincoln Boulevard Oklahoma City, Oklahoma 73105-4914

Presented By THE OKLAHOMA SUPREME COURT and THE SOVEREIGNTY SYMPOSIUM

Re-Energize and Save the Date

By John Morris Williams

WHEN I WAS TOLD THIS edition of the *Oklahoma Bar Journal* was focused on energy, I immediately thought of physical energy. This is probably very telling of how much I know about energy law these days. My apologies to the contributing authors for being a bit of a distraction to a very important and timely subject.

The latest data regarding the continuing fallout of the COVID-19 pandemic relates to continuing variants and very good news on the effectiveness of prevention methods and treatments. I pray we are moving into a much better place. In fact, I am counting on it as we plan for the rest of the year. My hopes have been dashed in the past, but we have had no major issues as we have cautiously moved forward with reopening and returning to in-person programming. This is mostly because OBA members are very good at taking preventive measures when necessary and have been very courteous in not placing others at risk. While these times have been challenging, OBA members have been the best in regard to safety, patience and courtesy. I want to say thank you for your kindness and creativity in making a horrible situation as good as it can be.

I consistently read articles regarding COVID-19 to stay abreast and try to keep up with what the experts are saying. If you are keeping up with this information, you probably have seen that not all the articles are on physical health. A growing body of literature is developing regarding the stress and isolation we have all suffered in the past two years. While virtual meetings appear to be a trend that will continue past the pandemic, they are not a complete substitute for the need for human interaction that most people need. The studies indicate that virtual meetings are good to exchange information but are not the best substitute for the interaction to create relationships and capture the nuances in non-verbal communications. Thus, being with people is sometimes the very best way to network and form new relationships. This seems like a no-brainer; however, we have all been retrained in the past two years to avoid this kind of interaction.

The current literature states stress and isolation are being experienced at alarming rates, resulting in physical and mental health issues. The remedy is for people to find ways to reconnect and get out as much as safely possible. As said above, we have reprogrammed ourselves to avoid in-person interactions, and many have abandoned long-practiced social interactions, such as attending religious services, participating in social events, and attending professional meetings. It is time to re-engage and re-energize!

Now for some good news. The OBA is coming back strong with events and programming that allow for in-person attendance and often with a virtual attendance component. One event that requires physical attendance is the Solo &

Now for some good news. The OBA is coming back strong with events and programming that allow for in-person attendance and often with a virtual attendance component.

Small Firm Conference. We intentionally did not try to recreate this event for virtual attendance because one of its primary purposes was to bring people together in a relaxed environment to interact (socialize) with fellow lawyers in similar practice settings. If you attended any online social events during the past two years, you may have found that they were just not the same. I personally found them a bit forced and artificial. So Solo & Small Firm Conference is a "you must be present to win" event. We will be back at the fabulous Choctaw Resort in Durant **June 23-25** with an outstanding program and really fun social events. **Save the date!**

President James Hicks and OBA staff are deep in the planning stages for the 2022 Annual Meeting. Since we are not at the point of publishing the agenda, I cannot reveal all the light and magic involved in this year's meeting. I can tell you the theme is very topical, and the speakers who have committed are nationally recognized experts. In all likelihood, there will a virtual component. Virtual attendance will not allow participants to experience the new and incredible Oklahoma City Convention Center and all the opportunities its state-of-the-art meeting and social event spaces provide. I highly recommend, if your schedule allows, that you attend this year's meeting in person. **Save the date, Nov. 2-4.**

It is time for us to come together and re-energize ourselves, build relationships and have some plain ol' fun. **SAVE THE DATES!**

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

The Practice of People Law

By Jim Calloway

THERE IS PEOPLE LAW, AND there is business/corporate law. Over the years, there has been a greater divergence in these two types of law practice focuses. But today I'm going to make the case that increasingly, these are completely different types of law practices, with different types of challenges and processes.

Some will believe this is obvious. I believe it is not only true but profound. I view it as profound because consideration of the differences should inform and impact the method of legal service delivery depending on the type of client.

So why so different?

PEOPLE LAW

The lawyer practicing people law may have a few long-term clients, but mainly represents individuals with their personal legal problems. This type of practice, by necessity, features a revolving cast of clients. Clients come in with a problem. The lawyer resolves the problem. The client pays the final bill and then becomes a former client, hopefully a satisfied former client who becomes a source of referrals for the lawyer. Many who hire lawyers are often seeking help from the lawyer with something about which they know little to nothing. And some of what they "know" is not correct. While individuals can certainly get themselves entangled in very complex legal situations, the bulk of this work can be somewhat routine. An increasing portion of this work can be delegated to subordinates or technology-automated tools. Constant marketing efforts are required to keep the practice functioning well.

BUSINESS/CORPORATE LAW

Many attorney-client relationships in this sector are long-term relationships. This complex work is often very intellectually stimulating and emotionally rewarding. This lawyer succeeds by developing deep expertise and frequently showcasing that expertise by speaking at industry events and other CLE programs. But the big difference between this and people law is the client representative. Often the outside firm is hired by corporate general counsel. A status report to another lawyer is quite different than explaining matters to a client not familiar with the system. Even if hired by a company officer, it will still likely be someone familiar with many aspects of the legal system and the firm's past experiences. While the lawyer practicing corporate/business law should be actively pursuing new engagements and new clients, much of a lawyer's billable time is devoted to working on existing clients' matters.

So, the people law client needs much more basic information on what happens next, what action should or should not be taken and how the entire process will play out. Repetition to assure the client has a clear understanding is important in many cases. By contrast, repeating items to an assistant general counsel frequently may bring a good-natured response that you seem to be padding the bill.

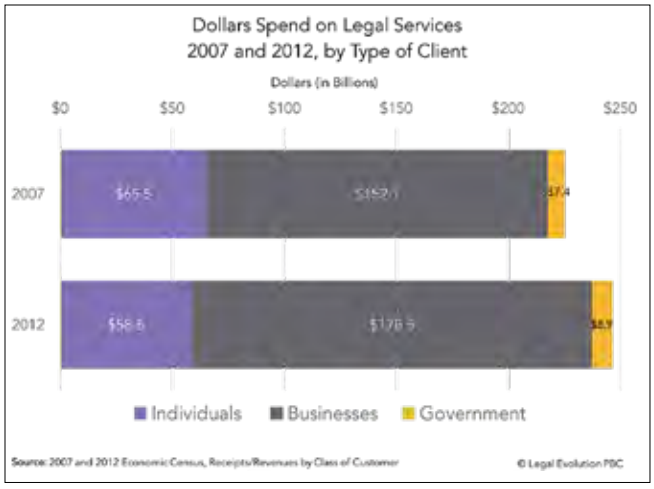
TRENDS IN PEOPLE LAW

Many of my thoughts on the shifts in practicing people law are based on the research of Professor Bill Henderson, professor of law at the Indiana University Maurer School of Law where he holds the Stephen F. Burns Chair on the Legal Profession. Professor Henderson is a great writer, and his *Legal Evolution*[1] site contains a large amount of data about the legal profession and analysis of the data.

Professor Henderson notes in his post "The Decline of the PeopleLaw Sector (037)": "Although total law firm receipts increased from $225 billion to $246 billion, [from 2007 – 2012] receipts from individuals declined by almost $7 billion. That's a staggering sum."[2]

There are several possible reasons for this. It may be that some access to justice efforts to reduce the cost of some legal matters have been effective. It may reflect significant inroads by the online legal services providers that are not attorneys. But it's inescapable that corporate and government spending on legal work increased during this period while law firm revenue from individuals declined.

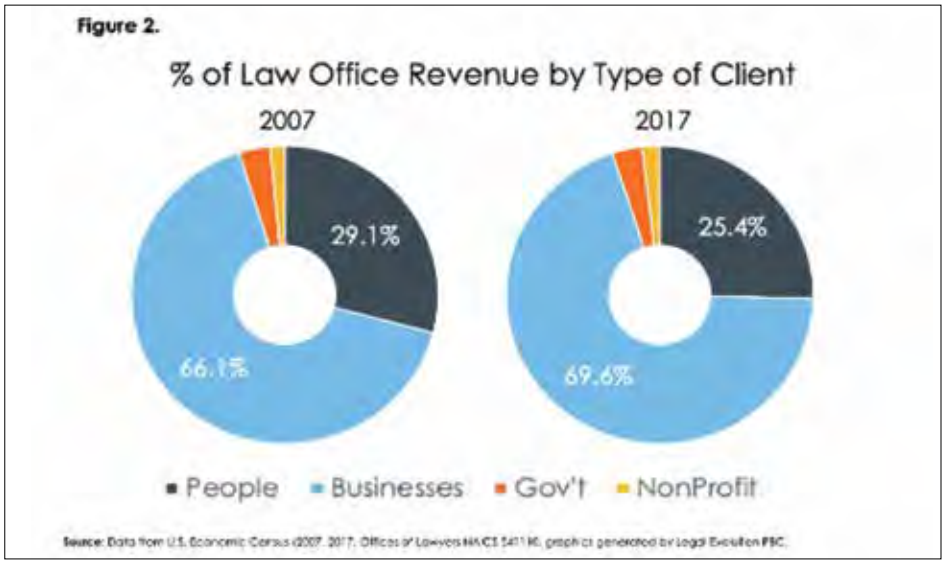
Professor Tom Sharbaugh[3] has highlighted the importance of those he calls "primary-care lawyers." In his post "In praise of the primary-care lawyer (194)," he observes some differences between urban and non-urban lawyers:



The non-urban lawyers whom I have encountered through the clinic are generally far less specialized than urban lawyers. The non-urban lawyers generally break down into two broad categories: those who do litigation of every type (personal injury, criminal, divorce, and commercial) and those who do everything else (buying and selling businesses and real estate, loans, leases, employment, tax and estate planning, etc.). Urban lawyers often belittle the skills of the non-urban lawyers, but based on my experience in both worlds, the non-urban lawyers deserve much more credit. They are the primary-care lawyers who develop recurring relationships with their clients and need to field a much broader range of questions and projects than specialists living in urban locales.[4]

I like the term "primary-care lawyers." This may be one of the biggest differences between people law and corporate/business law. Business lawyers can have a very narrow expertise, particularly if they are in a large firm where other lawyers have expertise in other areas. With people law, one must have a much broader perspective covering a wide range of substantive areas. Another medical analogy would be triage. Sometimes emergency advice is needed. Sometimes the law firm can handle the case. Sometimes the matter needs to be referred to another lawyer. Sometimes one must explain to the client the legal system doesn't offer a remedy for the harm they have suffered.

Professor Henderson's post "Eight updated graphics on the US legal services market (285)"[5] incorporates more data and reveals several trends that he says should give those of us in the profession pause. I'd encourage you to read it. Here is one of the eight graphics.



So, having considered the data, let's cover a few possible action items lawyers may want to incorporate into their people law practices.

BUILDING AN IMPROVED PEOPLE LAW PRACTICE

No doubt many lawyers already use some or most of the following ideas.

Beginning the Attorney-Client Relationship

After the lawyer has been retained and an attorney-client agreement has been executed, steps need to be taken on the underlying legal matter. But throughout the representation, we want to continue to have a client focus, not just a focus on the legal issue.

There is frequently a lot of emotion associated with many people law matters. People law involves individual clients, many of whom had no idea they would have this legal problem. Being sued, fired, arrested or foreclosed isn't planned. The client may have no idea what to do and may receive bad information and poor advice from well-meaning friends and relatives. Being evicted from your home or having a court determine who gets custody of your children are deeply personal events, and the emotion is understandable.

Empathy is an important attitude for the people lawyer. For many clients, their legal peril feels like the most challenging situation they have ever encountered, and for many it is.

For generations, lawyers have attempted to reassure their clients by saying things like, "You've been worrying about this for a long time, and now that you have retained our firm, you should try to let us worry about it while you worry about it less." That's still a good tool in today's times. You should also consider near the end of the initial interview asking the clients specifically what they are worried about and addressing the points they raise.

I think the new client should leave with several physical documents. First is a copy of the executed attorney client agreement. I also believe your law firm should prepare and distribute general client handouts about each type of matter. Part of the anxiety about the legal process is uncertainty about the future. While lawyers cannot predict the ultimate outcome, they are certainly aware of the steps ahead in the process. So, a timeline of how generally things proceed may be very helpful.

I'm all for paperless processes and handing things electronically when possible. But I think it's a positive for the client who has just hired your law firm to leave with physical documents, including perhaps the initial projects the client needs to work on. If you are using client portals, certainly place digital copies of the handouts there as well.

But more law firms will be using on-demand videos to inform clients because many people today would prefer to learn from a video than read a document. So many law firms will be creating client videos for certain situations. These tools for existing clients are different than videos the law firm might use for marketing. These videos should cover basics like "giving a deposition" or "appearing in court." You will probably want to store the videos in a "client-only" area.

Letting the client watch a "long" (*e.g.*, 15 or 20 minute) video before an office conference with the attorney in person for something like deposition prep can reduce the client's bill and focus the face-to-face meeting on the unique issues with this deposition. Some lawyers may be concerned about the impact on revenue from providing part of your client advice at no charge via video. But this relieves you from a routine task, allowing you to focus on the important aspects of this deposition when meeting with the client.

Automation

There are many non-billable tasks associated with representing a client. Every one of those that can be automated saves the law office time and money. You personally probably send out a dozen "form" emails regularly with just names, dates and matters differing. But your staff likely sends out many more. Set up Outlook email message templates[6] to insert template language into a blank email with one click. Allowing online scheduling of appointments is a big plus for the people law clients, especially those who have been reviewing your website after business hours. Automated document assembly is also important, particularly on flat-fee work.

Marketing

The people lawyer must be constantly marketing to replenish that revolving cast of clients. Increasingly that means online marketing. (Although cultivating a strong referral network is also very important.) Despite its drawbacks, social media is extremely useful in this regard. Targeted ads on Facebook can be narrowly focused. But a website is still very important. Today I believe the site must have pictures of all the firm's lawyers. While you may really like that great picture of you taken 15 years ago, consider having a professional photographer take some new pictures of the team. The pandemic has clearly boosted shopping online, and people now shop for everything online, including legal services. If you want someone to purchase your services, you need to be where the potential clients are.

The Client Experience

Here's an opportunity to do some research on your law firm's services. Pick a few good former clients who you believe will be candid with you and invite each of them to a one-on-one lunch with you. Ask them what they liked about the representation, what they didn't like and if they have any suggestions for improvement. At worst, you get to enjoy lunch with a former client who will be reminded they can refer new clients to you. At best, you get some great suggestions about aspects of your service delivery you can improve.

Discussing Fees

The people law sector is very sensitive to prices. This is especially true for those clients who have never hired a lawyer before but have heard for years that lawyers are very expensive. It is important to explain your method of billing and any required retainer during the initial consultation. Flat fees are very popular with the consumer market because they easily understand how much this will cost. If the lawyer is doing flat-fee work that has some contingencies that would increase the fee, make sure that information is very prominent in the fee agreement. You might even have your client initial those provisions. Then on flat-fee cases, one uses delegation to staff, templates, document assembly and other tools that reduce the time the lawyer personally spends on a matter to make these matters profitable while still maintaining quality control.

The Office Phone Lines

When I first started practicing law, it was customary for some small law firms to not answer the phone during the lunch hour. If you are doing that and it works for you, please continue. But people sometimes need to call their lawyer over their lunch hour and, even if you are unavailable, it is better for them to talk to a person than have an unanswered phone call or be offered only voicemail. Virtual answering services are affordable and can be given information like available times to schedule appointments. But let's not forget so many people hate talking on the phone so an alternative, such as a secure form on the website to send text inquiries to the lawyer, should be considered as they can operate 24 hours a day.

The Office Environment

Large law firms tend to have impressive office space and reception areas. This is appropriate and necessary. People law practices have a bit more of a tightrope to walk. Obviously, the premises need to be clean and inviting. But you may want to avoid an office so well-appointed that the first thought of a prospective client is whether they can afford you. I have always been a fan of having brochures in the reception area covering all the major practice areas of the firm.

CONCLUSION

If you primarily practice people law, you were already aware of much of this and use many of these practices. Hopefully this gives you ideas on what possible improvements you should explore. People law can be both emotionally challenging and emotionally rewarding. Once a former client stopped by my office just to tell me she had turned 18 and was no longer involved with the juvenile system. I had been appointed to represent her in a matter that was fairly simple to resolve and hadn't seen her for a few years. She just wanted me to know how much she appreciated my advice and counsel, not just about the legal matter but about life. We visited about her plans going forward.

So that was one of those non-cash returns from a people law practice.

But wait, there's more!

Special bonus offer to those who read all the way to the end.

If you haven't watched my CLE program from last summer, "The Changing Dynamics of a 'People Law' Practice," we have a special offer for you. Log in to the OBA-CLE website, search for "people law" and add this program to your cart. Then at checkout enter the code HelpPeople2022 to get a $25 discount, so you can watch this program and obtain an hour of Oklahoma MCLE credit for only $15. The offer expires at midnight on June 15.

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. www.legalevolution.org.
2. "The Decline of the PeopleLaw Sector (037)" https://bit.ly/3rkYH1Y.
3. Tom Sharbaugh is a professor of practice at Penn State Law and the director of the law school's Entrepreneur Assistance Clinic.
4. "In praise of the primary-care lawyer (194)" https://bit.ly/3O61uGf.
5. "Eight updated graphics on the US legal services market (285)" https://bit.ly/3uzchAU.
6. https://bit.ly/3LQG9yG.

OBF Diamonds & Disco Event

DIAMONDS & DISCO, celebrating 75 years of impact, is scheduled for June 10. This event will be a fun way to celebrate the OBF's 75th anniversary while raising funds for access to justice programs. One hundred percent of donations and proceeds from event ticket sales and sponsorships will support OBF Grantee Partners.

YOUR OFFICIAL GUIDE TO DIAMONDS & DISCO

Diamonds, because it's our 75th anniversary! Disco, because we like to have fun!

Attire: Cocktail attire with sparkle and/or a modern disco flair if you dare

Venue: First Americans Museum (FAM) in Oklahoma City

Time: Doors open at 6 p.m., and the party starts at 7 p.m. OBF guests can tour the Tribal Nations Gallery and Mezzanine Gallery before the program begins at 8 p.m.

Food: Modern, Indigenous-inspired cuisine and cocktails by the chefs at the Thirty Nine Restaurant (located in FAM)

Located near downtown Oklahoma City, the First Americans Museum serves as a dynamic center promoting awareness and educating the broader public about the unique cultures, diversity, history, contributions and resilience of the First American Nations in Oklahoma today.

Bar Situation: Our specialty cocktail, the Prickly Pear 75 Club Special, beer and wine will be provided. All other liquor will be a cash bar.

Band: Take Cover

Photobooth: Magic Mirror Photobooth

Event Photography: Aaron Gilliland Photography

Program Emcee: Bob Burke

Grantee Speaker: Brad Bandy, founder of The Spero Project

Grantee Video Highlight: Maria, a client of the Catholic Charities of the Archdiocese of Oklahoma City

TICKETS ARE LIMITED!

Purchase tickets at diamondsanddisco.swell.gives.

Can't make the event? You can still support OBF Grantees by visiting the event link above and clicking the donate button.

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Diamonds & Disco 75

OKLAHOMA BAR FOUNDATION PRESENTS

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April Fools Bring May Reasonable Men: A Survey of the Rule of Law

By Dylan D. Erwin

I'M GOING TO LET YOU ALL in on a little secret and tell you how the *Oklahoma Bar Journal* sausage is made. Despite the fact this article is coming out *this month*, it was written and submitted April 1. The bar association, as you would expect/want, likes to stay on top of things, and article submission is no exception. As today (in the writing timeline) is April Fools' Day, I find myself lingering on foolishness more than normal. The Fool, as I see it, is a foil to the Reasonable Man – that elusive, evanescent and oft-cited man-about-town. The Reasonable Man is one of those mythological concepts in our profession, like the capital R capital L Rule of Law. My first memory of hearing about the *Rule of Law* was back in 2011 during law school convocation. I'm sitting in the Bell Courtroom at the University of Oklahoma, listening to the parade of speakers welcoming the class of 2014. Each speaker offers their own unique bit of advice. "The United States is a democracy," the speaker says. "We aren't a monarchy. In a monarchy, you are governed by a king or a queen – a monarch. In a democracy, you are governed by the Rule of Law. As attorneys, it will be your job to protect and defend that Rule of Law." Let's take this speaker's analogy a step further. In the United States, the Rule of Law is king. In Arthurian legend, knights are tasked with protecting the king and the realm. In other words, my speaker at convocation was telling me I'm a lawyer-knight, tasked with felling all enemies who threaten my king, the Rule of Law, with my trusty squire – the Reasonable Man – at my side.

But I digress. During my time as an attorney, I have been in almost constant contact with the Rule of Law, this faceless monarch that lords over all American citizens and the Reasonable Man. Just as any monarchy has a few "dud" rulers (I won't name names, but if I did, I'd absolutely single you out, King John. You literally plotted with the king of France to overthrow your brother when he was fighting in the crusades), the Rule of Law can also get … unreasonable. In the spirit of foolishness, I present 10 of the most "interesting" laws in Oklahoma history – a few of which are still on the books in one form or another. Some of these laws may be found in statute, and some of these laws may be found in city codes around the state; but all these laws are presented *for entertainment purposes only.*

1) Women are forbidden from doing their own hair without being licensed by the state.
2) Fish may not be contained in fishbowls while on a public bus.
3) It is illegal to have the hind legs of farm animals inside your boots.
4) Anyone arrested for soliciting a prostitute must have their name and picture shown on television.
5) It is illegal to own more than two adult cats.
6) You may not open a soda bottle without the supervision of a licensed engineer.
7) It is illegal to wash your clothes in a birdbath.
8) Cars must be tethered outside of public buildings.
9) Dogs must have a permit signed by the mayor in order to congregate in groups of three or more on private property.
10) It is illegal for the owner of a bar to allow anyone inside to simulate deviant acts on a buffalo.

This is *usually* the part where you'd expect me to pop out from behind this article and scream "APRIL FOOLS!" While I may be able to do that in *this* timeline – the writing timeline – I'm aware our day of foolishness has come and gone. So instead, "MAY REASONABLE MANS!"

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

For Your Information

HAVE YOU REGISTERED FOR THE SOLO & SMALL FIRM CONFERENCE?

The 2022 Solo & Small Firm Conference and YLD Midyear Meeting is next month! This year's conference, held June 23 to 25 at the Choctaw Casino Resort in Durant, offers a wide range of substantive law and law practice management CLE sessions, with a focus on tools for and frequent challenges encountered by small firm lawyers. It will also provide social events with plenty of time to meet and network with lawyers from across the state who can provide you with advice, friendship and possible referrals. Register now at www.okbar.org/solo.

SOVEREIGNTY SYMPOSIUM 2022

The 2022 Sovereignty Symposium has been scheduled for June 8-9 at the Skirvin Hilton Hotel in Oklahoma City. The event, themed "The Earth," will be in person and virtual. It will also feature keynote speaker Janie Simms Hipp, a citizen of the Chickasaw Nation and general counsel for the United States Department of Agriculture. Watch for more details at www.sovereigntysymposium.com.

LHL DISCUSSION GROUP HOSTS JUNE MEETING

"Coping Skills" will be the topic of the next Lawyers Helping Lawyers monthly discussion group. The group will meet June 2 in Oklahoma City. Each meeting is facilitated by committee members and a licensed mental health professional. The small group discussions are intended to give group leaders and participants the opportunity to ask questions, provide support and share information with fellow bar members to improve their lives – professionally and personally. Visit www.okbar.org/lhl for more information.

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.

BAR JOURNAL TAKES SUMMER BREAK

The *Oklahoma Bar Journal* theme issues are taking a short break. The next issue, devoted to gaming, will be published in August. You will still receive the digital Courts & More issues with court material and news every Wednesday in June and July. Have a safe and happy summer!

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, May 30, and Monday, July 4, in observance of Memorial Day and Independence Day. Be sure to docket the OBA Annual Meeting Nov. 2-4 in Oklahoma City.

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.

ON THE MOVE

Judge Emily Maxwell Herron was sworn in as a Judicial District 17 district judge during a March 31 ceremony at the McCurtain County District Courtroom. The district includes McCurtain, Choctaw and Pushmataha counties. Judge Herron previously served as an assistant district attorney for 11 years.

Anil Gollahalli has been named chief legal officer of the Big Ten Conference. He will work closely with general counsel at the conference's 14 schools. For the past 14 years, Mr. Gollahalli has served as general counsel for OU and as vice president for technology development since 2007.

Jeffery D. Trevillion Jr. has joined the Oklahoma City office of Crowe & Dunlevy as a director of the firm's Taxation Practice Group. Mr. Trevillion is an experienced trial lawyer and certified public accountant with extensive knowledge of U.S. tax law and civil tax procedure. His practice also focuses on highly regulated industries, and he routinely represents clients before law enforcement and regulatory agencies. He received his J.D. from the OU College of Law and is a member of the Oklahoma County Bar Association, Texas Bar Association, American Institute of Certified Public Accountants and Oklahoma Society of Certified Public Accountants. He also served as 2021 Oklahoma Bar Foundation president.

Jack Blair was confirmed as Tulsa city attorney by Mayor G.T. Bynum. He started his new position April 10. Mr. Blair was the director of Research, Policy & Budget for the Tulsa City Council for 12 years before serving Mayor Bynum's administration as chief of staff and then chief operating officer. He also serves as the planning commissioner and trustee of the Tulsa Utility Board and Tulsa Authority for the Recovery of Energy.

Timothy L. Martin has joined the Oklahoma City law firm of DeWitt Paruolo & Meek as a partner. Mr. Martin has over 38 years of experience as a trial lawyer and certified mediator. His practice will remain focused on mediation, and he will continue to practice in the areas of aviation, construction, automobile, truck, premises, bad faith, insurance coverage, employment law, oil field and professional liability in the legal, dental and nursing fields.

J. Derek Cowan and **Benjamin R. Grubb** were named partners of the Oklahoma City law firm of DeWitt, Paruolo & Meek. **Lance C. Cook**, **Ryan L. Dean** and **Thomas R. Kendrick** were named equity partners and shareholders of the firm. Mr. Cowan practices in the areas of insurance issues, construction defect claims, commercial and contract disputes, wrongful death cases, trucking and transportation liability cases and employer liability issues. Mr. Grubb's practice is focused on civil litigation, including personal injury, commercial premises liability, contract disputes, construction, insurance bad faith, medical malpractice and labor and employment issues. Mr. Cook practices in the areas of personal injury, railroad law, transportation, construction and general civil litigation. Mr. Dean focuses on civil litigation, including complex commercial litigation, personal injury and legal malpractice. Mr. Kendrick practices civil litigation in state and federal courts in the areas of aviation, auto/trucking liability, construction, dram shop liability, insurance bad faith and subrogation and premises and products liability.

Matthew T. Crook has been named partner of Doerner, Saunders, Daniel & Anderson LLP. He is a commercial litigator focusing on creditors' rights, bankruptcy and construction litigation. In 2020, Mr. Crook was appointed by Gov. Stitt to serve on the Alcoholic Beverage Laws Enforcement Commission until 2025. Previously, he served as a director for several nonprofit boards, including the American Heart Association, Crime Prevention Network and Big Brothers Big Sisters of Green Country.

Joel D. Stafford, an attorney and CPA who has served as a tax advisor to individuals and companies for nearly 40 years, has rejoined the Tax & Family Wealth Group at McAfee & Taft. He will practice primarily in corporate and transactional planning, as well as tax audit and controversy matters. Prior to rejoining the firm, he served eight years as senior tax counsel at Devon Energy Corp., where he oversaw and managed all the public company's income tax planning, strategy and transactional matters. He is a member of the Oklahoma County Bar Association, Tax Section of the American Bar Association, Oklahoma Society of Certified Public Accountants, American Institute of Certified Public Accountants and Mineral Lawyers Society of Oklahoma City.

KUDOS

Terry West, founder of The West Law Firm, was named a Hall of Fame inductee by the TU College of Law Alumni Association. **Judge T. Lane Wilson** and **Marcia M. MacLeod** were also honored as incoming Hall of Fame members on March 5 during the 2022 Alumni Gala. Mr. West, who received his LL.B. from the TU College of Law in 1966, was also honored with the Benjamin P. Abney Cor Legis Award. He has served on the OBA Board of Governors, the Judicial Nominating Committee and has been a member of the Oklahoma Association for Justice since 1968. In 2019, the TU College of Law opened the Terry West Civil Legal Clinic, which offers wide-ranging experiential learning opportunities for students in areas of public service law.

Thomas Askew was appointed presiding municipal judge, and **Sharon Weaver** was appointed assistant municipal judge for the city of Sand Springs by its city council on March 28. They will serve two-year terms ending April 2024. Mr. Askew is a shareholder and director of the Tulsa office of Riggs Abney. He litigates business disputes, first- and third-party insurance matters, transportation liability cases, bad faith cases, business torts, contract disputes with private and governmental entities and personal injury matters. Ms. Weaver is also a shareholder in the firm's Tulsa office. She serves in several practice areas, with a focus on civil litigation, appellate law and alternative dispute resolution.

Annette Wisk Jacobi has been reappointed as executive director of the Oklahoma Commission on Children and Youth. Ms. Jacobi began her service as the executive director of the state agency in December 2017. She received her J.D. from the OU College of Law in 1991.

Carla D. Pratt was selected as the OU College of Law's first Ada Lois Sipuel Fisher Chair in Civil Rights, Race and Justice in Law. Pending the OU Board of Regents' approval, Ms. Pratt is expected to begin this fall. She will primarily be teaching and conducting research in the areas of civil rights law, election law and race and the law. She has served as dean and professor at the Washburn University School of Law since 2018. Prior to that, she was the associate dean for diversity and inclusion at Penn State Dickinson Law and was awarded the law school's Philip J. McConnaughay Award for outstanding achievement in diversity-related work. From 2012 to 2018, she also served as an associate justice for the Standing Rock Sioux Tribe Supreme Court.

Joseph C. Biscone II has been inducted by the College of Workers' Compensation Lawyers as a Fellow. The college honors workers' compensation plaintiff's attorneys, defense attorneys, professors and judges nationwide who have served for more than 20 years. Fellows are recognized as distinguished members of the legal community. Mr. Biscone, who is known as the "Cowboy Lawyer," has served clients for over 40 years. He is one of 29 people honored this year.

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 August issue must be received by July 1.

In Memoriam

Benjamin Randolph Allen III of Boerne, Texas, died Feb. 6. He was born July 25, 1958, in Richmond, Virginia. Mr. Allen received his J.D. from the St. Mary's University School of Law in 1996. In 1999, he founded an oil and gas law practice, Allen & Associates LLP, which he ran until his death. He also founded Abstract and Title Resources Inc., Legal Title and Outright Bail Bonds. Mr. Allen enjoyed his time on the Kendall County Women's Shelter board and donating to the Hill Country Youth Ranch. Memorial contributions may be made to MD Anderson Cancer Center.

Lee Allen of Checotah died Jan. 21. He was born Dec. 10, 1938, in Ryan. Mr. Allen received his J.D. from the OCU School of Law in 1966 and worked for Traveler's Insurance. He served as assistant district attorney in Eufaula from 1971 to 1978 and then was in private law practice in Checotah until 1999.

Gary D. Baer of Oklahoma City died March 6. He was born Jan. 28, 1938, in Hays, Kansas. Mr. Baer was a high school All-American athlete in football, basketball, baseball and track at Salina High School in Kansas before being recruited by Bud Wilkinson to join the OU football team. He received his J.D. from the OU College of Law and practiced corporate law in Oklahoma City for over 60 years. He served as counsel to Sunbeam Family Services and president of Legal Aid Services of Oklahoma, where he also served on the board for many years. Memorial contributions may be made to your favorite charity.

Dorothy S. Blohm of Jenks died April 1. She was born June 9, 1956, in Edmond. Upon graduating from Edmond Memorial High School, she attended OSU despite being a die-hard OU fan. Ms. Blohm received her J.D. from the TU College of Law in 1989 and practiced law for the next 29 years. In her work, she gave hope and change to people who were truly struggling. Memorial contributions may be made to the American Heart Association.

Glenn Reuben Davis of Tulsa died Aug. 4, 2021. He was born Nov. 5, 1943, in Muskogee. **Following graduation from college, Mr. Davis received a commission in the U.S. Army and completed Airborne, Ranger and Special Weapons Schools. He served in Vietnam as an artillery battery commander and brigade liaison officer with the 101st Airborne Division. He completed his service as an instructor of military tactics at Fort Sill.** In 1973, he received his J.D. from the OU College of Law, where he was inducted into the Order of the Coif and was managing editor of the *Oklahoma Law Review*. Mr. Davis enjoyed a long and distinguished career at the Tulsa law firm of Boone, Smith, Davis, Hurst & Dickman law firm. Memorial contributions may be made to Animal Aid of Tulsa or Boy Scouts of America.

James S. Drennan of Norman died April 5. He was born June 24, 1950, in Enid. Mr. Drennan earned bachelor's and master's degrees in industrial engineering from OSU, where he was named a Regents' Scholar. He received his J.D. from the OU College of Law in 1977; he served as editor of the *Oklahoma Law Review* and was a member of the Order of the Coif. He began his legal career at the Monnet Hayes Law Firm in Oklahoma City in 1978. He worked there for 44 years, eventually becoming a managing partner of the firm. Mr. Drennan practiced primarily in the areas of oil and gas, estate planning and real estate law. He was a member of the Oklahoma Corporation Commission and the Oklahoma City Mineral Lawyers Society. He was also a member of First Baptist Church Norman for 47 years, where he served as a deacon and played trumpet and baritone in the church orchestra. He played for over 25 years, one of the longest tenures of any player. Memorial contributions may be made to the James S. Drennan Memorial Orchestra Scholarship Fund at First Baptist Church of Norman.

David S. Eldridge of Piedmont died March 8. He was born Sept. 14, 1936. After graduating from Harding College, he taught English for one year in Tucumcari, New Mexico. He then returned to Oklahoma and received his J.D. from the OCU School of Law in 1967, second in his class. Mr. Eldridge was an expert in banking, bankruptcy and commercial law. His love of the law resulted in his brother, son and nephew following him into the practice of law.

Stephen Alan Fletcher of Norman died Aug. 15, 2021. He was born Aug. 23, 1950. Mr. Fletcher received his J.D. from the OCU School of Law in 1981.

E. Harry Gilbert III of Nichols Hills died March 24. He was born Jan. 16, 1952. Mr. Gilbert earned his bachelor's degree in engineering from OU, where he was a member of ROTC and the Delta Tau Delta fraternity. After college, he worked briefly as an electrical engineer before receiving his J.D. from the OU College of Law in 1979. After practicing patent law with McAfee & Taft, Mr. Gilbert began setting his practice aside one day a week to build houses with Habitat for Humanity. Eventually, he left the legal profession to teach at Westminster School. He taught for 14 years, primarily as an eighth-grade science teacher and basketball coach. A week after retiring from teaching, he went to work for MetaFund, where he served as general counsel. Memorial contributions may be made to Central Oklahoma Habitat for Humanity or Westminster School.

Clyde D. Graeber of Leavenworth, Kansas, died Feb. 21, 2021. He was born Aug. 29, 1933, in Tulsa. Mr. Graeber received his J.D. from the TU College of Law in 1959. While in law school, he worked full time at the National Bank & Trust Co. of Tulsa and was promoted to assistant trust officer in 1960. Three years later, he moved to Norman as vice president and trust officer with the bank. In 1968, he went to Leavenworth as president of Leavenworth National Bank & Trust Co., a position he held for over 25 years. He also served as mayor of Leavenworth, was elected to the Kansas House of Representatives, where he served six terms for a total of 12 years and was appointed as Kansas State Treasurer and Secretary of the Kansas Department of Health & Environment. Memorial contributions may be made to the C.W. Parker Carousel Museum or Leavenworth Public Library.

E. Michael Harding of Davis died March 5. He was born July 25, 1933, in Oklahoma City. Mr. Harding attended "Old" Classen High School, where he was captain of the football team and the starting running back in the first televised football game in Oklahoma. **After earning a bachelor's degree from OU, he enlisted in the U.S. Army as a first lieutenant artillery officer, beginning his service at Fort Sill and later deploying to Taegu, Korea, where he served a 14-month tour.** He received his J.D. from the OU College of Law. After practicing in Salina, Kansas, he moved to Dallas and founded MCM Construction Company, building residential and commercial developments throughout Oklahoma and Texas. Mr. Harding retired from his construction business in 2014 at 81 years old. Memorial contributions may be made to the Oklahoma Humane Society.

Windham Michael Hill of Tulsa died March 24. He was born July 14, 1947, in Norman. After graduating from Will Rogers High School, he attended Baylor University, where he was a member of the Beta Tau Alpha fraternity. **Mr. Hill was drafted and served in the U.S. Army, stationed in Germany.** Upon his discharge, he received his J.D. from the TU College of Law. He co-founded the law firm of Secrest & Hill, where he worked until his death. Mr. Hill was a long-time member of Asbury Church, where he served on the foundation board, and a member of the Faith Builders Sunday School Class, where he served as a teacher. Memorial contributions may be made to Asbury Church.

O. B. Johnston III of Vinita died March 26. He was born Oct. 1, 1941, in Tulsa. Mr. Johnston received his J.D. from the TU College of Law in 1966. **He joined the U.S. Army in 1966 and served as a captain in the Judge Advocate General's Corps until 1970 in Oakland, California; Seoul, South Korea; and Fort Sill. He received a Joint Service Commendation Medal, Army Commendation Medal and Armed Forces Expeditionary Medal.** In 1970, he was appointed assistant U.S. attorney for the Western District of Oklahoma and prosecuted major crimes cases until 1976. He then joined the Vinita law firm of Logan & Lowry, where he practiced until his retirement in 2014. Mr. Johnston served as past president of the Oklahoma Bar Foundation in 1995, past state chair of the Oklahoma Fellows of the American Bar Foundation and on the *Oklahoma Bar Journal* Board of Editors. He was also president of the Federal Bar Association in Oklahoma City and was twice appointed by the Oklahoma Supreme Court as a judge for the Temporary Court of Appeals. Memorial contributions may be made to the Parkinson's Foundation.

Herbert King Kenney of Cape Coral, Florida, died March 10. He was born Nov. 6, 1947. Upon earning his bachelor's degree in political science from Rice University, Mr. Kenney received his J.D. from the OU College of Law, where he was a member of the Order of the Coif. Working more than 35 years in corporate law in Oklahoma, Texas and Pennsylvania, his career took him to dozens of cities around the country working for the RTC and FDIC. Memorial contributions may be made to the Parkinson's Foundation, Lewy Body Dementia Association or Hope Hospice of Fort Myers, Florida.

David W. Kisner of Oklahoma City died Feb. 3. He was born July 2, 1940. Mr. Kisner received his J.D. from the TU College of Law in 1967 and practiced law in Oklahoma County for 50 years. He was an avid tennis player – his high school tennis team was inducted into the Northeastern Tennis Hall of Fame.

Ruth Ahsmuhs Kraemer of Norman died Nov. 28. She was born March 7, 1936. Ms. Kraemer received her J.D. from the OCU School of Law in 1977.

Kenneth George Miles of Tulsa died April 12. He was born June 14, 1946, in Lancaster, Pennsylvania. Mr. Miles received his J.D. from the University of Texas at Austin School of Law and practiced primarily in the areas of real estate and banking. **He served in the U.S. Army for 20 years, including two tours of duty in Vietnam.** He was an avid volksmarcher, a longtime member of the Tulsa Opera Chorus and served as a scoutmaster for Tulsa's Troop 20 and at the scouting district level for many years. Memorial contributions may be made to Oklahoma Baptist Homes for Children, South Tulsa Baptist Church General Fund or the Tulsa Opera.

Raymond Dean North of Enid died Dec. 24. He was born Sept. 7, 1932, in Douglas in a two-room farmhouse with no electricity or running water. **He took a leave of absence after his freshman year of college to join the U.S. Army. He enlisted, completed his training at Fort Sill in field artillery and was quickly promoted to sergeant. He served two years in Korea with the 303rd Anti-Aircraft Artillery.** In 1958, he received his J.D. from the OU College of Law and practiced law in Enid for 58 years. He was a lifelong advocate for the poor and underprivileged. Mr. North was a member of the Oddfellows for over 50 years, the Enid Gardening Club and a Vigil Honor member of the Order of the Arrow. He was also a past member of the Boy Scouts of America and a scoutmaster for more than 20 years. Memorial contributions may be made to the Enid Oddfellows Shoe Ministry, Loaves and Fishes or the Annual Thanksgiving Meal hosted by the Christian Church of the Covenant.

Dale Peter Phillips of Enid died July 2, 2020. He was born April 4, 1932, in Sioux Falls, South Dakota. **Mr. Phillips served in the U.S. Army just prior to the end of the Korean War.** After his retirement as a cereal chemist, he received his J.D. from the OU College of Law in 1999. He practiced law for a short time before retiring again. Memorial contributions may be made to St. Joseph Catholic School or Enid SPCA.

Jace Hill Powell of Dallas died Feb. 12. He was born Feb. 9, 1987. In 2009, he received his bachelor's degree in business and media from Austin College in Sherman, Texas, where he played football and was a member of the Pi Alpha Psi fraternity. Mr. Powell received his J.D. from the OCU School of Law in 2012. Although he spent many years of study and work in the legal field in Oklahoma, he remained focused on returning to Texas. In 2018, he joined the Silvera Law Firm in Dallas. Memorial contributions may be made to Texas Cowboys Against Cancer.

James Marsh Reid of Edmond died March 28. He was born Dec. 18, 1958, in Oklahoma City. Mr. Reid graduated from Heritage Hall High School in 1977, playing on the 1976 state champion golf team. He received his J.D. from the OCU School of Law in 1983 and practiced law in Oklahoma City with local firms and in private practice, focusing on family law and insurance defense. He was a dedicated and accomplished golfer, playing in top amateur tournaments across the country. He was a five-time Oak Tree National Club Champion, 10-time OGA champion, won the prestigious Winged Foot Anderson Cup two years in a row and played in two USGA championships.

John P. Scott of Oilton died March 29. He was born June 7, 1930, in Clayton, New Mexico. **Mr. Scott enlisted in the U.S. Army at the beginning of the Korean Conflict. From 1950 until 1953, he served as a battalion sergeant major in the 14th Regimental Combat Team and regimental sergeant major of the 11th Armored Cavalry at Camp Carson, Colorado Springs, rising**

to the highest rank possible for an enlisted soldier. He also served in the Armored Security Detachment in Bremerhaven, Germany. Mr. Scott received his J.D. from the TU College of Law in 1961 and was named the outstanding law student of his graduating class. That same year, he began practicing civil trial law in Tulsa. He later founded partnerships with Gudgel, Winn & Scott; Gudgel & Scott; and Savage, O'Donnell, Scott, McNulty, Affeldt & Associates. He retired from his practice with Scott & Gentges in 2005. He was a member of the Tulsa County Bar Association, Oklahoma Trial Lawyers Association, American Bar Association, American Trial Lawyers Association and the American Civil Liberties Union.

Melvin J. Spencer of Bothell, Washington, died March 4. He was born Jan. 2, 1923, in Buffalo Center, Iowa. **Mr. Spencer enlisted in the U.S. Army Air Corps in 1942. During his service, he was second lieutenant, navigator, Eighth Air Force, United Kingdom. He was shot down over Germany in 1944 and held as a prisoner of war for 15 months. He resigned as captain from the Air Force Reserves in 1955.** He received his J.D. *cum laude* from the University of Michigan Law School in 1950. Most recently, from 1975 until 1992, he served as an administrator for Deaconess Hospital in Oklahoma City and as a consultant for the hospital for the next year. He also served as a delegate to the Republican state convention, director and chairman of the Free Methodist Foundation, director of Deaconess Hospital and director of several other organizations. Memorial contributions may be made to the Butterfield Memorial Foundation.

L. David Trapnell of Houston died Oct. 2, 2021. He was born March 13, 1933, in Ponca City. Mr. Trapnell served in the U.S. Army in Italy. He received his J.D. from the OU College of Law in 1956 and served as counsel for Continental Oil Co. and later Occidental Oil & Gas Co. He was a partner at the law firm of Liddell Sapp & Zivley.

ADA LOIS SIPUEL FISHER
DIVERSITY AWARDS

Photo courtesy of Oklahoma Hall of Fame.

NOMINATIONS DUE AUGUST 1, 2022

Send to:
diversityawards@okbar.org

The Ada Lois Sipuel Fisher Diversity Awards categories are members of the judiciary, licensed attorneys and entities that have championed the cause of diversity. All nominations must be received by August 1.

For more details, visit www.okbar.org/diversityawards.

Oklahoma Bar Association
Diversity Committee

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2022 ISSUES

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

SEPTEMBER
Civil Procedure
Editor: Jana Knott
jana@basslaw.net
Deadline: May 1, 2022

OCTOBER
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Editor: Roy Tucker
RTucker@muskogeeonline.org
Deadline: May 1, 2022

NOVEMBER
Municipal Law
Editor: Roy Tucker
RTucker@muskogeeonline.org
Deadline: Aug. 1, 2022

DECEMBER
Ethics & Professional Responsibility
Editor: Scott Jones
sjones@piercecouch.com
Deadline: Aug. 1, 2022

2023 ISSUES

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cassandracoats@leecoats.com
Deadline: Aug. 1, 2022

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jana@basslaw.net
Deadline: Aug. 1, 2022

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RTucker@muskogeeonline.org
Deadline: Oct. 1, 2022

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aaron@bundylawoffice.com
Deadline: Oct. 1, 2022

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melissde@aol.com
Deadline: Jan. 1, 2023

AUGUST
Oklahoma Legal History
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melissde@aol.com
Deadline: Jan. 1, 2023

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jhartwig@tisdalohara.com
Deadline: May 1, 2023

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Access to Justice
Editor: Evan Taylor
tayl1256@gmail.com
Deadline: May 1, 2023

NOVEMBER
Agricultural Law
Editor: David Youngblood
david@youngbloodatoka.com
Deadline: Aug. 1, 2023

DECEMBER
Family Law
Editor: Bryan Morris
bryanmorris@bbsmlaw.com
Deadline: Aug. 1, 2023

If you would like to write an article on these topics, contact the editor.

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OFFICE SPACE

OFFICE SPACE AVAILABLE IN OKC, call 405-239-2726 for more information.

TULSA OFFICE SPACE AVAILABLE for solo practitioners or small law firm. One to five office spaces available. Two conference rooms, receptionist, kitchen, parking, internet and phones are provided. Ideally located at 21st and Boulder and in close proximity to the Courthouse, the Riverparks, the Gathering Place, Cherry Street and Utica Square. Starting at $500 per month on as little as a one-year lease. 918-764-9011.

OFFICE SPACE FOR RENT W/OTHER ATTORNEYS: NW Classen Blvd, OKC. Telephone, library, waiting area, receptionist, telephone answering service, desk, chair, file cabinet included in rent, one for $390.00, one for $490.00, and one for $590.00. Free parking. No lease required. Gene (405) 525-6671.

POSITIONS AVAILABLE

BUXTON LAW GROUP IS HIRING AN ASSOCIATE ATTORNEY to work in its Oklahoma City office. The firm handles personal injury and sewer back up cases all across the county and is looking for an attorney to help prepare cases for trial. No experience required. Great opportunity for a new lawyer. Must be good at research and writing. Great place to learn how to be a trial lawyer. Fun work environment. Competitive compensation and benefits. We got it all. Send resume and writing sample to jill@buxtonlawgroup.com.

ASSOCIATE ATTORNEY IN VINITA, OK. NE Oklahoma diversified law firm with offices in Vinita and Miami seeking an attorney with 1-4 years of experience. Candidate should be self-motivated, detail-oriented, organized, and able to prioritize multiple projects at one time and have the ability to assist senior attorneys to best serve client needs. Law firm areas of practice include criminal, civil, family, personal injury, municipal, real estate, probate and condemnation. Interested candidates are asked to provide the following: (1) cover letter; (2) resume; and (3) professional references. Please direct all communications to hlf@hartleylawfirm.com. Salary commensurate with experience.

DISTRICT 17 DA'S OFFICE IS LOOKING FOR AN ASSISTANT DISTRICT ATTORNEY. Located only a short drive from majestic Broken Bow State Park/Hochatown, an outdoorsman's paradise. Fastest growing area in Oklahoma! Requires a Juris Doctorate from an accredited law school. Salary range $65,000 - $85,000. Must be admitted to the Oklahoma state bar and be in good standing. Submit a resume by email: tammy.toten@dac.state.ok.us. Office: 580-286-7611, Fax: 580-286-7613.

SPECIAL MUNICIPAL JUDGE (PART-TIME). The City of Oklahoma City will accept applications from May 2, 2022, through May 15, 2022. Requirements include upon appointment must be a resident in the City of Oklahoma City and a minimum of four years' experience as a licensed practicing attorney in the State of Oklahoma. For more information and to apply go to www.okc.gov.

POSITIONS AVAILABLE

TRUST OFFICER POSITION AVAILABLE IN SOUTHEAST OKLAHOMA. Large community bank with well-established trust department is seeking a self-motivated applicant to fill the new position as Trust Officer. Applicants need to have 5 years' working experience in accounting, finance, real estate, or insurance related business. Degree in Accounting or Finance preferred. Position involves management of 30-40 trust accounts and coordination with in-house auditors and CPAs for current trust clients. Applicants must be highly empathic and have good communication skills. Generous benefit package and competitive pay. Contact Kristy Bolen, kbolen@visionbank.bank.

OBA HEROES PROGRAM COORDINATOR. Have you ever wanted to help a Veteran? The Oklahoma Bar Association has an opening for coordinator of its Oklahoma Lawyers for America's Heroes program. Duties include working with veterans, enlisted, Guard and Reserve members to qualify them for free legal services then matching them with volunteer lawyers from across the state to assist them with their legal issues. This is a part-time position. Familiarity with veterans' issues is desired, but not required. Resumes can be emailed to nickied@okbar.org.

MID-SIZED, ESTABLISHED LAW FIRM IS SEEKING AN EXPERIENCED OIL AND GAS TITLE ATTORNEY for its offices in Tulsa or Oklahoma City. The ideal candidate will demonstrate strong writing skills and attention to detail. Prefer 3+ years of experience in oil and gas title. The firm offers a competitive salary and excellent benefits. Send cover letter and resume to okctulattorneyjobs@gmail.com.

COLONIAL TITLE, A REAL ESTATE CLOSING COMPANY, is looking for an experienced title attorney to join our fast-paced team. You should be able to complete 6 abstract examinations per day, prepare documents and perform some curative work. Benefits, annual bonus opportunity as well as monthly incentive opportunity. Please send salary requirements and resume to: Mary Scribner at mscribner@colonialtitleinc.com. All communication is confidential.

POSITIONS AVAILABLE

OKLAHOMA CITY-BASED, MULTI-JURISDICTIONAL LAW FIRM actively seeking motivated and detail-oriented attorneys experienced in Family Law to join our fast-paced and growing practice group. As a firm, we are intentional in maintaining a positive and motivating work culture. Benefits include a competitive fee structure, full health benefits, 401K, full back-end client support and the opportunity for practice growth. Qualified candidates should have at least 4 years of experience in Family Law. Please send resume and references to office@ballmorselowe.com. If you are up to the challenge, please submit your resume for consideration.

JUDGE ADVOCATE GENERAL'S (JAG) CORPS for Oklahoma Army National Guard is seeking qualified licensed attorneys to commission as part-time judge advocates. Selected candidates will complete a six-week course at Fort Benning, Georgia, followed by a 10 ½-week military law course at the Judge Advocate General's Legal Center on the University of Virginia campus in Charlottesville, Virginia. Judge advocates in the Oklahoma National Guard will ordinarily drill one weekend a month and complete a two-week annual training each year. Benefits include low-cost health, dental and life insurance, PX and commissary privileges, 401(k) type savings plan, free CLE and more! For additional information, contact CPT Jordan Bennett at jordan.r.bennett.mil@army.mil.

ESTABLISHED, AV-RATED TULSA INSURANCE DEFENSE FIRM seeks motivated associate attorney to perform all aspects of litigation including research, brief writing, written discovery, depositions, motion practice, and trial. 2 to 5 years of experience preferred. Salary commensurate with experience. Submit cover letter, resume, and writing sample to Box T, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

HELTON LAW FIRM IS SEARCHING FOR AN ATTORNEY with 5+ years litigation experience or an attorney with 8+ years transactional experience. Please forward resumes to scott@heltonlawfirm.com.

POSITIONS AVAILABLE

GENERAL COUNSEL

Midland Financial Co., its subsidiary MidFirst Bank, and other affiliates are seeking a General Counsel for the overall management of its legal affairs. With $32.1 billion in assets, serving more than 900,000 customers, and significant operations in Arizona, California, Colorado, Oklahoma, and Texas, Oklahoma City-based MidFirst Bank is the largest privately owned bank in the country. The new General Counsel will office in Oklahoma City and, among other key responsibilities, will serve as a trusted advisor to the Chief Executive Officer, President, the Board of Directors and senior management, provide advice on sensitive and complex legal matters, and assist the Company in navigating the demanding banking regulatory landscape.

The General Counsel must be an experienced lawyer with the legal background, unquestioned integrity, management experience, and interpersonal skills required to function successfully in a challenging legal executive role. The General Counsel must have a Juris Doctorate from an accredited law school and be a licensed member in good standing of at least one state bar. Eligibility for licensure in Oklahoma is preferred.

If you are interested in being considered for this position, please submit your confidential resume to HR-Recruiting@midfirst.com.

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MID-SIZED, ESTABLISHED LAW FIRM IS SEEKING AN ATTORNEY with a background in medical cannabis law for its offices in Tulsa or Oklahoma City. The ideal candidate will demonstrate strong communication skills, writing skills, and attention to detail. This will be a position to assist our current clients with compliance. Experience in the area of medical cannabis law preferred but not required. Travel within the state will be required. The firm offers a competitive salary and excellent benefits. Send cover letter and resume to okctulattorneyjobs@gmail.com.

POSITIONS AVAILABLE

ALBRIGHT RUSHER & HARDCASTLE, AN AV RATED TULSA LAW FIRM, seeks to hire an associate attorney with 1-3 years of experience to work in the areas of commercial transactions, real estate and litigation. Prior experience in at least one of such areas is preferred. Excellent research and writing skills are required. The firm offers competitive compensation commensurate with experience and excellent benefits. All applications will remain confidential. Interested applicants should send cover letter, resume, and writing sample to anmack@arhlaw.com or Albright, Rusher & Hardcastle, Attn: Amy Mack, 2600 Bank of America Center, 15 W. 6th Street, Tulsa, OK 74119.

WHITWORTH, WILSON & EVANS, PLLC is looking for an experienced attorney who is motivated and looking to handle a variety of matters from complex litigation to wills and trusts and everything in between. If interested, please send your CV and list of references to 3847 S. Boulevard, Suite 100, Edmond, OK 73013 or charla@wwefirm.com. Thank you for your interest!

ATTORNEY WITH 2-5 YEARS OF EXPERIENCE. Downtown OKC law firm seeking attorney with 2-5 years of experience in litigation. Candidate should be self-motivated, detail-oriented, organized, and able to prioritize multiple projects at one time. Interested candidates are asked to provide the following: (1) cover letter; (2) resume; (3) professional references; and (4) writing sample. Please direct all communications to OKCHR@outlook.com. Salary $100,000 - $120,000 (DOE) plus bonus.

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

POSITIONS AVAILABLE

ASSISTANT GENERAL COUNSEL

Description: Tinker Federal Credit Union has an immediate opening for a full-time Assistant General Counsel in Oklahoma City. The primary role for this position is to provide legal advice to all levels of staff by identifying and analyzing legal issues, draft documents and memoranda, present recommendations and negotiate agreements ensuring TFCU remains in compliance with applicable laws. This position will also support the General Counsel in addressing legal issues, negotiating agreements and providing sound legal advice to the executive office, the Board, Senior Management and other departments. Negotiate transactions, including but not limited to, agreements and contracts, often involving substantial organizational assets and commitments for TFCU and its subsidiaries. Draft, review, and revise various legal instruments involving the interests of TFCU, its subsidiaries and members. Keep informed of legislation, regulations, judicial and other legal developments and trends affecting federal credit unions and related matters. Act as a member of management staff, working with other staff to develop goals and strategies in order to meet the objectives set by Senior Management. Provide legal advice and expertise to various departments and special project teams, conforming proposed practices and procedures to legal requirements.

Salary range: $119,778 - $149,721 actual placement will be determined individually based on the selected candidate's experience relative to organizational needs and internal salary equity.

Qualifications: The qualified candidate will possess a Juris Doctorate degree from an ABA accredited law school; 5+ years' experience consumer or financial law (preferably in a large credit union or bank) preferred; good standing member of the Oklahoma Bar Association.

Apply today at: https://bit.ly/37Hmsug

POSITIONS AVAILABLE

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

ATTORNEY WITH EXPERIENCE IN SSA DISABILITY LAW. High volume SSA disability firm seeks an attorney as an office manager and case developer/litigator in OKC. Will be responsible for client interviews, case development, and representing claimants during the administration process. Will also manage office staff and workload. Competitive salary plus attractive monthly performance bonus. Partner opportunities available. Must be personable and organized. Primary focus is providing great customer service. Don't apply if you don't have empathy and won't fight for those in need. Send resume to clay@sslcnow.com.

REPAYMENT ASSISTANCE

THE OKLAHOMA DISTRICT ATTORNEYS COUNCIL (DAC) is pleased to announce that DAC has been designated by the U.S. Department of Justice to award and disburse loan repayment assistance through the John R. Justice (JRJ) Loan Repayment Program. The State of Oklahoma has received a total of $69,442.00 to be divided equally among eligible full-time public defenders and prosecutors (including tribal government) who have outstanding qualifying federal student loans, not to exceed $10,000.00 per applicant. Applications for new and renewal applicants are currently available online. For more information about the JRJ Student Loan Repayment Program and how to apply, please go to http://www.ok.gov/dac. Under "About the DAC," click on the "John R. Justice Student Loan Repayment Program" link. Application packets must be submitted to the DAC or postmarked no later than October 28th, 2022, for consideration.

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Questions? Email
katie.dilks@okaccesstojustice.org

OKLAHOMA
ACCESS TO JUSTICE

A Silent History

By Mark S. Darrah

WHILE OKLAHOMA OFTEN revels in its colorful past, it's invested in keeping the bloody stains of its history hidden. Our state has a treacherous secret it now struggles to keep in the deep caverns of the past: the pre-statehood divestiture of Indian lands and the transfer of natural resources to white settlers, speculators, oil tycoons and ranchers.

Angie Debo, the late historian, wrote that liquidating Oklahoma's tribal holdings in the last part of the 19th century and early 20th century "was a gigantic blunder that ended a hopeful experiment in Indian development, destroyed a unique civilization, and degraded thousands of individuals." This is an understatement.

In summary, the Choctaws, Chickasaws, Muscogees, Cherokees and Seminoles lost their lands in the Southeast in return for most of present-day Oklahoma. Because of Civil War alliances with the Confederacy, the Five Tribes lost the western half of the state. Despite solemn treaty promises, the federal government failed to keep white settlers out of Indian lands.

Each of the Five Nations owned their lands in common, meaning each person owned the whole, but none owned individual tracts. Each tribe had its own law and courts but no jurisdiction over white settlers. The federal courts had little control over the lawless desperadoes of Indian Territory and even less over the white squatters and permitted residents.

By 1890, non-Indians made up over 60% of the population.

In the late 1800s, Congress passed laws requiring that Indian lands owned in common be divided up and individual lots distributed to individual tribal members, with the surplus properties sold or held for white settlement. The Five Tribes each negotiated agreements to do this as the best of no good options. For most tribal members, the concept of singular ownership of property made as much sense as owning the air.

Predatory private interests snatched much of the land as soon as the properties were distributed, and tribal controls lessened. Political patronage guided the appointment of federal administrators for the land transfers, many of whom were incompetent, ignorant and/or corrupt. A guardianship system to protect Indian rights utterly failed, particularly after the discovery of oil, resulting in the sale of valuable minerals rights for pennies. In the meantime, mixed-blood tribal members and land speculators pushed to remove restrictions designed to protect Indian ownership of the allotted lands so resource rich properties could be acquired for cheap. Historian Debo describes the Indian dispossession as "an orgy of exploitation ... almost beyond belief."

Originally published by Princeton University Press in 1940, Angie Debo's book, *And Still the Waters Run,* unravels in detail a complicated public/private swindle, featuring many forces and players to take the land, resources and wealth from the Five Great Tribes and put them into hands of white people. Realizing the stain and the secrets of this so dark episode, the University of Oklahoma Press refrained from publishing this very well researched and documented manuscript.

Read the book. After being dumbfounded and appalled, you will find yourself asking, why didn't I know this? Why weren't we taught?

Mark S. Darrah is a writer and a general civil and probate practice attorney in Tulsa.

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