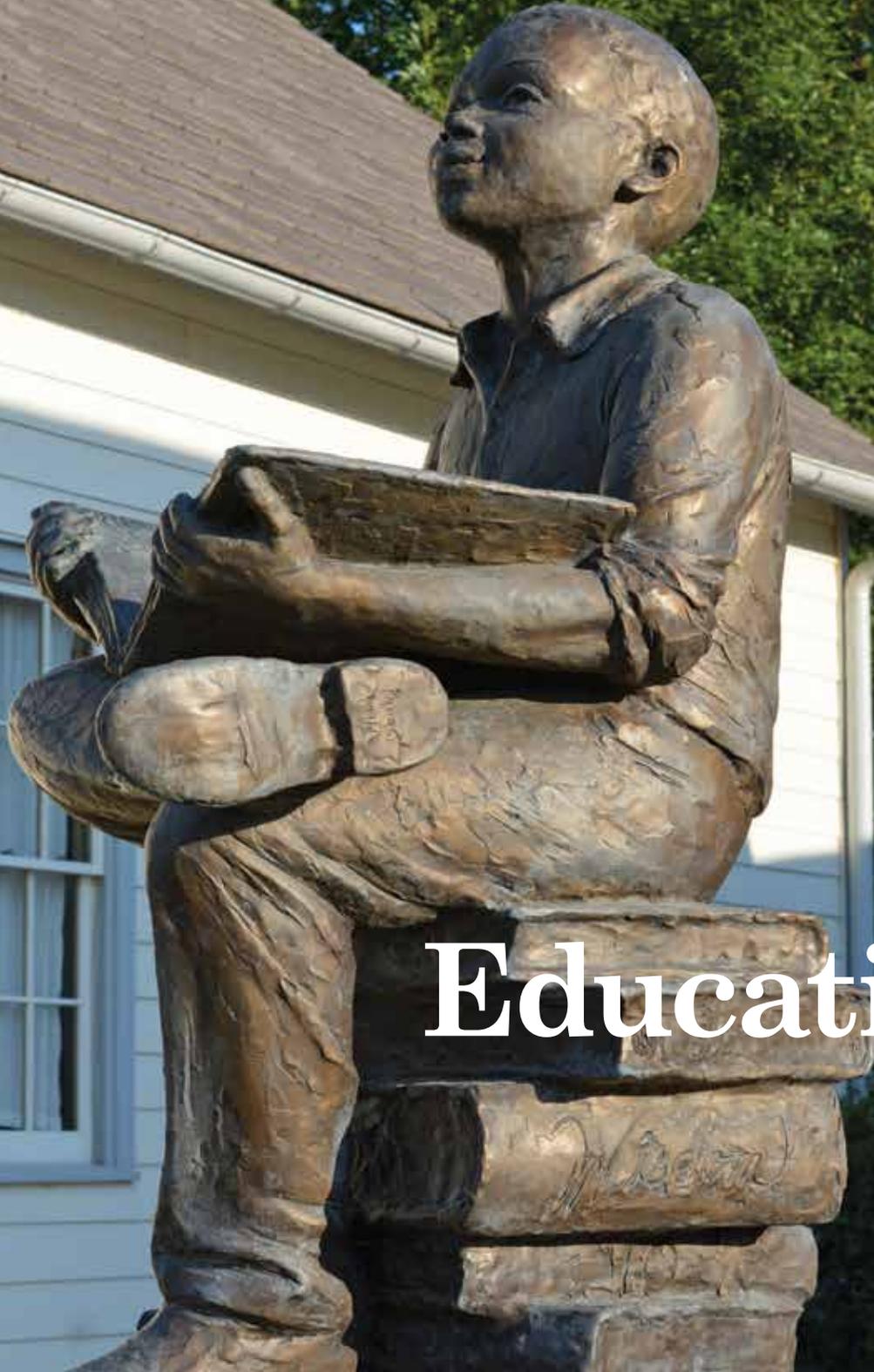


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THE OKLAHOMA BAR Journal

Volume 93 — No. 7 — September 2022



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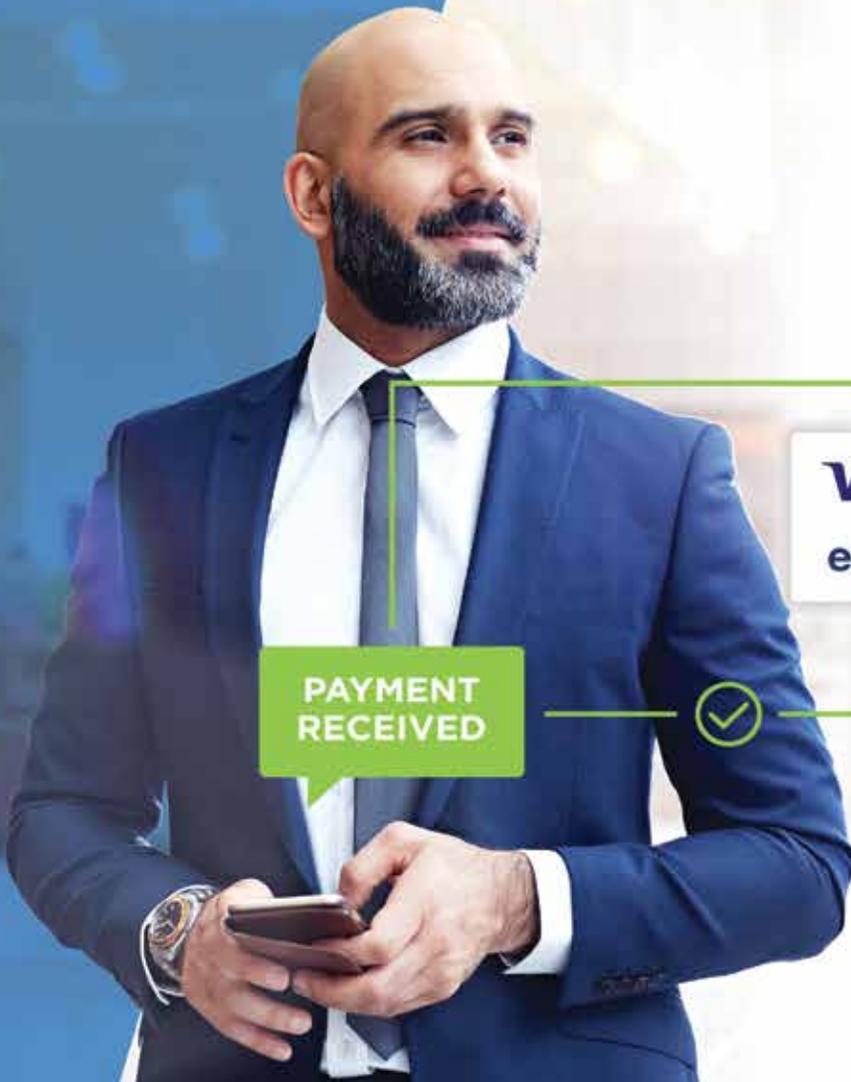
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AGENDA

- 8:30 TO 9:00 AM** Welcome and Opening Plenary
- 9:10 TO 10:10 AM** *Option 1: Effective and Fair Use of Online Dispute Resolution*
- Option 2: Achieving Procedural Fairness for Pro Se Litigants*
- 10:20 TO 11:20 AM** *Option 1: Incorporating Pro Bono Into Practice*
- Option 2: Building an Accessible (and Profitable) Practice*
- 11:30 AM TO NOON** Lawyers and the Legislature
- 12:00 TO 12:45 PM** Summer Pro Bono Challenge Awards (Lunch)
- 12:45 TO 1:45 PM** *Option 1: New Solutions for Rural Access*
- Option 2: The Benefits of a Holistic Practice*
- 1:45 TO 2:30 PM** Networking Break
- 2:30 TO 3:30 PM** *Option 1: Templates and Forms for Justice*
- Option 2: Lessons Learned from Recent Justice Reports*
- 3:40 TO 4:30 PM** Closing Plenary: Diversity and Representation in Access to Justice Work

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Editor: Roy Tucker

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Courtesy Edmond Visual Arts Commission and Edmond Historic Preservation Trust. Photo by Lori Rasmussen.

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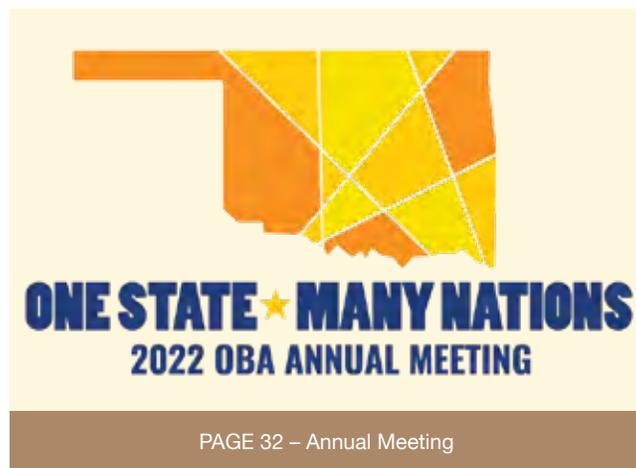
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OBA Member Awarded Congressional Medal of Honor

By Jim Hicks

OKLAHOMA CITY LAWYER DWIGHT BIRDWELL was presented with the Medal of Honor by President Joe Biden on July 5 in a White House ceremony. Mr. Birdwell's wife, Virginia, and other family and friends were in attendance. He received the award for his service with Troop C, 3rd Squadron, 4th Cavalry, 25th Infantry Division in Vietnam. The Medal of Honor is the highest and most prestigious military award a servicemember can receive. It is awarded to members of the U.S. armed forces who distinguish themselves conspicuously by valor, gallantry and intrepidity at the risk of their own lives above and beyond the call of duty, and it is normally presented by the president.

Mr. Birdwell's citation recounts his heroism during a battle that took place at the Tan Son Nhut Airbase near Saigon on Jan. 31, 1968. Troop C was the first American ground unit from outside the airbase to respond to the attack. When Mr. Birdwell's tank commander was seriously wounded, he took command and placed intense fire on the attacking enemy forces until his ammunition was expended. He then retrieved a machine gun from a downed American helicopter and drove back the attackers, creating a place of safety for the injured men behind the tank. With disregard for his own safety, he ran through a hail of enemy fire to get more ammunition for his men from other damaged vehicles. Despite sustaining injuries from shrapnel in his face, hands and arms, he remained on the battlefield until reinforcements arrived. At the time, Mr. Birdwell received the Silver Star for outstanding heroism on the battlefield.

On the night of July 4, 1968, he again risked his life to rescue more Americans, some of them wounded,

who were stranded in a battle zone in an enemy-occupied village. Seeing a damaged Army personnel carrier, he exposed himself to heavy enemy fire while loading all the wounded and evacuating them to safety. He then went back into the village to rescue more Americans, for which he was awarded his second Silver Star for bravery.

You can learn more about Mr. Birdwell's heroic actions at <https://bit.ly/3CcNJSJH>.

He served in the U.S. Army for three years, earning two Purple Hearts and two Silver Medals, one of which was upgraded to the Medal of Honor. Mr. Birdwell attended Northeastern State University in Tahlequah, followed by the OU College of Law, graduating in 1976. He is also a member of the Cherokee Nation and served on the Cherokee Nation Supreme Court for 12 years. His practice includes representing clients in oil and gas, probate and real estate matters.

Continued on page 45



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Banned Books: Censorship and Protecting Students From [CENSORED]

By Anthony T. Childers

FOR THOSE FAMILIAR WITH ANY AMOUNT OF HISTORY, book banning is nothing new. Religious texts, scientific theories and other written works challenging the prevailing social *mores* have been subject to censorship, removal from shelves or in the most extreme examples, burning. The motivations for censoring ideas have been varied, but the justification for censorship has traditionally relied on some authority's "duty" to forge the minds and mold the conscience of society.

You need not go far into the historical record to find examples. In 2019, J.K. Rowling's Harry Potter caused outrage among some groups who were demanding that the series be removed from library shelves. According to some, the books were objectionable. They complained the books, written for a 7 to 12-year-old audience, depicted magic and witchcraft and gave children access to "real spells" in violation of their own beliefs or because they considered such depictions to be immoral and inappropriate for young adults. For adults, within that same timeframe, it was Margaret Atwood's *The Handmaid's Tale* that came under the looking glass. The book depicted a future totalitarian society set in the southern United States, where women were treated as property. The book used coarse language and typed text to describe graphic scenes apparently

too much even for the eyes (or thoughts) of a mature adult. Once again, the objections were based on personal morals, religious beliefs or simply a disagreement with the ideas being expressed. For the objectors, what was bad for them was bad for all.

BANNING BOOKS AND LIMITING STUDENT SPEECH

In the United States, the government is prohibited from suppressing speech or ideas simply because the powers that be, or society itself, disagree.¹ However, within the public school setting, wherein the state undertakes the responsibility of educating children and instilling in them community values, the state has significant discretion over the content of its curriculum. Further, though students maintain their First Amendment rights, the right to free speech is "not automatically coextensive with the

rights of adults in other settings."² The effect is that school libraries can be particularly vulnerable to censorship based on calls from even a small minority who might disagree with ideas expressed in a book and if not handled appropriately can lead to litigation and liability.

Traditionally, when it comes to school curriculum, states and public school systems have been given almost total discretion in determining what materials should be taught in the classroom. The 10th Amendment reserves those "powers not delegated to the United States by the Constitution" to the states or people, and public education is one such area held by the states.³ Yet, the state's authority over curriculum is still constrained within the limits of an individual's rights protected within the constitutional amendments.⁴ Under

those protections, parents, students and school employees have successfully challenged a number of practices and restrictions, including government-sponsored prayer and other religious observances, required recitation of the Pledge of Allegiance and certain compulsory education requirements.⁵ Even within the highly discretionary area of curriculum, courts have struck down laws that prevent ideas from being taught within the classroom based on a violation of the First Amendment.⁶

Oklahoma public schools have seen their own fair share of book removals. In 1960, Tulsa Public Schools terminated a teacher who had assigned *The Catcher in the Rye* (admittedly a book whose underage protagonist drinks, curses and hires a prostitute, though doing little else than talking) to her 11th grade English class. Though she was later reinstated, she resigned, and the book was removed.⁷ More recently, from the period of July 1, 2021, to March 31, 2022, two Oklahoma school districts banned 43 books from their libraries.⁸ Some of those titles included *Brave New World*, *Of Mice and Men*, *Lord of the Flies*, *I Know Why the Caged Bird Sings* and *The Bluest Eye*, books that are considered classic literary works. As in the examples above, private citizens have their own protected right to object, but what legal standard applies when parents or the school board demand materials be removed from the school library, and are the First Amendment rights of students implicated?

In *West Virginia Board of Education v. Barnette*, the court recognized that students maintain some constitutional protections within the public school setting. Pronouncing that, “No official ... can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion,”

the court found that a law compelling students to salute the U.S. flag and recite the pledge was a violation of their First Amendment rights.⁹ Later, in *Tinker v. Des Moines Community Independent School District*, the court strongly reiterated those constitutional protections when it famously declared that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹⁰ When students were suspended for wearing black arm bands to protest the U.S.’ involvement in Vietnam, the court affirmed that students’ First Amendment rights remain, even within the school setting. Under the standard established in *Tinker*, student speech could only be restricted if it created a substantial disruption to the school’s ability to carry out its educational program.

In the decades following *Tinker*, the court considered other situations involving student speech and created additional exceptions to when student speech could be limited. In *Bethel v. Fraser*, the court considered student speech that was filled with sexual innuendos and delivered at a student assembly. Looking to *Tinker*, the court stated the First Amendment does not require that public schools surrender control to students; rather, students’ rights are curtailed by the schools’ “countervailing interest in teaching students the boundaries of socially appropriate behavior.”¹¹ Lewd or vulgar language could be prohibited within the school setting, even though an adult’s speech might be protected in a similar scenario. Later, in *Hazelwood v. Kuhlmeier* and *Morse v. Frederick*, the court created two additional exceptions: school sponsored/curricular speech and speech advocating illegal activity.¹²

BOARD OF EDUCATION V. PICO

It wasn’t until 1982 that the court first considered a challenge to the removal of materials from a school library. Unfortunately, the court’s decision offered little in terms of a clear test and resulted in a plurality determination without a binding opinion. In *Board of Education v. Pico*, a Long Island public school board removed 11 titles from the school library that they considered to be “anti-American, anti-Christian, anti-Semitic, and just plain filthy.”¹³ The board members had been provided with lists of “objectionable” books while attending a conference for parents concerned with education legislation. When the board members discovered some of those books were in their own school libraries, they directed that the books be removed so they could personally review them.¹⁴ Additionally, the board appointed a “Book Review Committee” consisting of parents and school personnel to make a recommendation to the board on the appropriateness of the books. The committee was instructed to consider educational suitability, good taste, relevance and appropriateness to age and grade level in making their recommendation.¹⁵ When the committee could only agree that two of the 11 books on the list be removed from the libraries, the board rejected the committee’s recommendation, returning only one title to the shelves and making another subject to parent approval. The nine other books on the list were banned, though the board gave no explanation for why it ignored the committee’s recommendation.¹⁶ When students in the district appealed, the trial court granted summary judgment for the board members relying on the line of cases that curricular decisions were given great discretion. The 2nd Circuit

reversed and the case went on appeal to the U.S. Supreme Court.

On consideration by the court, a plurality agreed the board's removal of the books violated the First Amendment free speech clause.¹⁷ The plurality referred to *Tinker* for the fact that students maintain their rights to freedom of speech "at the schoolhouse gate" and found that these rights can be implicated when a school attempts to remove books from their libraries. Not only does the Constitution protect speech but also the right to receive information and ideas.¹⁸ Citing *West Virginia Board of Education v. Barnette*, the court stated that schools could not ban books from library shelves "simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other opinion.'"¹⁹ The plurality made clear that the consideration of library materials is separate and apart from a school's determination on curriculum.

Within the curriculum, a school or the state has a legitimate interest in promoting traditional moral, social and political values, so long

as they comport with the demands of the First Amendment. Though discretion applied to curriculum, the "regime of voluntary inquiry" in school libraries did not lend itself to the same level of "absolute discretion."²⁰ Traditional classroom instruction is one where the teacher teaches, and the students listen; however, students are free to choose what they read from the school library. Before or after school or if there is free time, they can enter the library and make their own choices on what they want to learn and read what interests them either while still at school or at home on their own time. In short, it gives students access to ideas from within the "nurseries of democracy."²¹ Instead, the plurality found that any discretion within the library setting cannot be "exercised in a narrowly partisan or political manner" or driven by a desire to remove ideas with which the board members might disagree.²² As emphasized by Justice Blackmun in his concurring opinion, decisions to censor ideas by removing school library books cannot be driven by a desire for political or societal orthodoxy.

In *Pico*, when the plurality examined the particular facts of the case in light of the motion for summary judgment standard, they found the evidence raised an issue of material fact as to whether the board members exceeded their discretion in removing the listed books. Though the board had an established policy, it ignored, without reason, the committee's recommendation to remove only two of the books on the list. As Justice Brennan explained, had the record demonstrated that the board "had employed established, regular, and facially unbiased procedures for the review of controversial materials," this would have been a very different case. Yet, the board had agreed their decision was based, at least in part, on the books being "anti-American" and on their own personal values, morals and tastes, not any particular pedagogical concern.

Justice Brennan's opinion was joined by two other justices, with Justice Harry Blackmun joining in part and concurring in part. Justice Byron White concurred in result, but his concurrence was based on the procedural posture of the case. As no opinion was joined by a majority of the court, *Pico* is not a binding opinion; however, a framework can still be drawn from *Pico* that would appear to be in line with the court's current jurisprudence. In fact, lower courts have continued to apply the plurality's reasoning in *Pico* and have looked at whether the motivating factor for the removal was a disagreement over ideas in the book or some pedagogical concern such as accuracy, "pervasive vulgarity" or lewdness when taken in the context of the entire text.²³ Within our own 10th Circuit, the court seemed to accept the *Pico* decision as being the rule of the court.²⁴ Though there was no



Other courts have also focused on whether there was some legitimate pedagogical reason for the removal and whether any policy outlining the process was followed.²⁶

actual removal of materials in the case the 10th Circuit considered, the court stated in *dicta* that the “Supreme Court ... ruled” that the First Amendment was violated if the school board members removed books simply because they disagreed.

But we can turn toward other circuits for guidance as well. The 11th Circuit has twice considered board action on books. In *ACLU of Florida v. Miami-Dade County School Board*, the court first acknowledge that *Pico* was a plurality opinion but then assumed the test in *Pico* would still apply. In considering a challenge over the removal of *Vamos a Cuba*, a children’s board book that gave a very truncated overview of the life and culture in Cuba, the court used the same standard first articulated in *Pico*: If a book is removed “simply because they disliked the ideas contained in the book and sought by its removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion” the removal would be unconstitutional. The court, however, ultimately found the only motivation for removal was that the book was inaccurate in its depiction of life in Cuba. Removal due to accuracy would

be an appropriate, pedagogically related reason for removal.²⁵ Further, the court drew a distinction between *Pico* and the action taken by the Miami-Dade School Board on the basis that the board had a set policy for challenging curricular and library materials as opposed to an *ad hoc* decision that would lend credibility to the idea that the books were censored simply because of a disagreement with the ideas they contained.

Other courts have also focused on whether there was some legitimate pedagogical reason for the removal and whether any policy outlining the process was followed.²⁶ In *Case v. Unified School District*, a federal district court in Kansas found that the school had violated the First Amendment rights of its students when it removed a book from the library because it depicted a romantic relationship between two teenage girls.²⁷ The evidence at trial made it apparent that the decision to remove the book was made only because of personal disapproval of the ideas in the book and because the school had received pressure from outside parent groups and the media.²⁸ The book contained no vulgarity, offensive language or explicit sexual content and

had received numerous literary awards, including “Best of the Best” for young adult books. Even the district’s own librarians had reviewed the book and found it to be appropriate content for students. The books had been on library shelves since the 1980s and were only removed after additional copies were donated by GLAAD. A board member testified that he was offended by the book’s “glorification of the gay lifestyle” that, in his opinion, could lead students to a destruction of “a healthy sexuality, self image, and ... onslaught of physical destruction.” Other members considered it inappropriate, unsuitable for students, lacking in depth on the subject matter or simply not a topic that should be addressed in the public school setting. As in the cases discussed above, the school’s policy addressing the removal of materials was not followed. Based upon the evidence, the court found that when the school removed the book for being “educationally unsuitable,” the basis for that determination was their own disagreement with the ideas expressed in the book and thus a violation of the plaintiffs’ First Amendment rights. Testimony at trial revealed that every board member took into account their

own personal objections to homosexuality, and any other stated concern was rooted in that objection.

Similarly, a school district in Arkansas moved J.K. Rowling's Harry Potter books to a different part of the library and required a signed permission slip for students to check out the books.²⁹ The board had stated their reasons for removal were over concerns that the books might promote disobedience and disrespect for authority but also because they disagreed with the depiction of witchcraft throughout the series. The board members' testimony had made it clear: The reason for censoring the book was their own desire to suppress ideas they didn't like. Citing *Pico*, the court found the decision to move the books and require parental approval was a violation of students' First Amendment rights. Additionally, though the school attempted to argue that the books would create a substantial disruption to the educational environment, the exception defined in *Tinker*, the school district was unable to show any actual or foreseeable disruption simply by the fact that the books were in the library. The relocation of the books may have been a minimal inconvenience, especially considering the student plaintiff owned the books at home, but the court remarked, "The loss of First Amendment rights, even minimally, is injurious."³⁰ Clearly, though *Pico* is not binding as a plurality opinion, the reasoning by the plurality continues to be utilized by courts confronted with removals from school libraries.³¹

OKLAHOMA'S HB 3096

Legislatively, Oklahoma's public schools saw a wide variety of bills this year. Over 500 bills introduced or carried over into this session affected Oklahoma public schools. At least eight

were directly related to materials in school libraries, but only one library-related bill became law. On April 29, 2022, Gov. Stitt signed HB 3096, which requires that school libraries "be reflective of the community standards for the population the library media center serves when acquiring an age-appropriate collection of materials, nonprint materials, multimedia resources, equipment, and supplies adequate in quality and quantity to meet the needs of students ..." Effective Nov. 1, 2022, the law would seem to put into place some statewide standard that school libraries must consider when acquiring new books or other materials. Yet, nothing within the new legislation defines what is meant by community standards or age appropriateness – those terms would be defined at the local level, and consideration of what is appropriate will be made by the school district. The law appears to simply codify what is already the practice for Oklahoma schools. To the extent that a challenge may arise over what books a school is acquiring, the plurality in *Pico* made it clear they were not addressing the acquisition of new materials. Courts would likely grant very broad discretion to the school district in such a challenge; however, decisions on acquisition are not completely free of constraints as they may still implicate the First Amendment in certain circumstances.

CONCLUSION

Actions by public school boards or their administration that seek to remove or limit access to materials in the library may violate a student's First Amendment rights. Whether the removal is based upon a personal religious belief and thus prohibited by the Establishment Clause or simply

a disagreement with the ideas expressed in the material, the First Amendment provides protection to students in the K-12 setting. However, the First Amendment doesn't prevent a school from removing materials for genuine educational or practical reasons. Schools that do have legitimate concerns regarding the educational appropriateness of materials in their library should comply with the decision in *Pico* and make that determination only after following an established district policy that considers genuine pedagogical interests. Age appropriateness, lewdness, vulgarity, accuracy and educational suitability are all appropriate areas for consideration; however, the simple fact that a complaint has been made would not be sufficient justification for removal. Public schools should carefully consider the source and volume of requests to restrict access to books or other materials and ensure decisions are based upon what is in the best interest of all students and on educationally appropriate factors. Beyond the school library, schools must also keep in mind efforts to block digital resources based on a disagreement with ideas.³² Even removing materials, whether in a physical library or made available digitally, simply because they might be offensive is not a sufficient reason for censorship and could result in a successful challenge.³³ Though curricular decisions are provided significant discretion, a student's First Amendment rights "may be directly and sharply implicated by the removal of books from the shelves of a school library."³⁴

ABOUT THE AUTHOR



Anthony T. Childers is a staff attorney with the Oklahoma State School Boards Association.

He is a 2010 graduate of the OU College of Law and is a member and current president of the Oklahoma School Board Attorneys Association.

ENDNOTES

1. *Lamont v. Postmaster General*, 381 U.S. 301 (1965).
2. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
3. U.S. Const. amend. X.
4. See e.g., *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) (invalidating the state's compulsory flag salute law under the First Amendment's Free Speech Clause); *Engle v. Vitale*, 370 U.S. 421 (1962) (holding that requiring a daily prayer written by the state board of regents at the start of every school day was a violation of the Establishment Clause); *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963) (finding that a state law requiring "at least ten verses from the Holy Bible" to be read at the opening of each public school day was a violation of the establishment clause).
5. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (holding that a law requiring all children to be enrolled in public education was a violation of the 14th Amendment); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (Wisconsin's law requiring all school-age children until the age of 16 was unconstitutional as applied to an Amish family whose religious beliefs circumscribed education beyond the eighth grade).
6. *Epperson v. Arkansas*, 393 U.S. 97 (1967) (holding that a state law prohibiting the teaching of evolution in the classroom is unconstitutional).
7. *Battle of the Books: Literary Censorship in the Public Schools, 1950-1985* by Lee Burrell. Page 68.
8. <https://pen.org/banned-in-the-usa>.
9. *Barnette*, 319 U.S. 624 (1943).
10. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).
11. *Bethel School District v. Fraser*, 478 U.S. 675 (1986).
12. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) (holding that a school-sponsored student publication was subject to school review and censoring); *Bethel v. Fraser*, 478 U.S. 675 (1986) (holding that a student who gave a speech filled with sexual innuendos to the student body could be disciplined); and *Morse v. Frederick*, 551 U.S. 393 (2007) (a public school district did not violate students' free speech rights when the students were disciplined for unfurling a banner reading "Bong Hits 4 Jesus" as the Olympic torch passed through town).
13. 457 U.S. 853 (1982).
14. *Id.*, at 856-857.
15. *Id.*
16. *Id.*, at 858.
17. As Justice White concurred as to the result, *Pico* is not binding. However, circuit courts have continued to follow the reasoning outlined in *Pico* in considering similar cases.

18. *Stanley v. Georgia*, 394 U.S. 557, 564, 89 S.Ct. 1243, 1247, 22 L.Ed.2d 542 (1969); see also *Kleindienst v. Mandel*, 408 U.S. 753, 762-763, 92 S.Ct. 2576, 2581, 33 L.Ed.2d 683 (1972); *Martin v. Struthers*, 319 U.S. 141, 143, 63 S.Ct. 862, 863, 87 L.Ed. 1313 (1943) (citation omitted); *Lamont v. Postmaster General*, 381 U.S. 301, 308, 85 S.Ct. 1493, 1497, 14 L.Ed.2d 398 (1965).

19. 457 U.S. 853 at 854.

20. Even within the curricular setting, the court has recognized there are limits upon the state: *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (striking down a state law that forbade the teaching of foreign languages in public and private schools); *Epperson v. Arkansas*, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968) (finding that a state law prohibiting the teaching of evolution in any state-supported school to be unconstitutional).

21. *Mahanoy Area School District v. B.L.*, 594 U.S. ____ (2021).

22. *Pico*, 457 U.S. at 871.

23. See *B.H. ex rel. Hawk v. Easton Area School Dist.*, 725 F.3d 293 (3rd Cir. 2013) (finding that middle school students wearing bracelets bearing the slogan "I ♥ Boobies! (Keep A Breast)" was not lewd or vulgar in the middle school setting when considered in context). See also *Chandler v. McMinnville School Dist.*, 978 F.2d 524 (9th Cir. 1992).

24. *Turkish Coalition of Am., Inc. v. Bruininks*, 678 F.3d 617 (10th Cir. 2012).

25. 557 F.3d 1177 (11th Cir. 2009).

26. *Campbell v. St. Tammany Parish School Board*, 64 F.3d 184 (5th Cir. 1995) (Relying on the analysis in *Pico* in holding that the removal of a nonfictional book tracing African tribal religious practices and referencing voodoo was unconstitutional); *PFLAG v. Camdenton R-III School District*, 853 F.Supp.2d 888 (Mo. W.D. Ct. 2012) (finding that a school internet filter that limited access to sites expressing a positive viewpoint toward LGBT individuals was a violation of student free speech).

27. 908 F.Supp. 864 (Dist. Ct. Kan. 1995).

28. See also *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022 (9th Cir. 1998) (stating, "A student's First Amendment rights are infringed when books that have been determined by the school district to have legitimate educational value are removed from a mandatory reading list because of threats of damages, lawsuits, or other forms of retaliation.").

29. *Counts v. Cedarville School District*, 295 F. Supp. 2d 996 (W.D. Ark. 2003).

30. *Id.*, at 999.

31. But see e.g., *Griswold v. Driscoll*, 616 F.3d 53 (1st Cir. 2010) (stating, "Pico's rule of decision, however, remains unclear" while still reviewing *Pico*. Further, *Pico* was distinguished to the extent that it applied to a curricular choice by the state board of education and was not applicable to the school library setting).

32. See *Campbell v. St. Tammany Parish School Board*, *supra*.

33. *Monteiro v. Tempe Union High School Dist.*, *supra*.

34. *Pico*, 457 U.S. at 853.

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Legal Issues Regarding Transgender Students in Oklahoma Schools

By *Laura L. Holmes and Laura L. Holmgren-Ganz*

A RECENT SURVEY CONDUCTED BY THE TREVOR PROJECT focused on the challenges experienced by nearly 35,000 lesbian, gay, bisexual, transgender and queer and questioning (LGBTQ) youth ages 13-24 across the United States. Forty-two percent seriously considered attempting suicide in the past year, while 72% reported symptoms of generalized anxiety disorder. Seventy-five percent reported experiencing discrimination based on their sexual orientation or gender identity at least once in their lifetime. Only one in three transgender youth found their home to be LGBTQ-affirming.¹

During spring 2022, state legislatures around the country considered and, in some cases, passed legislation aimed at gay and transgender issues in schools. Some of the proposed or enacted legislation cited “parents’ rights” to ban any discussion of gay and transgender issues in public schools. Some states, including Oklahoma, enacted legislation to ban transgender athletes’ participation in girls or women’s sports.² This article discusses the legal issues concerning transgender students faced by Oklahoma’s public schools.

There are currently no explicit legal protections for transgender students at the federal level.³ However, courts that have considered the issue have concluded that Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex, also

prohibits discrimination on the basis of gender identity.⁴ The First Amendment and the Due Process and Equal Protection clauses of the 14th Amendment have also been raised in cases of gender identity. In several cases involving harassment and discrimination against LGBTQ students, courts have relied upon the Equal Protection Clause to impose a duty on schools to protect transgender students from harassment on an equal basis with other students. Courts have recognized that schools must balance the need to support transgender students while ensuring the safety and comfort of all students. Specifically, courts have held that discrimination against transgender students is discrimination on the basis of sex, in violation of Title IX and/or the Equal Protection Clause.

COURT DECISIONS INVOLVING EMPLOYMENT AND TRANSGENDER PERSONS

In 2007, a transgender employee sued her former employer after being told the reason for her termination was her using the female restroom even though she still had male genitalia.⁵ She alleged that her termination was for being transgender and failing to conform to the expectations of stereotypical male behavior.⁶ The trial court granted the employer’s motion for summary judgment, holding that transgender persons were not a protected class. The 10th Circuit Court of Appeals affirmed the district court’s decision, holding that discrimination based on a person’s status as transgender was not discrimination “because of sex” under Title VII of the 1964 Civil Rights Act (Title VII)



and concluding that transgender individuals were not members of a protected class under the Equal Protection Clause.⁷ The court noted the vast majority of federal courts addressing the issue had concluded that Title VII's prohibition on sex discrimination means only that it is unlawful to discriminate against women because they are women and men because they are men.⁸

Ten years later, Kimberly Hively filed a claim under Title VII stating that she suffered discrimination when her community college employer terminated her employment because she was a lesbian.⁹ Hively argued that if she had been a man married to or dating a woman, the employer "would not have refused to promote her and would not have fired her."¹⁰

Concluding "it is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex," the court held that discrimination against a woman for being a lesbian was sex discrimination in violation of Title VII.¹¹

In 2020, the United States Supreme Court consolidated three employment cases that involved either a gay or transgender person who was fired due to their gay or transgender status.¹² In all three cases, the employer was alleged to have fired long-time employees simply because the employee was gay or transgendered.¹³ In the majority opinion, Justice Gorsuch noted that Title VII outlawed discrimination on the basis of sex and stated, "An employer who fires an individual for being homosexual

or transgender fires that person for traits or actions it would not have questioned in members of a different sex."¹⁴ The employers in *Bostock* argued that based on the meaning of the word "sex" when Title VII was enacted in 1964, the term "sex" refers to a person's status as either biologically male or female.¹⁵ However, as outlined in previous cases, the issue is not the meaning of the term "sex" but the law's prohibition of actions taken "because of" an employee's sex.¹⁶ Ultimately, the court concluded that "an individual's homosexuality or transgender status is not relevant to employment decisions" because "it is impossible to discriminate against a person for being homosexual or transgender without discrimination against the individual based on sex."¹⁷ *Bostock* makes it

clear that Title VII's protections apply to an employee's sexual orientation or transgender status.¹⁸

While the issue of transgender students was not before the court in *Bostock*, Justice Alito's dissent recognized that similar issues have arisen under Title IX and noted several circuit court cases that were facing the issue of students barred from using a bathroom based on their biological sex versus the sex with which they identify.¹⁹ Likewise, Justice Alito's dissent also raised the issue of transgender individuals participating in women's sports.²⁰

TITLE IX CASES

Title IX provides, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance ..."²¹ All Oklahoma public schools, including charter schools, receive federal financial assistance and are thus subject to Title IX. It is well established that Title IX is a source of individual rights for alleged sex discrimination, including sexual harassment.²² When considering cases of alleged discrimination under Title IX, courts have routinely considered the same legal analysis as Title VII cases.²³

Prior to the United States Supreme Court decision in *Bostock*, several federal appellate courts and district courts were addressing the issue of transgender students in school, specifically as to the use of particular bathrooms. The United States Department of Education (DOE) attempted to enjoin a school district from excluding a transgender girl from using the girls' restroom.²⁴ The trial court granted the DOE's request for a preliminary injunction, and the school district

sought a stay on appeal.²⁵ The 6th Circuit Court of Appeals concluded the school district was not likely to succeed on the claim because Title IX prohibits discrimination based on sex stereotyping and gender nonconformity.²⁶

In 2017, the 7th Circuit Court of Appeals upheld a trial court's grant of an injunction prohibiting a school district from denying a student who was born female but identified as male from using the girls' bathroom or a single-occupancy bathroom.²⁷ Relying in part on determinations of other courts that had concluded that transgender employees were protected by Title VII, the court determined that discrimination on the basis of gender identity of students is likewise "sex" discrimination, which is prohibited by Title IX.²⁸ In considering the plaintiff's Equal Protection Clause claim, the court specifically rejected the school district's argument about protecting the privacy of other students.²⁹ After the *Bostock* decision, two appellate courts cited *Bostock* to reach the same conclusion, holding that Title IX protects transgender students from discrimination based on gender identity.

Drew Adams was identified as female at birth and in eighth grade identified himself as male.³⁰ In high school, he transitioned by cutting his hair short, wearing more masculine clothing, binding his chest to flatten his breast tissue, taking hormones to stop his menstrual cycle and masculinize his body and ultimately having a bilateral mastectomy to remove his breast tissue.³¹ In ninth grade, he used the boys' bathroom for six weeks until two female students complained to the administration they had seen him entering the boys' bathroom. After the complaint, the school district's administrators gave him a choice of using the girls' bathroom or using a single-stall gender-neutral bathroom.³² Unsatisfied with these options, he sued the school district, alleging the school district violated his right to equal protection and his rights under Title IX by prohibiting him from using the boys' bathroom at school.³³

In the first decision by the 11th Circuit three-judge panel, the court concluded that the school district's bathroom policy served an

Other courts have also addressed the issue of transgender students and school bathroom policies, where the school policy allowed transgender students to use the bathroom based on their gender identity rather than their biological sex.

important governmental interest in protecting student privacy but was arbitrary in its administration and thus not sufficiently related to the indicated governmental interest.³⁴ Relying on *Bostock*, the court also concluded that Title IX prohibits discrimination against a transgender person because such discrimination is on the basis of sex.³⁵

In its revised decision, the panel's previous opinion was vacated and replaced in "an effort to get broader support among our colleagues ..."³⁶ The revised opinion does not discuss Mr. Adams' Title IX claim and solely addresses one ground under the Equal Protection Clause. Accepting as legitimate the government interest of student bodily privacy when using the restrooms by maintaining sex-separate restrooms, the court concluded the school district's bathroom policy failed because it was based on the student's sex indicated on the student's enrollment documents, even if the student later provided documents showing a different sex. Thus, "The bathroom policy does not apply to all transgender students equally."³⁷ The court also concluded the policy was impermissibly arbitrary because the school district refused to change any official records or consider any other government documents reflecting a student's sex after the student enrolled.³⁸ In discussing the harm Mr. Adams suffered, the court recognized the stigmatization and shame he experienced from not being permitted to use the boys' restroom while at school.

Twenty-two states and Washington, D.C., filed *amicus curiae* briefs in support of Mr. Adams. Conversely, 18 other states, including Oklahoma, filed an *amicus curiae* brief in support of the school district's policy preventing the transgender student from using the boys'

bathroom. The 11th Circuit granted rehearing *en banc* and conducted oral argument on Feb. 22, 2022. The United States Department of Justice was granted leave to appear and participated in oral argument in support of Drew Adams' claims. A ruling should be forthcoming.

Shortly after the initial 11th Circuit decision in *Adams*, the 4th Circuit issued a decision in *Grimm v. Gloucester Cnty. Sch. Bd.*³⁹ In 2015, Gavin Grimm, then a student at Gloucester County High School whose biological sex is female but who identified as male, sued the Gloucester County School Board alleging violations of the Equal Protection Clause and Title IX. The school originally allowed him to use the boys' bathroom, but after the board faced significant backlash from parents, it adopted a policy that students could only use the bathroom matching their biological sex.⁴⁰ Mr. Grimm also alleged the board violated the Equal Protection Clause and Title IX by refusing to amend his school records despite amending his birth certificate to reflect that he was male.⁴¹

In 2020, the 4th Circuit ultimately determined the board's bathroom policy violated Mr. Grimm's equal protection rights because the bathroom policy was a sex-based classification and transgender persons are a quasi-suspect class. Thus, for the bathroom policy to withstand scrutiny, it must have been substantially related to a significant governmental interest. The board argued the policy was applied equally to all persons and was necessary to protect the privacy of all students. The court rejected these arguments and noted the information provided by both the board as well as various *amici curiae*, including other school boards and school administrators, did not support the argument that

the privacy of other students was impacted in any way by allowing transgender students to use the bathroom associated with their gender identity.⁴²

As to Mr. Grimm's Title IX claims, the court concluded, relying on *Bostock*, that a bathroom policy prohibiting a transgender student from using the bathroom applicable to their gender identity constitutes discrimination on the basis of sex.⁴³ In determining that Mr. Grimm had suffered harm as a result of the bathroom policy, the court relied on this country's history of racially segregated bathrooms and concluded, "The stigma of being forced to use a separate restroom is likewise sufficient to constitute harm under Title IX."⁴⁴ The court acknowledged that Title IX allows for separate toilet, locker room and shower facilities on the basis of sex and reasoned that Mr. Grimm was not challenging the existence of sex-segregated bathrooms but his exclusion from the sex-segregated bathroom corresponding with his gender identity.⁴⁵

Other courts have also addressed the issue of transgender students and school bathroom policies, where the school policy allowed transgender students to use the bathroom based on their gender identity rather than their biological sex. Cisgender⁴⁶ students brought a lawsuit against the school district seeking a preliminary injunction against the school district's policy of allowing transgender students access to bathrooms and locker rooms consistent with their gender identity, alleging the policy violated their rights and Title IX.⁴⁷ The court denied the request for a preliminary injunction, finding that the school district's policy was thoughtful and carefully tailored to address real issues while maintaining a safe

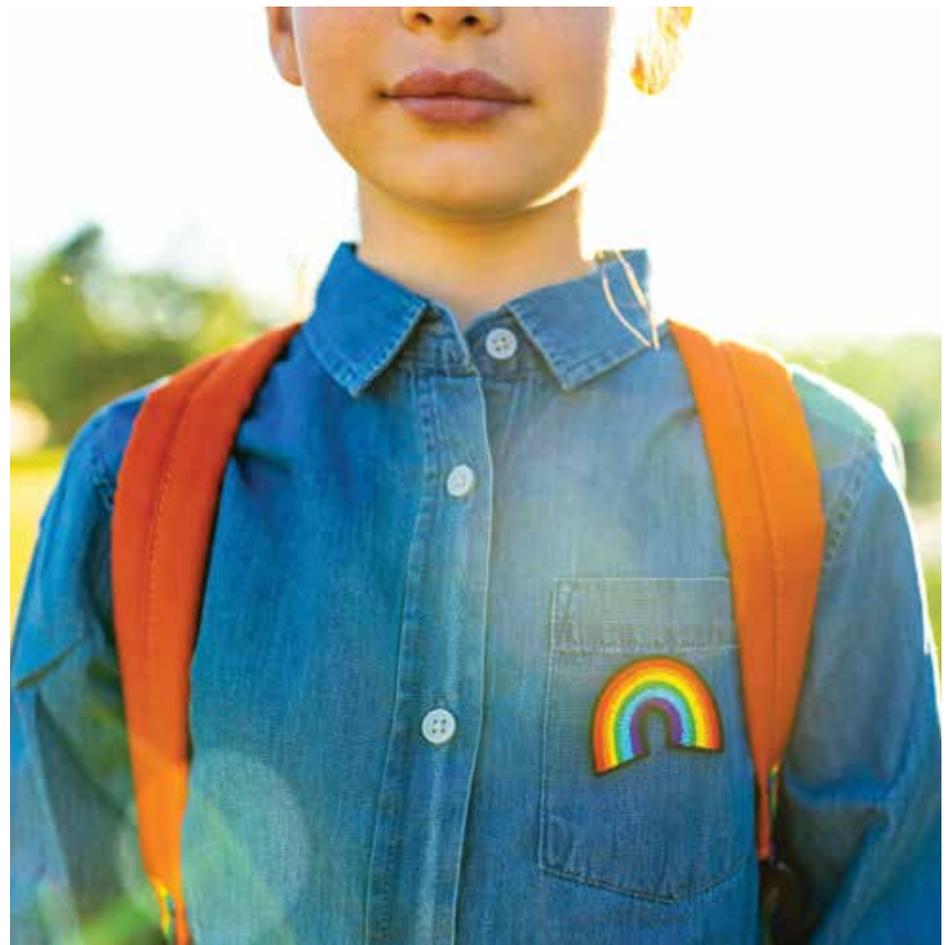
and respectful learning environment for cisgender and transgender students.⁴⁸ Likewise, the 9th Circuit concluded that cisgender students' Title IX and constitutional rights were not violated by the school district's policy that allowed transgender students to use school bathrooms and locker rooms that correspond with their gender identity.⁴⁹

Moreover, public schools are facing lawsuits for substantial monetary damages for alleged discrimination against transgender students due to excluding transgender students from bathrooms corresponding with their gender identity. In December 2021, a Missouri jury found that a school district discriminated against a transgender male student by denying him the use of the boys' bathroom and locker rooms and awarded him \$4,000,000 in damages.⁵⁰

OTHER ISSUES

As evidenced by these cases, public school districts throughout the nation continue to struggle with issues regarding transgender students at school. For the most part, public schools have adopted gender-neutral dress codes and have allowed transgender students to change their legal name or gender with appropriate documentation. Public schools have also generally provided for transgender and gender nonconforming students to be addressed by a name and pronoun corresponding to their gender identity regardless of whether the student has obtained a court-ordered name or gender change. These students are treated like other students who are allowed to use a nickname or preferred name.

Every Oklahoma school district is required to have policies to prevent bullying. A school district's



bullying and nondiscrimination policies should prohibit harassment and discrimination against students based on the student's sexual orientation as well as gender identity and/or expression, address appropriate accommodations, establish consequences for those who harass and discriminate and set a tone allowing students to feel safe to report harassment.

On March 30, 2022, Gov. Kevin Stitt signed into law Senate Bill 2, which prohibits transgender women or girls from competing in athletics sponsored by public schools, colleges or universities. The new law provides for a private cause of action for injunctive relief as well as monetary damages against any school that allows a biological male to participate on a girls sports team.⁵¹

Similar laws are under attack in other states. A transgender female

student in West Virginia sued the West Virginia State Board of Education and her school district after being informed she would not be permitted to join the cross country and track teams based on a statute that prevents males from participating on athletic teams for females, women or girls. The student challenged the law as violating Title IX and the Equal Protection Clause. In denying the motions to dismiss filed by both the Harrison County Board of Education and the West Virginia Board of Education, the court noted that the United States Supreme Court in *Bostock* ruled that discrimination on the basis of a person's transgender status is discrimination on the basis of sex.⁵²

Another issue many public schools have addressed concerns gay rights or gay/straight student organizations on campus. The

Equal Access Act (EAA) applies to public secondary schools that receive federal financial assistance and have a limited open forum.⁵³ The EAA requires public schools to provide equal access to and prohibit discrimination against secondary students desiring to conduct meetings within a school district's limited open forum on the basis of the religious, political, philosophical or other content of the speech at such meetings.⁵⁴ A secondary school creates a limited open forum whenever it allows an opportunity for one or more noncurricular-related student groups to meet on school premises during noninstructional time.⁵⁵ The EAA is not to be construed to limit the school district's authority to maintain order and discipline on school premises, protect the well-being of students and staff and assure that attendance of students at meetings is voluntary.⁵⁶

The majority of courts addressing student-led gay rights or gay/straight organizations seeking recognition from a public secondary school have held that the group must be recognized.⁵⁷ Where the stated purpose of the organization included promoting tolerance and acceptance of students regardless of sexual orientation, creating a safe and respectful learning environment and working with the school administration and other school clubs to end prejudice and harassment, the court found that the group had to be recognized by the school district.⁵⁸ However, a school district's denial of a club's application based on the fact the club's website included links to websites with obscene and sexually explicit material and the club's stated goal of educating students as to safe sex directly interfered with the school's "abstinence only" policy.⁵⁹

CONCLUSION

Those courts that have considered the issue of Title IX and transgender students have concluded that discrimination on the basis of sexual orientation and gender identity constitutes discrimination on the basis of sex and is prohibited by Title IX as well as the Equal Protection Clause. Neither Oklahoma courts nor the 10th Circuit Court of Appeals has ruled on the rights of Oklahoma's transgender students with respect to the use of bathrooms and locker rooms. On April 23, 2022, in response to a request from Stillwater Public Schools, State Superintendent of Public Instruction Joy Hofmeister requested an attorney general's opinion from Oklahoma Attorney General John O'Connor. The request specifically relates to the usage of bathroom facilities within the school district based on a student's gender identity.

In May 2022, Oklahoma enacted a new provision of law that requires students to utilize multiple occupancy restrooms or changing areas based on their sex as identified on the student's original birth certificate rather than their gender identity.⁶⁰ If the legislation is challenged in court, the 10th Circuit may have an opportunity to address the questions already addressed by the 3rd, 4th, 6th, 7th, 9th and 11th Circuit Courts of Appeals. Depending on the 11th Circuit's *en banc* decision in *Adams*, it is possible the United States Supreme Court will be asked to weigh in if a split in the circuits develops. Until there is a definitive case in this area, the law remains uncertain in the 10th Circuit.

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ENDNOTES

1. Trevor Project, "National Survey on LGBTQ Youth Mental Health 2021," <https://bit.ly/3zyBhLq>.
2. SB 2, 2022 Legislative Session.
3. The United States Department of Education is currently working on revisions to Title IX's regulations. According to *The Washington Post*, draft text of the regulations indicates that discrimination on the basis of sex will be defined to include sexual orientation and gender identity. "New Title IX Rules Set to Assert Rights of Transgender Students," Laura Meckler, *The Washington Post*, March 30, 2022.
4. 20 U.S.C. 1681.
5. *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1219 (10th Cir. 2007). *Etsitty* is no longer a valid precedent and is recognized as being overruled by *Bostock v. Clayton County, GA*, 140 S.Ct. 1731 (2020). *Tudor v. Southeastern Oklahoma State Univ.*, 13 F.4th 1019 (10th Cir. 2021).
6. *Id.* at 1219-1220.
7. *Id.* at 1221-1222.
8. *Id.* at 1222.
9. *Hively*, 853 F.3d 339, 341 (7th Cir. 2017).
10. *Id.* at 345.
11. *Id.* at 351.
12. *Bostock v. Clayton County, GA*, 140 S.Ct. 1731 (2020). The three cases involved an appeal from the 11th Circuit Court of Appeals (*Bostock v. Clayton County, GA*, 723 Fed.Appx. 964, *affm'd and reh'g en banc denied*, 894 F.3d 1335 (2018)), 2nd Circuit Court of Appeals (*Altitude Express v. Zarda*, 883 F.3d 100 (2018)) and 6th Circuit Court of Appeals (*R.G. and G.R. Harris Funeral Homes, Inc. v. EEOC*, 884 F.3d 560 (2018)).
13. *Id.* at 1734.
14. *Id.* at 1737.
15. *Id.* at 1739.
16. *Id.*
17. *Id.* at 1741.
18. *Id.*

19. *Id.* at 1779-1780.
 20. *Id.*
 21. 20 U.S.C.A. §1681(a).
 22. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 285, 118 S.Ct. 1989, 1997, 141 L.Ed.2d 277 (1998); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 119 S.Ct. 1661, 1671-1672, 143 L.Ed.2d 839 (1999).
 23. *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001) (Courts have generally assessed Title IX discrimination claims under the same legal analysis as Title VII discrimination claims.)
 24. *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016) (*per curiam*).
 25. *Id.* at 220.
 26. *Id.* at 221-22.
 27. *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017).
 28. *Id.* at 1050.
 29. *Id.* at 1052.
 30. *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), vacated and superseded by 3 F.4th 1299 (11th Cir. 2021) petition for reh'g *en banc* pending granted 9 F.4th 1369 (11th Cir. 2021).
 31. *Id.* at 1292.
 32. *Id.* at 1293.
 33. *Id.* at 1295.
 34. *Id.* at 1297-1299.
 35. *Id.* at 1304-1305.
 36. *Id.* at 1303-1304.
 37. *Id.* at 1309.
 38. *Id.* at 1310.
 39. *Grimm v. Gloucester County Sch. Board*, 972 F.3d 586, 593 (4th Cir. 2020), reh'g *en banc* den'd, 976 F.3d 399 (4th Cir. 2020), cert. den'd 141 S.Ct. 2878 (2021). In response to the initial lawsuit in 2015, the board filed a motion to dismiss, and the trial court denied the request for preliminary

injunction and dismissed the Title IX claim. 132 F.Supp.3d 376 (E.D. VA. 2015). Upon an interlocutory appeal, the 4th Circuit reversed the trial court. 822 F.3d 709 (4th Cir. 2016), reh'g *en banc* den'd, 824 F.3d 450 (4th Cir. 2016). The board sought *certiorari* in the United States Supreme Court, which granted *certiorari* and scheduled the case for oral argument. However, based on the United States Department of Education's withdrawal of its guidance document, which provided that schools must treat transgender students consistent with their gender identity, the Supreme Court vacated the 4th Circuit's opinion and remanded the case for reconsideration based on the change in the Department of Education's guidance.

U.S., 137 S.Ct. 1239, 197 L.Ed. 2d 460 (2017). Mr. Grimm, who had graduated high school, then filed an amended complaint that sought nominal damages and declaratory relief and updated the facts. The board again sought dismissal of the complaint for failure to state a claim, and the trial court denied the board's motion to dismiss, concluding that Mr. Grimm's claims of discrimination on the basis of transgender status sufficiently pled sex discrimination. 302 F.Supp. 3d 730 (E.D. Va. 2018). The board and Mr. Grimm subsequently filed cross-motions for summary judgment. The district court ruled in Mr. Grimm's favor and granted him summary judgment on both his Title IX and equal protection claims regarding the board's bathroom policy and its refusal to amend his school records to reflect that he was male. The board then appealed.

40. The board's bathroom policy provided that the school district would "provide male and female restrooms and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders." *Grimm*, 972 F.3d at 608.
 41. *Id.* at 593.

42. *Id.* at 613-615.
 43. *Id.* at 616.
 44. *Id.* at 617.
 45. *Id.* at 618.
 46. Cisgender persons are those who have a gender identity that is congruent with one's biological sex. *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 522 (3rd Cir. 2018) cert. den'd., 139 S.Ct. 2636 (2019).
 47. *Id.*
 48. *Id.* at 537-538.
 49. *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020).
 50. *R.M.A. v. Blue Springs Sch. Dist.*, Circuit Court of Jackson County, Missouri, Case No. 1516- CV20874.
 51. 2022 Legislative Session, Senate Bill 2, to be codified at 70 O.S. 27-106.
 52. *B.P.J. v. West Virginia Board of Education*, S.D. W. Va., Case No. CIV-21-00316, Memorandum Opinion and Order, Dec. 1, 2021 (Doc. No. 129), pp. 7-8.
 53. 20 U.S.C.A. §4071(a).
 54. *Id.*
 55. 20 U.S.C.A. §4071(b).
 56. 20 U.S.C.A. §4071(f).
 57. *Gay-Straight Alliance of Okeechobee High School v. School Board of Okeechobee County*, 483 F.Supp. 2d 1224, 1227-1228 (S.D.Fla. 2007).
 58. *Id.* at 1229.
 59. *Caudillo v. Lubbock Ind. Sch. Dist.*, 311 F.Supp.2d 550, 564 (N.D. Tex. 2004).
 60. 70 O.S. §1-125.



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Oh Snap!: Tinkering With Student Speech Restrictions in *Mahanoy v. B.L.*

By Hayley Jones

ON JUNE 23, 2021, the United States Supreme Court released its decision in *Mahanoy Area School District v. B.L.*,¹ the first student speech case decided by the court in almost 15 years. At issue was whether the Mahanoy School District had violated the First Amendment rights of a student by suspending her from the cheerleading squad after she posted a profanity-laden message to her Snapchat account expressing her displeasure at not making the varsity cheerleading team.² A disgruntled student venting on social media is a near-daily occurrence faced by our country's public schools, so some may wonder why the court chose to take up *Mahanoy* when it has declined to review numerous other student speech cases in recent years.

The Supreme Court decided four student speech cases between 1969 and 2007,³ determining that public school students retain their First Amendment rights at school, though permitting some regulation by school officials in recognition of the special circumstances of the school environment. However, none of those cases contemplated student speech that occurs online. Absent guidance from the high court regarding the application of current student speech jurisprudence to the internet age, lower courts have split on the issue,⁴ leaving school officials unsure of their authority to intervene in instances of troubling student speech that originates off campus but impacts the school environment. Thus, education law practitioners across the country

watched with keen interest as the court in *Mahanoy* addressed the following question: To what extent do public school officials have the authority to regulate student speech that occurs off campus?

THE *TINKER* STANDARD

Fifty years ago, the Supreme Court recognized in *Tinker v. Des Moines Independent Community School District* that students "do not shed their constitutional right to freedom of speech or expression at the schoolhouse gate."⁵ The court held the school district's punishment of three students for wearing black armbands in opposition of the Vietnam War was an unconstitutional restriction on speech.⁶ Though *Tinker* clarified that students retain significant First Amendment rights

while in school, those rights are not absolute, and the court went on to lay out the framework for analyzing student speech that still applies today. Justice Fortas, writing for the majority, stated, "Conduct by the student, in class or out of it, which for any reason ... materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech."⁷ In weighing a student's constitutional right to free speech against the school district's need to maintain the educational environment, the burden falls on the school district to demonstrate disruption, disorder or invasion of others' rights. In the case of Mary Beth Tinker and her peers, the school district could not specifically



articulate how the students' silent act of protest "materially and substantially interfere[d] with the requirements of appropriate discipline in the operation of the school," thus the students' speech was protected.⁸

A trio of post-*Tinker* decisions by the court has further clarified limitations on student free speech, permitting the restriction of on-campus speech that is indecent, lewd or vulgar and involves a captive audience;⁹ school-sponsored speech that is reasonably related to pedagogical concerns (in this case, a school newspaper);¹⁰ and speech that promotes illicit drug use.¹¹

Education law practitioners have relied on *Tinker* and its progeny to advise school district clients regarding limitations on student speech in the school environment, but the rise in online communication platforms among students has blurred the lines between on- and off-campus speech, causing confusion for school officials and their counsel when the speech in question occurs outside the schoolhouse gate. By 2018, 97% of 13- to 17-year-olds used at least one social media platform.¹² Ninety-five percent of teens have access to a smartphone, and 45% claim to be online "nearly constantly."¹³ With smartphone

ownership now a nearly universal aspect of teen life, much of their modern-day discourse occurs via the internet. Add the prevalence of computer-based learning during the recent COVID pandemic, and it has become much easier for student speech originating off campus to instantly reach a wide audience of peers and impact the on-campus environment.

It is not at all surprising that schools have struggled with determining their role in regulating student speech that occurs online but off campus. School officials and school law practitioners have been clamoring for guidance regarding the extent to which *Tinker* applies to off-campus speech, and the straightforward facts of the *Mahanoy* case provided an opportunity for the Supreme Court to deliver much-needed direction to our nation's schools.

MAHANAY V. B.L.: OFF CAMPUS AND OUT OF LINE?

B.L., a sophomore student at Mahanoy Area High School, was a member of the junior varsity cheerleading squad her freshman year and hoped to move up to varsity as a sophomore.¹⁴ After learning she did not make the cut, but an incoming freshman did, B.L. – like many disgruntled teens in the digital age – took to social media to vent.¹⁵ At a local convenience store over the weekend, B.L. posted a photo of herself and a friend with their middle fingers raised, captioned with the words “f*** school f*** softball f*** cheer f*** everything.”¹⁶ She also posted a blank image captioned, “Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn’t matter to anyone else?”¹⁷ These posts were distributed to B.L.’s approximately 250 Snapchat “friends,” some of whom were

also students and cheerleaders at Mahanoy Area High School.¹⁸ A fellow student took screenshots of the posts and shared them with the cheerleading coach.¹⁹ Though she apologized after the fact, B.L. was subsequently removed from the cheerleading squad for a year for violating team and school rules prohibiting the use of profanity directed toward a school extracurricular activity.²⁰

B.L., along with her parents, filed suit in federal district court, alleging a violation of her First Amendment rights. Applying the *Tinker* analysis, the district court agreed, finding that B.L.’s speech did not cause substantial disruption to the school environment.²¹ On appeal, the 3rd Circuit affirmed the district court’s decision, though for different reasoning.²² In a surprising departure from other circuit courts to consider the question, two judges on the panel decided to “forge [their] own path” and declared, “*Tinker* does not apply to off-campus speech – that is, speech that is outside school-owned, -operated, or -supervised channels and that is not reasonably interpreted as bearing the school’s imprimatur.”²³ Because B.L.’s speech occurred away from the school campus, the appellate panel reasoned the *Tinker* framework did not apply, and the school district could not punish her for her pure speech.²⁴ This broad new rule was deeply concerning for school districts and their legal counsel as it could prevent school districts from addressing online bullying, harassment, threatening behavior and other harmful student speech that risks student safety and significantly disrupts the learning environment.

The Mahanoy Area School District filed *certiorari* with the Supreme Court, requesting an opinion regarding the applicability

of the *Tinker* standard to off-campus speech. In an 8-1 decision, the court ruled for B.L., finding the school had overstepped its role in punishing B.L. for her form of pure speech.²⁵

However, the court also sided with the school district by rejecting the 3rd Circuit’s assertion that *Tinker* does not apply off campus, reasoning that schools *do* have some authority over off-campus speech, although it is “diminished.”²⁶ Justice Breyer, writing for the majority, identified three features of off-campus speech that could diminish a school’s interest in intervening:

- 1) The extent to which school officials are acting *in loco parentis* in the case of off-campus speech;
- 2) The extent to which off-campus speech is subject to 24/7 regulation, especially speech that is political or religious; and
- 3) The school’s interest, as a “nursery of democracy,” in protecting students’ unpopular expression, especially when the expression occurs off campus.²⁷

The court noted that the school’s interest in regulating off-campus speech remains significant in some circumstances, such as “serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices.”²⁸

Applying *Tinker*, along with the three features of off-campus speech listed above, the court found no evidence that school officials were standing in the shoes of B.L.’s parents – her speech occurred off

campus, outside of school hours, and it did not directly mention the school or target any students with harassing or bullying behavior.²⁹ Though B.L.'s language was crude, there was "no evidence of any effort to prevent students from using vulgarity outside the classroom."³⁰ Additionally, the school could prove no evidence of substantial disruption or decline in cheer team morale.³¹

STUDENT SPEECH POST-MAHANAY: WHERE DO WE GO FROM HERE?

One of the goals of public schools is to teach civil discourse and debate while still allowing students to disagree and express unpopular opinions. Schools also strive to maintain a safe environment where students can be free to learn and grow without being harassed, bullied or threatened. The Supreme Court struck a balance in the *Mahanoy* case by rejecting the 3rd Circuit's overly broad "location" rule and acknowledging that while the First Amendment protects student speech in most instances, schools *do* have the authority to regulate some types of student speech, even speech that occurs off campus. It is important to note that *Tinker* analysis still applies: "In *Tinker*, we indicated that schools have a special interest in regulating ... student speech that materially disrupts classwork or involves substantial disorder or invasion of the rights of others."³²

When counseling school district clients regarding student speech issues, it is important to note that First Amendment protection for student speech should be the norm, not the exception. Absent a substantial disruption or invasion of the rights of others, school districts should be careful how they respond to speech that stems from the impulsiveness

of youth – an angry parent or insulted staff member demanding punishment for an online insult or critique will typically not rise to the level of intervention by the school district, as demonstrated in *Mahanoy*. However, speech that bullies, harasses or otherwise infringes on the rights of others can and should be regulated. Oklahoma law requires school employees to investigate reports of bullying and harassment,³³ even when the reported behavior occurs via electronic communication. School staff also have mandatory reporting requirements for threatening language or behavior "which reasonably may have the potential to endanger students, school personnel or school property."³⁴ School district personnel should be well-versed on district policies and laws regarding student speech, consider the facts of each potential restriction of student speech and when weighing potential curtailment of student speech, be able to articulate a reasonable forecast of substantial interference or disruption of the school environment or an infringement on the rights of others in the school community.

ABOUT THE AUTHOR



Hayley Jones is the associate general counsel for Oklahoma City Public Schools. She is a member and past president of the Oklahoma School Board Attorneys Association and a member of the NSBA Council of School Attorneys. Ms. Jones is a 2015 graduate of the OU College of Law and a former public school teacher.

ENDNOTES

1. 141 S.Ct. 2038 (2021).
2. *Id.*
3. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988); *Morse v. Frederick*, 551 U.S. 393 (2007).
4. See *Doniger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008); *Kowalski v. Berkeley County Schools*, 652 F.3d 565 (4th Cir. 2011); *D.J.M. ex rel. D.M. v. Hannibal Pub. Sch. Dist. No. 60*, 647 F.3d 754 (8th Cir. 2011); *J.S. ex rel. Snyder v. Blue Mt. Sch. Dist.*, 650 F.3d 915 (3rd Cir. 2011); *Wynar v. Douglas County Sch. Dist.*, 728 F.3d 1062 (9th Cir. 2013).
5. 393 U.S. 503 (1969).
6. *Id.* at 511.
7. *Id.* at 513.
8. *Id.* at 509.
9. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986).
10. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988).
11. *Morse v. Frederick*, 551 U.S. 393, 409 (2007).
12. Monica Anderson and JingJing Jiang, "Teens, Social Media & Technology 2018," Pew Research Center (May 31, 2018), <https://tinyurl.com/4hzvcwma>.
13. *Id.*
14. 141 S.Ct. 2038 (2021).
15. *Id.* at 2043.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 2044.
22. *Id.*
23. 964 F.3d 170, 189. (Judge Ambro, concurring in the opinion, agreed that B.L.'s snap was not student speech that schools may regulate but declined to join the majority's broad holding that *Tinker* does not apply to off-campus speech.)
24. *Id.* at 180.
25. 141 S.Ct. 2038, 2043.
26. *Id.* at 2046.
27. *Id.*
28. *Id.* at 2045.
29. *Id.* at 2047.
30. *Id.*
31. *Id.* at 2048.
32. *Id.* at 2039.
33. 70 O.S. §24-100.4.
34. 70 O.S. §24-100.8.

I.T.K. v. Mounds Public Schools: Interpreting the GTCA Notice Requirement

By Eric D. Wade and Adam T. Heavin



IN OKLAHOMA, SCHOOL DISTRICTS ARE POLITICAL SUBDIVISIONS OF THE STATE. Any attorney who has worked for or against the state of Oklahoma or a political subdivision is likely familiar with the Oklahoma Governmental Tort Claims Act (GTCA). That same attorney would likely tell you that compliance with the provisions of the GTCA is not always straightforward as there is a myriad of procedural steps a plaintiff must maneuver through before filing a lawsuit sounding in tort¹ against a political subdivision in district court. Unfortunately, the case law construing the GTCA sometimes leaves attorneys with more questions than answers. This article will focus primarily on the opinion of the Oklahoma Supreme Court in *I.T.K. v. Mounds Public Schools*, which interpreted a seemingly unambiguous provision of the GTCA and came to an unexpected conclusion and two opinions that have since been handed down by other courts that relied on *Mounds*.²

THE GTCA NOTICE REQUIREMENT AT ISSUE IN *MOUNDS*

At issue in *Mounds* was §156(D) of the GTCA, which states “a claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body”³ within one year of the date of loss.⁴ This is a jurisdictional prerequisite to filing an action in court.⁵ A plain reading of the language of this statute would cause the reader to take note of two requirements. A tort claim against a political subdivision of the state must be 1) in writing and 2) filed with the office of the governing body’s clerk.

The plaintiff in *Mounds* alleged that a school bus driver negligently

operated a school bus and caused injury to the six-year-old plaintiff. Thankfully, the plaintiff was not seriously injured, but he was taken to an emergency room, given several diagnostic tests and treated for two lacerations.⁶ The plaintiff sought damages for medical expenses and associated pain and suffering.⁷

The plaintiff’s attorney sent a letter to the school superintendent and school insurance adjuster two weeks after the incident occurred, notifying them of his representation of the plaintiff, the plaintiff’s injuries and the manner in which the injuries were sustained.⁸ Ostensibly, this notification was intended to satisfy the tort claim notice requirements under §156(E) of the GTCA.⁹

The pivotal question in *Mounds* was whether the plaintiff’s attorney failed to satisfy the requirement of §156(D), quoted above, requiring a claim to be in writing and filed with the clerk of the governing body. After all, §156(D) does not state that a claim against a political subdivision shall be in writing and filed with the office of a *representative* (i.e., superintendent) of the governing body. Such an argument might seem trivial, but the statutory language explicitly requires the notice to be filed with the clerk of the governing body of the relevant political subdivision, and its language would appear to be unambiguous.

Accordingly, Mounds Public Schools argued the lawsuit was

time-barred because proper notice was never given under the language of §156(D). In support of its contention, the school district pointed to the court's prior decision in *Minie v. Hudson*, in which the court held that oral notice of a tort claim is insufficient to satisfy §156(D).¹⁰ There, the court reasoned the statutory language, "shall be in writing ...," was a legislative command a plaintiff must follow when submitting notice of a claim.¹¹

Thus, in light of this precedent, the school district's position in *Mounds* was that notice to the clerk of the governing body was also a legislative command that must be followed. On the other hand, the plaintiff argued that §156(D) could be divided in two, with the "in writing" requirement being mandatory and the "with the clerk of the governing body" requirement only requiring substantial compliance.

Over the years, the court has construed various GTCA provisions so that they fit within one of two categories. One set of provisions establishes a "strict compliance" duty on plaintiffs seeking to file a claim under the GTCA, while another set of provisions merely requires "substantial compliance."¹² In addressing these two categories, the court in *Mounds* stated:

Generally, a party's fulfillment of a statutory mandatory (or jurisdictional) requirement is sometimes expressed as a "strict compliance" duty, but fulfillment of a non-jurisdictional or directory statutory requirement is often expressed as a "substantial compliance" duty. We recognize some obligations created by statutes do not neatly fit into a universally applicable dichotomy of mandatory (jurisdictional) versus directory (non-jurisdictional) nature, and a statute may be

mandatory for some purposes and directory for others. We disagree with the conclusions made by both parties.

In other words, the court rejected the school district's contention that "filed with the clerk of the governing body" was a "strict compliance" provision while also rejecting the plaintiff's contention that §156(D) could be bifurcated, so its latter half only required substantial compliance. The court instead created a third option. It reasoned that the "plain language in 51 O.S. §156(D) makes filing the GTCA notice with 'the office of the clerk' of the governing body a mandatory duty," but "the manner of filing with the clerk's office is not statutorily specified as mandatory."¹³ The court explained that when a school district is the governing body, a relevant inquiry is:

The identity of potential clerks who may receive the notice for filing, and whether a superintendent is a proper recipient for notice when the superintendent's managerial duties require both representing the board and transmitting to a clerk for filing any financial claims against the school district which the superintendent has received.¹⁴

The court implied that a plaintiff may not know which clerk to file the notice with – and therefore may file it with the superintendent – because the law allows for the appointment of a clerk, deputy clerk, encumbrance clerk and/or minute clerk, and it is possible for a clerk and/or deputy clerk to be a member of the board.¹⁵ However, the same statute that provides for the possibility of those various clerk positions also states in the next sentence, "No superintendent ...

employed by such board shall be elected or serve as clerk or deputy clerk of the board nor as encumbrance clerk or minute clerk."¹⁶

In explaining its reasoning, the court quoted a portion of the Oklahoma Administrative Code describing the relationship between a superintendent and board of education to support its decision that a superintendent is analogous to a clerk of the governing board, although the regulations do not fully bear out this comparison, and the aforementioned statute explicitly prohibits a superintendent from serving as a clerk.¹⁷ The court itself recognized, "A superintendent is not a clerk for the board, and is prohibited from formally acting as the clerk."¹⁸

The *Mounds* opinion raises an issue for attorneys interpreting provisions of the GTCA moving forward. Does an attorney's review of the plain language of the statute, as well as the strict compliance versus substantial compliance dichotomy found in case law, encompass the full scope of GTCA interpretation employed by the courts, or is there now more that an attorney must consider?

THE IMPLICATIONS OF *MOUNDS* MOVING FORWARD

In light of the foregoing discussion, attorneys and lower courts may be wary of relying on the provisions of the GTCA and uncertain whether following the plain language of the statute will lead to the correct result on appeal. The current state of the case law is intricate at best, and *Mounds* is not the last case in which the plain language of the GTCA is interpreted with a more "practical approach" in mind.

Proving the point, the Oklahoma Court of Civil Appeals heard a case in 2020, *Alburtus v. Independent School District No. 1 of Tulsa County*,

In light of the foregoing discussion, attorneys and lower courts may be wary of relying on the provisions of the GTCA and uncertain whether following the plain language of the statute will lead to the correct result on appeal.

that asked whether notice to an insurance representative of a school district could satisfy the notice requirement of the GTCA.¹⁹ The Court of Civil Appeals found that it did, noting the *Mounds* opinion “ruled against a literal reading of Section 156(D).”²⁰ The *Alburtus* opinion recognized “an insurance agent is not the same as a superintendent” but still found, based on the facts of the case and analysis of the *Mounds* opinion, that the insurance representative could bind the school as its agent.²¹

Similarly, the 10th Circuit heard a case, *Osterhout v. Board of County Commissioners of LeFlore County, Oklahoma*, in 2021 and relied on the *Mounds* opinion in its decision.²² There, the provision at issue was §156(E), which provides, *inter alia*, that a written tort claim notice “shall state ... the name, address, and telephone number of the claimant, the name, address, and telephone number of any agent authorized to settle the claim, and any and all other information required to meet the reporting requirements of [a specified federal statute].”²³

As was the case with the provision at issue in *Mounds*, a reading of the plain language of the statute would cause the reader to

take note of a couple of things. First, the contact information of the claimant must be provided in the notice, and second, the contact information of an agent authorized to settle the claim (*i.e.*, the claimant’s attorney) must be provided. If the statute intended to give claimants the option of providing *either* the claimant’s contact information *or* their attorney’s contact information, one would think the statutory language would say so. Nevertheless, the 10th Circuit noted, “The Oklahoma Supreme Court has taken a practical approach to the statutory notice requirements.”²⁴ In discussing *Mounds*, the 10th Circuit explained:

In *I.T.K. v. Mounds Public Schools*, the Oklahoma Supreme Court recognized the duty to file, but acknowledged the statute’s flexibility as to the manner of filing: “[B]ecause the *manner of filing with the clerk’s office is not statutorily specified as mandatory*,” “a superintendent is a proper recipient for notice when the superintendent’s managerial duties require both representing the board and transmitting to a clerk for filing any financial claims against the school district.”²⁵

The 10th Circuit then relied on the *Mounds* reasoning in holding that a claimant need not provide their own contact information when submitting notice of a tort claim despite the plain language of the statute stating the contrary. The 10th Circuit explained its interpretation of the statute by pointing to Rule 4.2 of the Oklahoma Rules of Professional Conduct, which generally requires an attorney to contact a represented party through counsel.²⁶ While this is certainly a valid reason for a school district’s attorney (or attorney for any political subdivision) to not directly contact a represented claimant, it is probably not what the Oklahoma Legislature had in mind when it created the statutory requirement in the GTCA.

CONCLUSION

It remains to be seen whether the Oklahoma Legislature will ever pass legislation clarifying the notice requirements of the GTCA in response to *Mounds*, *Alburtus* or *Osterhout* as it did following the *Minie* opinion. For now, attorneys must work with a relatively complex web of case law to determine which tort claim notice requirements in the GTCA require “strict

compliance,” which require “substantial compliance” and which may be set aside in favor of a more “practical approach.” To avoid protracted litigation over compliance with the notice requirements, attorneys representing claimants would be well-served by choosing to strictly comply with all the requirements.

ABOUT THE AUTHORS



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ENDNOTES

1. For purposes of the GTCA, a “tort” is defined as a legal wrong, independent of contract, involving violation of a duty imposed by general law, statute, the Constitution of the state of Oklahoma or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment. See Okla. Stat. tit. 51, §152(17).
2. 2019 OK 59.
3. Okla. Stat. tit. 51, §156(D).
4. *Id.* at §156(B).
5. 2019 OK 59, at ¶15, “A notice of claim given to the State or political subdivision is a mandatory or jurisdictional prerequisite to filing a claim for tort damages in a District Court,” (citing *Hall v. The GEO Grp., Inc.*, 2014 OK 22, ¶¶1, 13).
6. 2019 OK 59, at ¶2.
7. *Id.*
8. *Id.*
9. Okla. Stat. tit. 51, §156(E) (requiring a tort claim notice to include the date, time, place and circumstances of the claim; the identity of the political subdivision involved; the amount of compensation or other relief demanded; the name, address and telephone number of the claimant; the name, address and telephone number of any agent authorized to settle the claim; and any and all other information required to meet the reporting requirements of the Medicare Secondary Payer Mandatory Reporting Provisions).
10. See 1997 OK 26.
11. *Id.* (making note of the fact that “shall be in writing” was an amendment to the statute passed by the Legislature in response to a previous court ruling that the “in writing” requirement was not mandatory) (emphasis added).
12. 2019 OK 59, at ¶19.
13. *Id.* at ¶23 (emphasis in original).
14. *Id.*
15. See Okla. Stat. tit. 70, §5-119(A).
16. *Id.*
17. See Oklahoma Administrative Code 210:10-1-7 (2011 & 2016).
18. 2019 OK 59, at ¶33.
19. See 2020 OK CIV APP 39.

20. *Id.* at ¶14 (explaining that, “I.T.K. recognized the statute does not express a particular manner of submitting notice to the clerk of the school. Based on [the insurance representative]’s actions in this case, submission of the claim to [the insurance representative] may be treated as written notice to School.”).

21. *Id.* (making note of the fact that the school instructed the claimant to take their claim to the insurance agent).

22. See *Osterhout v. Bd. of Cty. Comm’rs*, 10 F.4th 978 (2021).

23. *Id.* at 983 (quoting Okla. Stat. tit. 51, §156(E)) (brackets and emphasis in original).

24. *Id.* at 984.

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

26. *Id.* (citing Okla. Stat. tit. 5, ch. 1, app. 3-1, R. 4.2).

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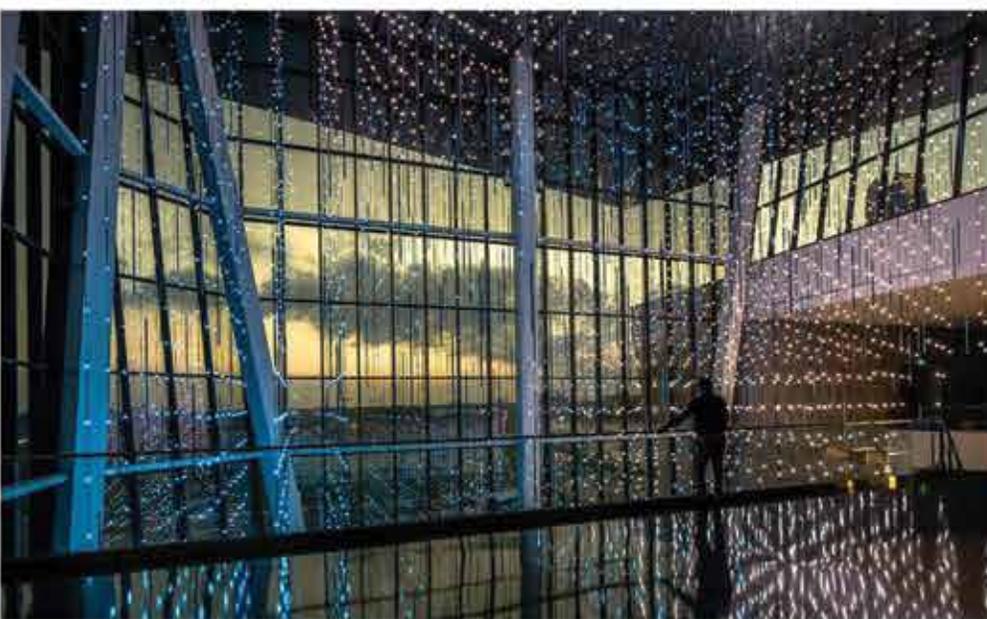
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A handwritten signature in black ink, which appears to read "James R. Hicks". The signature is written in a cursive, flowing style.

James R. Hicks, Oklahoma Bar Association President



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ONE STATE ★ MANY NATIONS

OKLAHOMA IS HOME TO 39 FEDERALLY RECOGNIZED TRIBAL NATIONS that richly contribute to our state's unique culture and history. This year's Annual Meeting will feature a variety of content and speakers who will join us in celebrating our state's Native American heritage while exploring the various facets of law related to tribes, tribal people and tribal sovereignty.

All events will be held Nov. 2–4 at the Oklahoma City Convention Center unless otherwise specified. Submit meeting room and hospitality suite requests to Janet Johnson, janetj@okbar.org, by Sept. 16 for inclusion in the official Annual Meeting program.

HIGHLIGHTS

One State – Many Nations (6-Hour CLE) | Wednesday Morning & Afternoon

This dual-tracked CLE program features a variety of speakers who will discuss topics of interest to every OBA member, including land matters, energy law, taxation issues, criminal law jurisdiction matters and more. A panel discussion featuring several tribal Supreme Court justices will be moderated by OBA President Jim Hicks. Attend online or in person.

President's Reception | Wednesday Evening

The event is free with Annual Meeting registration, and complimentary heavy hors d'oeuvres and drink tickets will be provided.

CLE Plenary Session (3-Hour CLE) | Thursday Morning

Our Thursday morning plenary session will feature a variety of topics related to tribal sovereignty. The cost of this program is included with your Annual Meeting registration fee.



*Chuck Hoskin Jr.,
Principal Chief,
Cherokee Nation*

Annual Luncheon | Thursday at Noon

Keynote speaker Principal Chief Chuck Hoskin Jr. of the Cherokee Nation will speak during the Annual Luncheon on Thursday at noon as part of the OBA Annual Meeting. OBA award winners for 2022 will also be honored at this event.

Wellness Matters: Lawyers Helping Lawyers CLE Program | Thursday Afternoon

The focus will be on wellness, mental health and substance abuse during this afternoon session. The cost of this program is included with your Annual Meeting registration fee. Attend online or in person. Sponsored by the OBA Lawyers Helping Lawyers Assistance Program.

Diversity Awards Dinner | Thursday Evening

OBA Diversity Awards are presented to Oklahoma businesses, groups or organizations promoting or developing diversity initiatives that advance justice, fairness and inclusivity. Awards are also presented to Oklahoma lawyers and members of the judiciary. Tickets will be available for purchase.

Delegates Breakfast | Friday Morning

Kick off the last day of the Annual Meeting with a generous breakfast and hear from OBA member and Cherokee Nation citizen Dwight Birdwell, who was recently presented with the Congressional Medal of Honor for military valor during the Vietnam War. The breakfast is free for delegates; tickets may be purchased separately for nondelegates.



*Dwight W. Birdwell,
Congressional Medal
of Honor recipient*

General Assembly and House of Delegates | Friday Morning

The most important association business of the year takes place Friday morning – OBA award presentations, updates from judicial and OBA leaders, elections and consideration of resolutions. The Kiowa Black Leggings Warrior Society will present the colors. For resolutions to be published in the official General Assembly and House of Delegates publication, proposed resolutions in bill format must be submitted to Executive Director John Morris Williams by **Sept. 16**. The deadline to publish proposed resolutions in the October *Oklahoma Bar Journal* is **Sept. 16**.



*The Kiowa Black Leggings
Warrior Society will
present the colors
at Friday morning's
General Assembly.*

Wednesday CLE – Two Tracks to Choose From!

Six hours of CLE; includes one hour of ethics.

Agenda is subject to change.

| | Criminal Law Track | Land Track |
|------------------|--|--|
| 9 – 9:50 a.m. | Sabah Khalaf – DUIs in Indian Country: A Post <i>McGirt</i> Analysis and Update | Conor Cleary – Legal Ethics Issues in Indian Country (includes ethics) |
| 10 – 10:50 a.m. | Jacintha Webster – Tribal Court Victims’ Rights and Criminal Practice | Don Shandy – The Mining Act and Other Environmental Regulations |
| 11 – 11:50 a.m. | Debra Gee – Tribal issues | Jennifer Krieg – Probate and Quiet Title Considerations |
| Noon – 1:45 p.m. | Law School Luncheons | |
| 2 – 2:50 p.m. | Chrissi Ross Nimmo – “Jurisdiction” by Agreement | Stephanie Moser Goins – <i>McGirt</i> and the Energy Sector |
| 3 – 3:50 p.m. | Arvo Mikkanen – Tribal Issues (includes ethics credit) | Greg Buzzard – Taxation in Indian Country |
| 4 – 4:50 p.m. | Tribal Supreme Court Justice Panel moderated by OBA President James R. “Jim” Hicks | |

2023 OBA BOARD OF GOVERNORS VACANCIES



Nominating Petition Deadline: 5 p.m. Friday, Sept. 2, 2022

OFFICERS

President-Elect

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

Vice President

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

BOARD OF GOVERNORS

Supreme Court Judicial District Two

Current: Michael J. Davis, Durant
Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, Le Flore, McCurtain, McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah counties
(Three-year term: 2023-2025)
Nominee: **Micah D. Knight, Durant**

Supreme Court Judicial District Eight

Current: Joshua A. Edwards, Ada
Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties
(Three-year term: 2023-2025)
Nominee: **Vacant**

Supreme Court Judicial District Nine

Current: Robin L. Rochelle, Lawton
Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman counties
(Three-year term: 2023-2025)
Nominee: **Vacant**

Member At-Large

Current: Amber Peckio Garrett, Tulsa
Statewide
(Three-year term: 2023-2025)
Nominee: **Vacant**

NOTICE

This issue went to press before the deadline, and the list of nominees is not complete. See <https://bit.ly/3PPthud> for updates.

SUMMARY OF NOMINATIONS RULES

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

Not less than 60 days prior to the annual meeting, 50 or more voting members of the OBA from any or all judicial districts shall file with the executive director a signed petition nominating a candidate to the office of member at large on the Board of Governors, or three or more county bars may file appropriate resolutions nominating a candidate for this office.

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

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

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

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

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

OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

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

OFFICERS

President-Elect

Miles T. Pringle
Oklahoma City

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

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

A total of 172 signatures appear on the petitions.

BOARD OF GOVERNORS

Supreme Court Judicial District No. 2

Micah D. Knight
Durant

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

Vice President

D. Kenyon Williams Jr.
Tulsa

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

Charles W. Chesnut, Susan Stocker Shields, Brian T. Hermanson, Matthew C. Beese, Brian K. Morton, Timothy E. DeClerck, Benjamin R. Hilfiger, James R. Hicks, Andrew E. Hutter, Alissa D. Preble Hutter, Robin Lee Rochelle, Mark Banner, Aaron C. Tifft, Pamela S. Anderson, James Kevin Hayes, Lynn Lane Williams, Kristen Pence Evans, Steven A. Broussard, Johnathan L. Rogers, Michael T. Keester, Kent A. Gilliland, Jared R. Ford, Ty E. Schoenhals, Eric C. Money, Larry G. Ball, Emily P. Pittman, Seth A. Day, Littleton Tazewell Ellett IV, Daniel V. Carsey, Jonathan A. Epstein, John Frederick Kempf Jr., John W. Gile, Mitchell K. McCarthy, Raymond S. Rudnicki, Stephen R. Pitcock, Elaine R. Turner, James D. Satrom, Heather Flynn Earnhart, James M. Reed, Sarah E. Hansel, Christopher L. Carter, Samantha W. Davis, Jon M. Payne, Sarah C. Miller, James C.T. Hardwick, Thomas P. Schroedter, Gregory P. Reilly, Natalie S. Sears, W. Davidson Pardue Jr. and Brian T. Inbody.

A total of 91 signatures appear on the petitions.

Attorneys, Interpreters and Justice

By Taylor Cozzens

AT THE CONCLUSION OF World War II, as the Allies prepared to try Nazi leaders in Nuremberg, Germany, Hermann Göring declared, “Of course I want counsel. But it is even more important to have a good interpreter.” His prosecutors agreed. With pending testimony from speakers of German, French, Russian, English and other languages, the Allies knew the trial could not go forward without competent, professional interpretation.

In the U.S. courts of the 1970s, judicial authorities reached a similar conclusion. In a 1974 case involving a Spanish speaker, the Supreme Court of Arizona ruled that defendants of limited English proficiency have a fundamental right to interpreters. In their words:

It is axiomatic that a ... defendant who is unable to speak and understand the English language should be afforded the right to have the trial proceedings translated into his native language in

order to participate effectively in his own defense ... A defendant’s inability to spontaneously understand testimony being given ... would be as though [he] were forced to observe the proceedings from a soundproof booth ... being able to observe but not comprehend the criminal processes whereby the state had put his freedom in jeopardy.

Since the 1970s, authorities around the nation have worked hard to train – and certify the



ability of – court interpreters and standardize interpretation practices. In Oklahoma, where I work as an interpreter, authorities have done much in the past decade. One of the main tasks now is to trust certification, which means allowing interpreters to do their jobs.

In courtrooms around central Oklahoma, I sometimes run into attorneys who say they do not need interpreters because they already speak Spanish. They may, indeed, but I have yet to hear an attorney interpret it in a way that would pass the certification exams. Knowing neither the technique nor the vocabulary, lawyers who brush off interpreters seldom know words such as *DA*, *arraignment*, *enter a plea*, *waive*, *deposition*, *stipulation* or *call docket*. In criminal proceedings, these terms are ubiquitous, and lawyer-interpreters regularly omit or change them.

On one occasion, I heard a defense attorney change the crime of “burglary and assault” to “robbery and assault” because he did not know the term for burglary. Imagine how confused the defendant must have felt. After all, he may have broken into a building, but no one else in the courtroom had even insinuated that he had stolen something.

On another occasion, an attorney told me he could speak Spanish fluently. However, as he attempted to discuss a plea agreement with his Spanish-speaking client, he did not know how to explain that by accepting the agreement, his client would waive certain rights. When I later accompanied the defendant before the judge, the defendant panicked at the idea of waiving his rights, and the proceedings stopped with a jerk.

The goal of court interpreters is to ensure that defendants with limited English understand everything native English speakers would understand in their position. To achieve this goal, they not only learn languages at a professional level, but they also learn simultaneous and consecutive interpretation techniques as well as sight translation (reading English documents aloud in Spanish). They use each of these skills in criminal proceedings.

If the history of the professionalization of interpreters since the 1970s teaches us anything, it is that these abilities do not just appear when someone learns a little Spanish or when they have a Hispanic name. The ability to interpret fully and accurately in court requires more than a few years of high school Spanish, just as performing Chopin and Schubert in concert requires more than a

few years of piano lessons. Even attorneys who grow up speaking Spanish in their homes do not automatically know the terminology or the techniques to interpret professionally. An interpreter could certainly never do an attorney’s job. Should an attorney be allowed to do the interpreter’s job?

Until all judges and attorneys embrace the irreplaceable role of certified interpreters, Spanish-speaking defendants and victims will not have full access to the U.S. legal system. If court authorities want to ensure fairness for non-English speakers, they will remember the vision of the Arizona Supreme Court in the 1970s and allow interpreters to make it a reality.

ABOUT THE AUTHOR

Mr. Cozzens is a certified courtroom interpreter in Oklahoma and a graduate student at the University of Oklahoma.

May 2021

Oklahoma Bar Journal

The *Oklahoma Bar Journal* was presented with one of eight ABA Silver Gavel Awards for Media and the Arts. The May 2021 issue of the journal, focusing on Black Legal History in Oklahoma, was recognized as the winner of the magazines category for 2022. The award recognizes outstanding work that fosters the American public's understanding of law and the legal system, and it is the ABA's highest honor in recognition of this purpose. The full list of this year's winners and more information is available at ambar.org/gavelawards.

2022

ABA Silver Gavel Award
for Magazines

WINNER



Oklahoma Bar Journal Board of Editors Chair Melissa DeLacerda and guest editor Justice John G. Browning jointly accepted the award on behalf of the OBA during the awards presentation ceremony in Washington, D.C., on July 12.



NOTICE

OKLAHOMA BAR ASSOCIATION EXECUTIVE DIRECTOR SOUGHT

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

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

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

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

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

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

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For more information contact

Michael Figgins, Executive Director

michael.figgins@laok.org | (405) 488-6768

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A project of the
Oklahoma Bar Association



Continued from page 4

In a July 5 editorial, the *Tahlequah Daily Press* noted that Mr. Birdwell's heroism has long been known by those around him, but he's a humble man and not one to boast about how he saved so many lives while he was seriously injured himself. But his friends, as well as President Biden, had no problem giving credit where it's due. Said the president, "When he was ordered to load onto the medevac helicopter, he complied – this I find amazing – only to crawl right back off the other side and to keep on fighting." The *Stilwell Democrat Journal* published a comprehensive feature on Mr. Birdwell when he learned he'd

be receiving the honor. And the July 15 *Cherokee Phoenix* published a front-page article on the events at the White House awards ceremony.

We can all be proud of our fellow member for receiving this prestigious honor. OBA members will have the privilege of hearing from Mr. Birdwell during this year's Annual Meeting, where he will serve as a guest of honor and speaker during our traditional Friday morning Delegates Breakfast. Make plans to join us at the new Oklahoma City Convention Center this Nov. 2-4. Breakfast tickets will go fast, so don't miss this opportunity to hear from a true American hero!

NOTICE OF JUDICIAL VACANCY

Vacancy Notice
for

**United States Magistrate Judge
United States District Court
For The Northern District of Oklahoma**

Applications are now being accepted for a full-time position of Magistrate Judge in Tulsa. The duties are demanding and wide-ranging and will include: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial motions and evidentiary proceedings as may be delegated by the Judges of the District Court; and (4) trial and disposition of civil cases upon consent of the litigants. The deadline to apply is September 30, 2022. The incumbent will begin to serve on April 1, 2023. See full notice, including qualification requirements and application instructions, at: www.oknd.uscourts.gov.

AN EQUAL OPPORTUNITY EMPLOYER

I Learned a Lot in Education

By John Morris Williams

EARLIER IN MY CAREER, I spent over seven years as in-house counsel for the Oklahoma Education Association. My undergraduate degree is also in education. So, I am always curious and interested in what is happening in education law.

In the years I spent representing educators across the state, I met some extraordinary people performing tasks at all levels. From cooks, janitors and bus drivers to superintendents and even some educators in higher education, I found a dedicated group of professionals who supported the world of “lifelong learners.”

I learned a lot during my time working in education and about the vast amount of law that is dedicated to or impacts education. Special education, Title IX, due process in employment proceedings and much more are encompassed in a vast area of the law. Having not worked in these areas in years, I am certain this edition of the *Oklahoma Bar Journal* will be most educational.

At the OBA, we are directed by the Oklahoma Supreme Court Rules for Mandatory Continuing Legal Education to ensure that OBA members are lifelong learners as well. The MCLE Rules and Regulations are another set of laws relating to education I had to learn. Last year, there were more than 800 separate CLE providers, and OBA members attended more than 140,000 hours of CLE. I can



say with certainty that the concept of lifelong learning is well embedded in our profession.

Something that differs greatly within our profession is that we were well positioned to move to virtual learning prior to the pandemic. The gradual increase in online learning prior to 2020 had us moving solidly toward half of all CLE hours being obtained online. 2020 took that trajectory

and sent it in a direction of almost all hours being obtained online due to the obvious reason that people could not be physically around each other.

One of the things I learned during my time in education is that learning models differ for different groups. Most adults can tolerate about 50 minutes of sitting and listening. Children, dependent on the age group and other

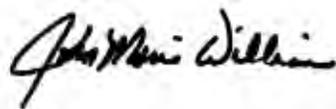
factors, often tolerate much less sitting and listening. However, some adults need different accommodations. Online learning is perfect in many instances. If one needs more frequent breaks or to space the viewing time, attending a prerecorded program has great benefits. Live programs with chat features offer some interactive participation; however, none of these are replacements for the social and other attributes of in-person learning. Hopefully, we are moving to a better mix of online and in-person learning opportunities.

I am proud of the fact that the OBA was well-positioned to offer all the online learning opportunities we did during the worst of the pandemic. Two years prior to the pandemic, we petitioned the Oklahoma Supreme Court to allow members to get all their annual CLE hours online if they wished. When the pandemic hit, we didn't need to seek a rule change as many other states had to consider. Also, in the last year and a half, we provided well over one million dollars in free CLE to ensure that our members, who may have been struggling during the pandemic, had one less thing to worry about. We tried to provide programming that was relevant to not only the legal issues that presented themselves but also information on dealing with the emotional and psychological impact of a world that

had suddenly changed to, at times, almost zero personal interactions.

Another significant thing I learned during my years in education is that people who truly care usually are the most impactful educators. When I submitted my plan to our elected leadership and CLE Department to provide significantly more no-cost and low-cost CLE during this time, I encountered people who truly cared about our members. This compassion was also demonstrated by our sections, committees and numerous volunteer speakers who stepped up to produce high-quality CLE. We had to do some workarounds to ensure MCLE credit was recorded and reported in the Zoom and BlueJeans programs, but it all worked out. Another thing I learned while working in education is that smart people who care can do just about anything, sometimes without having perfect tools and resources.

However, the most important thing I learned during my time in education is that it's all about the learners. It seems I never left my time in education law, I just got to work with a different set of laws and learners. Lucky me.



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

Office Sharing Tips for Lawyers

It Seems Simple Until It's Not

By Jim Calloway

IT IS CERTAINLY NOT RARE to see lawyers practicing in an office sharing arrangement. Sometimes a law firm that is downsizing finds itself with more office space than it needs, and subletting makes sense. Two or three lawyers might rent an office suite for their individual solo practices. Office sharers can benefit from sharing overhead expenses, such as utility bills and equipment. And there can be many benefits, such as lawyers nearby to discuss issues with or someone filing a pleading for you when they do their own filings, saving you a courthouse trip.

Office sharing is also positive when a lawyer wants to slow down and practice less than full time but still needs a place to interview clients and someone to sign for deliveries and certified mail when the lawyer is out. Sometimes your officemates may be a good source of referrals.

Office sharing may appear to be simple on its face. But for the lawyers who want to comply with all ethical rules, protect themselves and have appropriate and effective business operations, there is a lot to consider.

Foremost among lawyers' minds will be complying with the Oklahoma Rules of Professional Conduct regarding client confidences, conflicts of interest and

the like. Good lawyers will also be concerned about whether they may be opening themselves up to potential liability. So even though office sharing has the potential for positive benefits, some thought and advance preparation is advised.

One must then invest the energy and time-building processes that address each significant area of concern.

BEGIN AT THE BEGINNING

Let's begin with the formation of the attorney-client relationship. The solo practitioner will be the one representing their client, just like the other officemates are. But while you may share overhead expenses, you don't want to share any potential liability should a case go poorly. So let's reverse engineer this. If you were trying to sue three office-sharing lawyers on a theory of implied partnership or partnership by estoppel, what evidence could you muster?

- The sign on the front of the building says "Smith, Jones and Wilson, Attorneys at Law."

This is not to say the sign is determinative in a court proceeding, but three separate signs with individual lawyers' names are better.

- Clients waiting for their appointment repeatedly hear the receptionist answer the phone "Smith, Jones and Wilson, Attorneys."

While I have noted before that "Hello, law office" is not an inspiring way to answer incoming calls,¹ it is common, and I suspect the practice is often inspired by office-sharing arrangements. (Very cautious lawyers might even consider signage in the waiting room: "This is not a law firm partnership. The attorneys who work here each have individual law practices.")

- "Their website said 'Smith, Jones and Wilson.' It seemed like a partnership to me."

Normally each solo practitioner should have a separate website. Not only does that possibly relate to liability, but it makes things simpler when someone wants to move to another location. There could be a situation where an office complex might have a website listing the various lawyers who office there. But examine these exceptions to the "rule" with your plaintiff's lawyer eyes, and you should be able to minimize any risk.

Client billing should come only from the engaged attorney and not from a firm name.



PAPERWORK

Your office-sharing arrangement, in most circumstances, requires a written agreement. This is because there are items you need the other officemates to include in their attorney-client agreements to protect you.

Primarily, every client for every lawyer should be required to sign an attorney-client agreement that states something to the effect that the client is only contracting with attorney Smith for this legal matter, and other lawyers at this address are not responsible for it. If you wish to make this even more prominent, make that provision a single-sentence paragraph with a place for the client to initial. Review the contract's other provisions about utilizing other attorneys to ensure consistency. After all, if you wake up

too sick to appear at that arraignment, your officemates are likely among the first you would call. All participants should also agree never to refer to the practice being a partnership or firm.

There are many other aspects of business that need to be considered.

The lawyers need a detailed outline of everyone's financial responsibilities and a "prenuptial agreement" providing for how someone withdraws, including security deposits, if any, how much written notice is required to leave and how jointly acquired equipment will be divided. Consider what happens if the copier dies. The lawyer who owned the "paid for" copier may have been happy to accept a dime a page for compensation but may not want to buy a new copier or sign a lengthy copier lease. The simple solution

may be for each lawyer to buy their own copier, particularly since there is often less need for huge copy jobs in many law offices today. You may even want to include provisions on sharing common facilities, including day-to-day maintenance and cleanup of those areas.

What is the term of the agreement or is it indefinite? How are changes to the agreement handled? What if there is a tie vote? Each different arrangement may have different concerns. If someone is dead set against doing this in contract form, at least they should agree to the preparation of an unsigned memo as to agreed terms.

Then there's the matter of liability insurance. The lowest-risk scenario would include an executed agreement between all the officemates, where each agrees to carry a minimum amount of

professional liability insurance with the notice given to the other officemates if the policy is ever canceled, just like a lienholder would receive on collateral. If all officemates agree to carry professional liability insurance with the same policy limits from the same provider, this can be an important safeguard. While the prior discussion about avoiding implied partnership is very important, if an individual lawyer's professional liability insurance policy limits are sufficient to cover a client's claim, there is reduced motivation to try to bring in another lawyer defendant – particularly one who didn't work on the matter.

Once you have a good working agreement between all insured officemates and everyone has included the proper provisions in their engagement letters, what's next?

THE PHONES

For some types of law practices, the phone number may be one of the lawyer's most valuable assets. This varies based on how long a

phone number has been used for a legal business and the amount of advertising that has been invested in publicizing the phone number.

But, whatever the circumstances, it is usually best for each lawyer to have their own phone number, not shared with other lawyers in the building. The primary reason for this, in my opinion, is if the relationship with the other lawyer or lawyers doesn't work out and one decides to move, there will be no need to obtain a new number and risk losing contact with clients calling the old number.

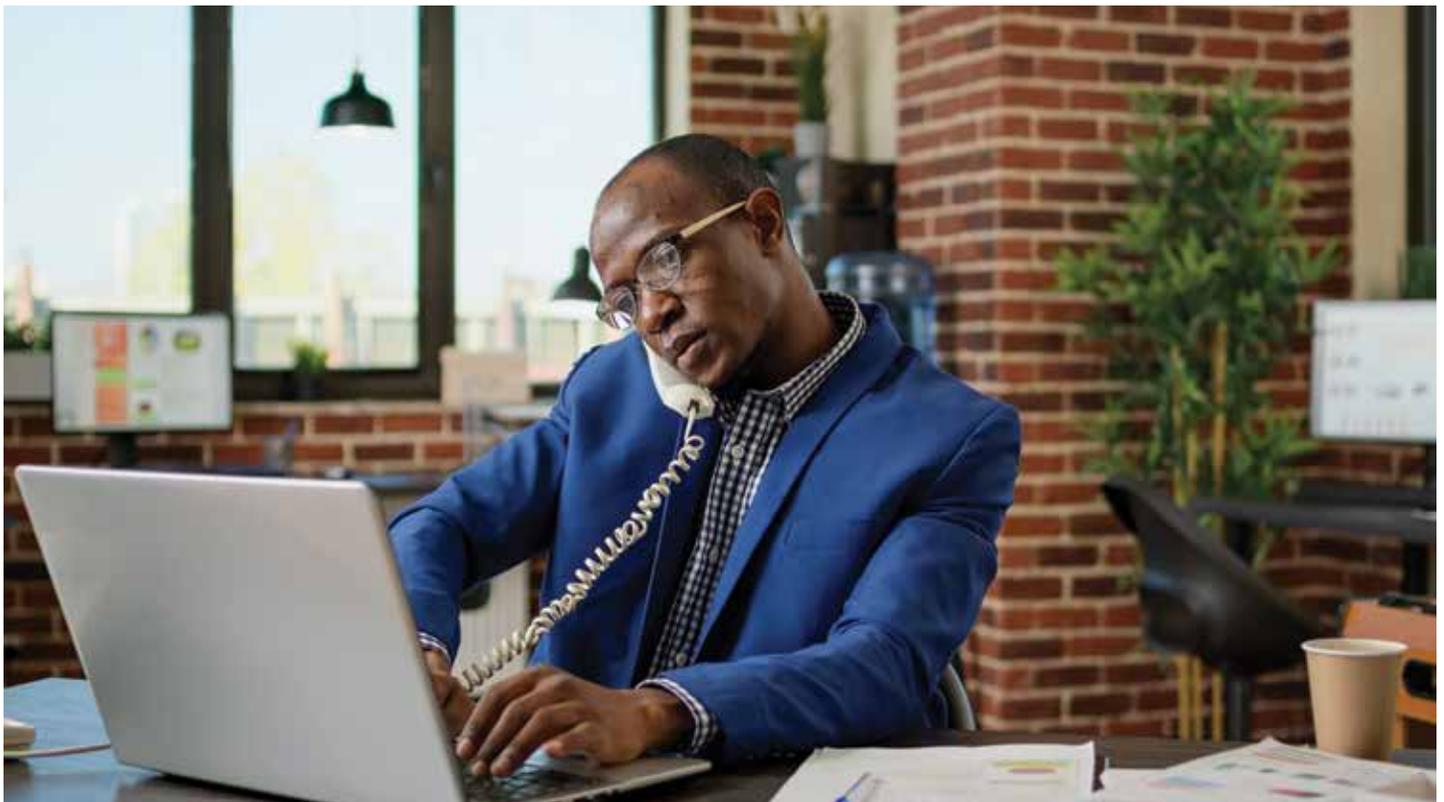
But having the individual office phone number has other benefits as well. If you pay a person or service to answer your phone, they can answer it with your law firm's name. If you utilize voicemail, you can have a customized message, including your name. If you invest in marketing efforts that feature your phone number as a part of the information, this makes it less likely you will pay for advertising that could benefit your officemates instead of you.

Once I was in an office-sharing relationship with an attorney who died. His brother, also an attorney, had a different type of law practice and was happy to let the remaining lawyers keep his brother's phone number. We assigned that number to the last rollover line so we would know when calls coming in were directly coming into it. He must have been very good about giving out his business card because that phone rang with potential client inquiries for years.

So most experienced lawyers will want to keep their own phone numbers. A jointly owned phone number may be quite a bone of contention when an office sharing arrangement terminates. Include how that will be decided in your operating agreement.

SHARING OF STAFF AND CONTRACTORS

Is it appropriate for officemates in an office-sharing relationship to share staff? As we lawyers often have to say, it depends.



If you have a cleaning service for the office, most likely that should be a shared expense. Someone should be responsible for making sure the cleaning crew understands they are not to read any documents they may come across or discuss anything they have seen in the law firm with outsiders. But there's no apparent business or ethical reason not to split the cost of law office cleaning. But once you get past the shared cleaning services, things are more complicated.

What about the office receptionist? The traditional role of the in-office receptionist is not usually problematic. Welcoming individuals, offering them a seat or perhaps refreshments and letting the lawyer know their appointment has arrived is routine. Any question the client might ask about the legal matter can be answered with, "Ask your lawyer about that in the meeting."

But the policies regarding the person who answers the phones can be more challenging. Clients or potential clients calling a law firm's phone number may blurt out confidential information to the person who answers the phone. So that must be addressed with a policy and training about the nature of the office sharing arrangement. If three or four lawyers all want a shared receptionist to answer individual phone lines with different greetings, this could be too challenging for many.

A shared phone line will present the additional challenge of who gets the call from a potential new client wanting to talk with a lawyer, any lawyer. Some sort of shared rotation should be established. To me, the first rule should be if only one lawyer is available to take a call immediately, they get the potential client inquiry simply because if the caller leaves

a message and their call is not returned for a few hours, they may already have secured a lawyer. Sometimes there are other considerations. For example, if only one lawyer in the office-sharing arrangement practices criminal law, those inquiries should go to that lawyer.

As we examine the possibilities, the idea of each lawyer having a separate phone number (with a virtual reception service as a backup when they cannot answer the phone) becomes more appealing.

Sharing staff, such as legal assistants and secretaries, increases the complexity. It can be challenging for two partners in a law firm to share a secretary or paralegal, and many a law firm associate has felt that they were second-class citizens compared to the partners as to how staff handled their assignments.

But in those large-firm situations, everyone is still theoretically focused on generating revenue for the firm, while the lawyers in an office sharing arrangement are all focused on their individual bottom lines. While I appreciate that many lawyers have made these situations work well for years, there will be growing pains initially setting this up, particularly if the staff person has a primary role in document creation.

CONFIDENTIALITY CONCERNS

When a client retains a law firm, all those working in the firm are understood to have access to the client's confidential information. (A law firm may limit access for administrative reasons.) With an office-sharing situation, as suggested above, the clients sign a contract with only one individual lawyer instead of a firm. So shared resources and staff are not assumed but must be examined with an eye toward guarding client

confidentiality. Before we cover some of these concerns, let's discuss a broad office confidentiality policy.

To oversimplify, there are two broad approaches. You can build walls between the practices so nothing is shared between them and then determine exceptions as needed (*e.g.*, letting the in-office receptionist know whom to expect that day.) Or you can decide that even though the arrangement is not a partnership, it is a better arrangement not to take cases in opposition or conflict with each other. This would require a conflict-checking protocol like that used by any law firm.

To me, there are many reasons not to take matters in direct opposition to your officemates. Lawyers can sometimes get emotionally involved in litigation, and it's best to avoid that with officemates. As one long-term office sharer remarked to the OBA Office of Ethics Counsel, "We don't take cases against each other. Too much potential for things to get messy." But the main reason to me is the Murphy's Law hypothetical situation, where lawyers do not share schedules. Just imagine two lawyers scheduling pretrial conference preparation with opposing parties in a marital dissolution case at the same time. What if both lawyers are then delayed, and the two clients spend a lot of time in your waiting room glowering at each other? It is quite possible that someone's trust in their lawyer could be damaged, and/or a client could decide to fire their lawyer just over the waiting room situation.

The lawyers' agreement will also need to address walk-in clients and how they are assigned a lawyer. Any method of operation has the potential for challenges. The walk-in client who just showed up needing a lawyer – any lawyer – may turn out to have

Jim noted that some of the most important attributes for making this arrangement work are common courtesy and cleaning up after yourself when you use common areas. Some things do not change.

been referred to Lawyer A by a long-time client. But that is far better than dealing with an enraged client who didn't notice both their attorney and opposing counsel shared the same address.

PAYROLL

Most solo and small firm practices with employees are well served to use a payroll service. But if you are sharing an employee and paying a portion of the employee's salary, you can be personally responsible should someone else fail to make the employee tax deposits with the authorities. The reports from the payroll service can make that simple.

TRUST ACCOUNT

Trust account management under office sharing scenarios is simple. Each individual lawyer should have their own trust account. There is no good argument to handle it any other way

First of all, it is simpler to manage a single-lawyer trust account. Even assuming it would ethically be permissible to have a multi-lawyer trust account, it would take someone with very strong accounting skills to properly manage it. That person would have to be

compensated. And, of course, the worst-case scenario would be checking on the trust account to find that it was substantially overdrawn, and an overdraft notice had been sent to the OBA Office of General Counsel even though you hadn't used the trust account for months.

COMPUTER NETWORK

One may need to hire a computer expert to set up your network properly so each lawyer only has access to their own files. This is not a particularly difficult task for a trained individual to set up.

But the cloud is likely the best option for client file information in any event. Either your practice management software or a service like Microsoft OneDrive can organize and store all your client information, including scanned copies of all documents filed with the court. And just like owning your own phone number, your cloud-based information storage is yours exclusively, as long as you keep paying the subscription fees.

CONCLUSION

I hope this rather detailed piece will not deter you from sharing offices with another lawyer or firm if that is in your best interest.

Working through all of this in advance with your officemates may take some time, but planning can avoid potential problems and potential liability.

Many years ago, Oklahoma City attorney Jim Slayton and I taught a CLE on office sharing and published an article as well. Jim noted that some of the most important attributes for making this arrangement work are common courtesy and cleaning up after yourself when you use common areas. Some things do not change.

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.

ENDNOTE

1. "Avoiding 'Hello L'office' and Other Law Firm Telephone Tips" <https://bit.ly/3bTJsc9> (OBJ November 2021)

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- 8:30 a.m. Registration and Continental Breakfast**
- 9:00 a.m. The Business of Law**
Jim Calloway, OBA Management Assistance Program
- 10:00 a.m. How to Manage Everything!**
Jim Calloway and Julie Bays, OBA Management Assistance Program
- 11:00 a.m. Break**
- 11:10 a.m. Tools of the Modern Law Office, Hardware/Software and Fastcase**
Jim Calloway and Julie Bays, OBA Management Assistance Program
- 12:15 a.m. Lunch**
Provided by Oklahoma Attorneys Mutual Insurance Company
- 12:30 p.m. Professional Liability Insurance and Risk Management**
Phil Frain, President, Oklahoma Attorneys Mutual Insurance Company (OAMIC)
- 1:30 p.m. Professionalism in the Practice of Law**
Presiding Judge David Lewis, Oklahoma Court of Criminal Appeals
- 1:50 p.m. Break**
- 2:00 p.m. Trust Accounting and Legal Ethics**
Gina Hendryx, OBA General Counsel
- 2:50 p.m. Break**
- 3:00 p.m. How to Succeed in Law Practice**
Jim Calloway and Julie Bays, OBA Management Assistance Program
- 4:00 p.m. Adjourn**

*Sponsored by Oklahoma Attorneys Mutual Insurance Company
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Meeting Summary

The Oklahoma Bar Association Board of Governors met July 15, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended the Solo & Small Firm Conference and an Annual Meeting planning meeting with Executive Director Williams and other key staff to set deadlines for registration and publications. He also participated in photo and video sessions at the Oklahoma City Convention Center to promote the Annual Meeting. He attended a meeting of the Executive Director Search Committee, where OBA directors were interviewed, and he also consulted with Executive Director Williams on hiring the association's new director of administration. He coordinated Disaster Response and Relief Committee attendance for the multi-state Disaster Legal Assistance planning meeting and hosted a Lawyers Helping Lawyers Assistance Program Committee planning meeting with leadership. He also spoke and provided an OBA update during the Oklahoma Judicial Conference.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he prepared OBA appointments and attended the Solo & Small Firm Conference as well as meetings of the Executive Director Search Committee and the Membership Engagement Committee. He virtually attended

the Oklahoma Bar Foundation Trustee meeting, and he also made a CLE presentation related to criminal law legislation. In addition, he attended the District Attorney Council board meeting, the Oklahoma District Attorney Association board meeting, the Oklahoma District Attorney Association Annual Meeting and the District Attorney Council and Oklahoma District Attorney Association Summer Conference.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he chaired a meeting of the Legislative Monitoring Committee and worked on the upcoming Legislative Debrief. He also attended meetings of the Executive Director Search Committee, Membership Engagement Committee and Oklahoma County Bar Association *Briefcase* Committee.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Solo & Small Firm Conference, where he moderated a CLE panel, provided a welcome address and was the Saturday lunch CLE presenter. He also attended meetings of the *Oklahoma Bar Journal* Board of Editors and the YLD Board of Directors. He hosted an Annual Meeting planning meeting with President Hicks and key staff to set deadlines for registration and publications. He conducted interviews

and hired the OBA's new director of administration and participated in an interview for a new OBA communications specialist, and he also attended the monthly staff celebration. He attended meetings of the Membership Engagement Committee, Diversity Committee and Legislative Monitoring Committee, and he obtained MCLE approval for the upcoming Legislative Debrief and furnished materials to the CLE Department for simulcast.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended the Solo & Small Firm Conference.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Solo & Small Firm Conference and the Legislative Monitoring Committee meeting. She will be presenting at the Aug. 11 Legislative Debrief. **Governor Bracken** reported he attended the Solo & Small Firm Conference. **Governor Dow** reported she attended the Solo & Small Firm Conference and presented a CLE on guardianship with Judge Kaitlyn Allen. **Governor Edwards** reported by email he attended the Solo & Small Firm Conference. **Governor Garrett** reported by email she attended the Solo & Small Firm Conference, where she co-taught two CLEs regarding an update on the new Oklahoma cannabis laws. She

also chaired the Cannabis Law Committee meeting. **Governor Hilfiger** reported he attended the Solo & Small Firm Conference and Muskogee County Bar Association meeting. **Governor Rochelle** reported he attended the Solo & Small Firm Conference. **Governor Smith** reported by email she attended the Solo & Small Firm Conference as well as the Diversity Committee meeting. **Governor Vanderburg** reported he attended the Solo & Small Firm Conference and the Oklahoma Municipal Judges Association Board of Directors meeting. He also reported the Kay County Bar Association will provide \$30,000 in scholarships to local students.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended the Solo & Small Firm Conference and YLD June meeting. He reports the primary focus of the division's June meeting was final preparations for the Solo & Small Firm YLD hospitality suite. Also discussed was a planned August event with Legal Aid Services of Oklahoma as well as the division's upcoming "mandatory" July meeting, where Bar Exam Survival Kits will be assembled. He also attended the Access to Justice Committee meeting, where the main topic of conversation was the status of evictions. He said the committee heard from Adam Hines, Access to Justice Commission intern, who

has seen 500 evictions over eight counties and is currently gathering data regarding the same. He will be presenting his work to the commission this fall. The committee also heard from Communications Director Rasmussen who is encouraging the committee to contribute monthly submissions on the topic of Access to Justice for publication in the *Oklahoma Bar Journal*.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Office of the General Counsel received 21 formal grievances and 62 informal grievances from June 1 to June 30. These numbers compare with 16 formal grievances and 56 informal grievances respectively the same time period last year. As of June 30, there were 174 grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission. In addition to the pending investigations, there was one grievance awaiting a private reprimand and 12 grievances waiting for formal charges to be filed. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Erwin said the **Solo & Small Firm Conference Planning Committee** is celebrating its successful event in June. He said the **Access to Justice Committee** met and discussed a report on

Governor Erwin said the Access to Justice Committee met and discussed a report on evictions that is being prepared for presentation to the Board of Governors at an upcoming meeting. The report will cover topics such as geographic inequalities, habitability and issues related to proper notice.

evictions that is being prepared for presentation to the Board of Governors at an upcoming meeting. The report will cover topics such as geographic inequalities, habitability and issues related to proper notice. Governor Rochelle said the **Disaster Response & Relief Committee** is currently working with ABA Disaster Response to respond and provide available assistance to residents of several Oklahoma counties that were recently declared a disaster by FEMA due to June flooding. Governor Conner said the **Awards Committee** is reviewing nominations for the 2022 OBA Awards in advance of their August meeting. President Hicks said the **Clients' Security Fund Committee** recently met. He also said the **Lawyers Helping Lawyers Assistance Program Committee** recently met and continues working to expand meetings beyond metro areas. President-Elect Hermanson said the **Membership Engagement Committee** met and discussed a planned campaign to increase Fastcase usage among OBA members to ensure they are getting the most out of their OBA membership. Vice President Pringle said the **Legislative Monitoring Committee** is planning its annual Legislative Debrief for Aug. 11, and the event has been approved for MCLE. Governor Smith reported by email the **Diversity Committee** has met and is finalizing details related to the 2022 Diversity Awards and Annual Diversity Awards Dinner to be held in conjunction with the Annual Meeting in November. The committee will also host a summer CLE with speaker Professor Danné Johnson and an LSAT bootcamp later this year or early in 2023.

PROPOSED RULE CHANGE BY COMMITTEE ON JUDICIAL ELECTIONS

The board passed a motion to approve filing an application to the Supreme Court to approve the proposed rule change that would require committee members involved in current judicial campaigns to recuse themselves in the event a complaint is filed against a judge or candidate seeking election to judicial office.

ANNUAL JULY REPORT OF LICENSED LEGAL INTERNSHIP COMMITTEE

Governor White delivered the report and described the contributions to the delivery of skilled and affordable legal services in Oklahoma. The committee will this year acknowledge the service provided by licensed legal interns through the establishment of the Licensed Legal Intern of the Year Award, to be presented in conjunction with the Annual Meeting in November.

PRESIDENT'S APPOINTMENTS

The board passed a motion to approve the appointment of Alissa Dawn Preble Hutter, Norman, to complete the unexpired term of Jimmy Oliver, Stillwater, with a term expiring Dec. 31, 2022.

COUNCIL ON JUDICIAL COMPLAINTS LEASE

Executive Director Williams described the lease agreement with the Council on Judicial Complaints that occupies space within the Oklahoma Bar Center and said the lease is being executed.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the ABA Annual Meeting, Aug. 3-9, Chicago; the Sheep Creek Event hosted by the Pontotoc County Bar Association, Aug. 13; the Board of Governors joint board event with the Tulsa County Bar Association, Aug. 18, Tulsa; Boiling Springs Legal Institute, Sept. 20, Woodward; Swearing-In Ceremony for new admittees, Sept. 27, Oklahoma Judicial Center, Oklahoma City; OBA Women in Law Conference, Sept. 30, Civic Center Music Hall, Oklahoma City; and the OBA Annual Meeting, Nov. 2-4, Oklahoma City Convention Center, Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in August, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. Friday, Sept. 16 at the Oklahoma Bar Center in Oklahoma City.



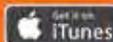
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Oklahoma Bar Foundation Announces 2022 Court Grant Recipients

By Candice Pace

THE OKLAHOMA BAR Foundation is excited to announce that Court Grants totaling \$148,366.04 have been awarded to seven Oklahoma courts this year. These grants will provide modern technological equipment and updates to courthouses across the state to improve the administration of justice.

The Oklahoma Bar Foundation funds law-related nonprofits, court improvements, court reporter rural service grants and law school scholarships. More news and information can be found at www.okbarfoundation.org.

Ms. Pace is OBF director of development & communications.

2022 COURT GRANT RECIPIENTS:

| Court | Equipment | Grant Amount |
|--------------------------------|--|---------------------|
| Court of Civil Appeals | Design and development of case management software | \$12,075 |
| Kingfisher County Court | Courtroom sound system | \$5,192.66 |
| Murray County Court | Courtroom audio improvement project | \$20,474.91 |
| Oklahoma County Law Library | Computers for public access area and software | \$12,698.52 |
| Pontotoc County District Court | New court reporting system | \$5,571 |
| Pottawatomie County Court | Courtroom audio improvement project | \$72,578.70 |
| Tulsa County District Court | Two SMART Boards and accessories | \$19,775.25 |
| Total: | | \$148,366.04 |



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The Young [sic] Lawyer's Division

By Dylan D. Erwin

IF I HAD A DIME FOR EVERY time over the last seven years a young lawyer has walked up to me and asked how they can get involved in the YLD, I would have ... a lot of dimes. Enough dimes to never worry about gas prices ever again. This metaphorical dime collecting, coupled with the impending YLD elections (see the excellent article penned by the one and only April Moaning in last month's bar journal), made me realize there may be some of you out there reading this article who are eager to get involved in the YLD but not necessarily ready to take the full plunge and throw your hat in the ring when elections roll around next year. If you're one of those people, this article is for you.

The YLD is a unique division within the OBA. You are automatically a member simply by existing and practicing law. Under Article 2.1 of the YLD Bylaws, "[a]ll members of the Oklahoma Bar Association in good standing who were first admitted to the practice of law in any jurisdiction 10 years ago or less" are eligible. In that respect, the term "young" is a bit misleading – as it identifies the vintage of the attorney rather than the age of the individual.

"Well, that's great, Dylan," you say, "But what does that mean?" Excellent question. As an OBA member eligible to be an active participant in YLD activities, you have several ways you can contribute.

The best way to get an idea of what's going on and how you can help is by attending our monthly meetings. As a body, the YLD has elected to have 11 monthly meetings throughout 2022. Our most recent meeting (recent to this writer, and not necessarily to you, the reader) was in conjunction with the 2022 July bar exam, and YLD members put together BESKs (bar exam survival kits) containing such essentials as Tylenol, ear plugs and extra pencils. Our three remaining meetings will be held Sept. 24 and Oct. 22 at the Oklahoma Bar Center at 10 a.m. and in November in conjunction with the OBA Annual Meeting. These meetings are an excellent way to stay informed and an excellent way to meet other young attorneys from around the state.

I'm sure I've said it before, but I have no issue repeating that my involvement with the YLD has been one of the most fulfilling professional choices I've made over the course of my career. I encourage you to join us and get involved. If you have any questions, do not hesitate to contact me or any other board member.

It is now the duty of YLD members to select those who will ultimately lead. Please look at the candidates in your district, and don't forget to vote! Remember: Every lawyer who was first admitted to the practice of law in any jurisdiction within the past 10 years

is automatically a member of the YLD and is eligible to vote.

Please take a moment to read the candidate information and vote; voting is a quick and easy process. Voting for YLD elections is conducted by electronic ballot, which will be emailed to you Oct. 3. You may cast your vote any time before midnight, Oct. 17. To ensure you receive a ballot, verify the OBA roster contains your current email address. You may do so by logging in to MyOKBar or by calling the OBA Membership Department at 405-416-7080. If you do not receive a ballot, email april@moaninglaw.com.

2023 LEADERSHIP

2023 Chair



Caroline M. Shaffer Siex
Caroline Shaffer Siex is a December 2016 graduate of the TU College of Law. She currently works at Gibbs Armstrong Borochoff PC, handling civil litigation, nursing home defense and family law matters.

Ms. Shaffer Siex has served the OBA as a member of the YLD Board of Directors since 2017 and as the YLD Hospitality chair from 2018 to 2019. In 2020,

she served as the board's secretary, and in 2021, she served as the board's treasurer. From 2020 through 2021, she concurrently served as the ABA YLD district representative for District 24 (Oklahoma and Arkansas).

During her time on the board, she has shown her willingness and effort to help other young lawyers, especially those just emerging into practice, from passing out bar exam survival kits, hosting a swearing-in happy hour for the newly admitted Tulsa-area lawyers and attending the TU bar preparation class to provide information about the Oklahoma bar and advice to law students. She has also contributed to publications aimed at assisting young lawyers to grow in their careers. Ms. Shaffer Siex wants to continue to serve on this board to bring more networking opportunities to the young lawyers in Tulsa and ease the daunting transition from law school into the legal field for newly admitted lawyers.

2023 Immediate Past Chair



Dylan D. Erwin

Dylan Erwin joined the Oklahoma City law firm of Holladay & Chilton in 2018. Prior to entering private practice, Mr. Erwin was an assistant district attorney for Comanche and Cotton counties. During his time in the DA's office, he was able to hone his skills as a trial attorney while serving the people in his hometown of Lawton. After leaving the DA's office, he brought his trial experience with him into the private sector with Andrews Davis, where he worked primarily

in their criminal law and civil litigation practice areas. As a criminal defense attorney, he has represented clients in matters ranging from speeding tickets and misdemeanor DUIs to felony drug charges and multi-defendant racketeering prosecutions. As a civil litigator, he has handled cases ranging from small claims disputes to large-scale construction litigation, complex business litigation and employment and labor claims on behalf of both the employer and the employee.

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

UNCONTESTED ELECTIONS

The following persons have been nominated. They are running uncontested and will be declared elected at the OBA YLD meeting in November.

Chair-Elect



Laura Talbert

Laura Talbert is a shareholder at Stockton Talbert PLLC in Oklahoma City. Her practice primarily

focuses on complex civil litigation, employment law and cannabis law. Ms. Talbert graduated from the OU College of Law in 2012. After graduating, she worked as a prosecutor. Prior to starting her own firm, she also worked for the General Counsel's Office for the Oklahoma Department of Corrections. In her free time, she enjoys playing volleyball and cheering on the Sooners. She has been on the YLD board for five years and is excited to continue serving.

Treasurer



Taylor C. Venus

Taylor C. Venus is a solo practitioner at the Venus Law Firm PLLC in northwest Oklahoma.

His practice focuses on civil litigation and transactional law for individuals and companies. Mr. Venus is a native of Ponca City and graduated from OSU with bachelor's degrees in economics and finance. During his time at OSU, he had the honor to be Pistol Pete. Thereafter, he obtained his J.D. and MBA at OU. While in law school, he served

as the articles editor for the *Oil & Gas, Natural Resources & Energy Journal* and served as an officer or representative in multiple student organizations.

He has a passion for serving in his local community and with organizations that have transformed his life. In Enid, Mr. Venus is the president of the Enid Public Schools Foundation, a member of Rotary and AMBUCS and actively participates and volunteers with several other groups in northwest Oklahoma. Outside of his local community, he is the secretary for the OBA YLD, a member of his fraternity alumni board and an active member of the Pistol Pete and Cherokee Strip OSU Alumni chapters. In his time out of the office, Mr. Venus enjoys spending time with his friends and family, playing golf, hunting and being an armchair expert on his favorite sports teams and political views.

Secretary



Allie Gage

Alexandra "Allie" Gage graduated from the TU College of Law in 2019. She currently works as a

civil litigation attorney at Doerner, Saunders, Daniel & Anderson LLP.

Ms. Gage has always had a strong commitment to community service and mentorship. Before attending law school, she lived and worked in the eastern European country of Kosovo, where she served as a community center coordinator for a center in the nation's capital. After returning, she chose to follow her call to a legal career at TU. She enjoyed serving as a mentor in law school and continues to support and encourage new lawyers

and law students entering their legal careers.

After the COVID-19 pandemic left its mark on Oklahoma, Ms. Gage sought to find a way to further serve her recovering community. In that effort, she joined the OBA YLD as a member of the Board of Directors for District 6. Her time on the board has been short, but she dove headfirst into her duties and continues to show her willingness to serve the YLD and its members. She now seeks to continue her service on the Executive Committee as the board's secretary.

District 3



Matthew Shelton

Matthew Shelton is an associate attorney with Stockton Law, where he practices primarily

in the areas of civil litigation, employment law and cannabis law. He is currently a member of the OBA YLD board and is the leader of the Membership and New Attorney Orientation committees.

Mr. Shelton was born and raised in Kansas City, Missouri, and comes from a family of firefighters. He moved to Oklahoma City four years ago for law school after receiving his bachelor's degree from the University of Missouri - Kansas City. His goal for his career is to gain as much knowledge of the law to be able to help anyone with any legal issue that comes his way.

District 4

Taylor C. Venus

See bio above

District 5



Dayten Israel

Dayten Israel is a May 2021 graduate of the OU College of Law. He currently works for OU as the director

of Startup Programs, providing management consulting and entrepreneurial coaching to emerging startups and small businesses. He is also a founding member of the OU Entrepreneurial Law Center.

Since joining the OBA in 2021, Mr. Israel has served on several committees, including the Strategic Planning, Diversity and Law Schools committees. His involvement in the Law Schools Committee has allowed him the opportunity to explore gaps in legal education and perceived access issues for soon-to-be attorneys in the state.

Mr. Israel seeks a position on the YLD board to take a greater role in supporting newly admitted and other young attorneys to grow in their legal careers. In this role, he intends to establish new opportunities for development and a greater connection to the OBA among young attorneys practicing in this state.

District 6



Keaton Taylor

Keaton Taylor is the founder and managing partner of the Tulsa law firm of Taylor Martuch,

practicing primarily in the areas of civil litigation, business formation and disputes, personal injury claims and criminal defense. Mr. Taylor represents clients from every walk of life and takes each

client's situation into account when developing a solution. In the representation of his clients, his focus is always to get the best possible result for each individual client's goals.

A native Tulsan and a graduate of Northeastern State University and the TU College of Law, Mr. Taylor is licensed to practice law in all Oklahoma state courts, Muscogee (Creek) Nation courts as well as the United States District Court for the Northern District of Oklahoma. He is a member of the American Bar Association and the Tulsa County Bar Association and a District 6 representative for the OBA YLD. He is also active in the Tulsa Young Professionals, the Tulsa County Bar Association and the Oklahoma Criminal Defense Lawyer's Association (OCDLA). In his spare time, he enjoys getting outdoors and volunteering in the community.

CONTESTED ELECTIONS

The following persons have been nominated and are running contested for the following positions. Results will be announced at the YLD November meeting.

At-Large

Dayten Israel

See bio above



Nick Marr

Nick Marr is an attorney at the Oklahoma City law firm of Nix Patterson LLP. He represents plaintiffs in a wide

array of mass tort and complex matters, concentrating on insurance bad faith, medical device

liability and False Claims Act litigation.

Born and raised in Norman, Mr. Marr is an alumnus of OU and the OU College of Law. He continues to live in Norman with his wife, Daniela, who owns and operates her own bakery, Coop Cake. Their dog, Lando, serves as his unenthusiastic work-from-home legal assistant. Outside of work, he enjoys traveling, going to the movies and investing a dangerous amount of his self-worth into the success of the OU football program.



Chase McBride

Chase McBride has served on the YLD board for three previous terms. He has his own firm based in Pryor

and primarily practices in the northeast Oklahoma area. He has a bachelor's degree in finance and a minor in economics from TU and graduated from OU with both his J.D. and MBA. He also received a certificate in law and entrepreneurship from the OU College of Law.

Mr. McBride is primarily a litigator. He has successfully argued in front of Oklahoma's highest court, defended federal business litigation actions, organized multi-million-dollar business transactions and transfers, represented high-asset divorce estates and successfully defended two first-degree murder charges, a first-degree manslaughter and other felonies.

He has also successfully represented three separate Oklahoma police chiefs in wrongful termination and employment disputes and successfully defended multiple politicians in the Tulsa area against defamation claims filed against them. Mr. McBride

currently represents several large businesses across the state.

He is also active in continual learning for lawyers. His articles have been published in the *Oklahoma Bar Journal* regarding court-ordered grandparental rights, interlocutory appeals and construction trusts in Oklahoma, all of which he has presented continued learning education courses for other lawyers across the state.

Mr. McBride is the current president of the Mayes County Bar Association and has served as the Mayes County Law Day Chair from 2018 to 2022. He also serves on the OBA Technology Committee and Clients' Security Fund Committee. Outside of law, he resides in Owasso with his wife and two daughters and can often be found playing golf at the Patriot Golf Club or fly fishing.



Phoebe Mitchell

Phoebe Mitchell is a third-year litigation attorney with Phillips Murrah PC. She represents

individuals and both privately held and public companies in a wide range of civil litigation matters. Ms. Mitchell received her J.D. from the OU College of Law, where she earned the American Jurisprudence Award for Civil Procedure II and was on the Dean's Honor Roll. She served as research editor and candidate mentor for the *Oklahoma Law Review* and was a member of the Phi Delta Phi legal honor society. She also served as a mentor on the Dean's Leadership Council, was selected as a Dean's Leadership Fellow and served on the Academic Appeals Board. While in law school, she had the opportunity to clerk as a judicial intern

for Oklahoma Court of Criminal Appeals Judge Rob Hudson.

Ms. Mitchell was born and raised in Oklahoma City and received her bachelor's degree from Vanderbilt University in Nashville, Tennessee. She is a member of Make-A-Wish Oklahoma's Young Professionals Council and an alumni advisor for OU's Kappa Alpha Theta chapter. Phoebe lives downtown with her mini aussiedoodle, Rumble, and enjoys Thunder basketball, OU football and cheering on her Vanderbilt Commodores in her spare time.

Matthew Shelton

See bio above

Keaton Taylor

See bio above

Taylor C. Venus

See bio above

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.



OPENING YOUR LAW PRACTICE

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"Opening Your Law Practice" is a free, semi-annual seminar that assists attorneys setting up new solo or small firm practices. This one-day seminar is held in both Oklahoma City and Tulsa.

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Jim Calloway, *OBA Management Assistance Program Director*
jimc@okbar.org | 405-416-7008 | 800-522-8060

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FOR YOUR INFORMATION



FREE FASTCASE 7 TRAINING OFFERED SEPT. 23

Fastcase is your OBA-provided legal research benefit. It covers all federal and state court opinions, statutes, regulations, court rules and constitutions. Even subscribers to other legal research services may find Fastcase useful for jurisdictions not covered in their plan.

The Fastcase 7 upgrade provided more powerful features and a simpler interface. But to access all of Fastcase's powerful features, most lawyers will benefit from additional Fastcase training, especially if you haven't used Fastcase 7 recently. You will learn how to set up bookmarks to speed your searches, use search history, use Fastcase's authority check, whether to use natural language search or Boolean, interpret the interactive timeline in your results, share a link with a non-subscriber and about the semantic tag cloud that allows you to see words and phrases that occur frequently with your current search.

Understanding the advanced features of Fastcase 7 can save you time and improve your searching abilities. The OBA will offer "Legal Research Using Fastcase for Oklahoma Lawyers" to its members on Sept. 23 at 11 a.m. There will be no registration fee, and one hour of MCLE credit (0 ethics) will be offered. To register, visit <https://ok.webcredenza.com>.



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.

LHL DISCUSSION GROUP HOSTS OCTOBER MEETING

The Lawyers Helping Lawyers monthly discussion group will meet Oct. 6 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Oct. 13 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. 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.

SOVEREIGNTY SYMPOSIUM 2022

The 35th annual Sovereignty Symposium, previously scheduled to be held Sept. 7 at the Skirvin Hotel in Oklahoma City, has been canceled. Visit <https://bit.ly/3cm6VTs> for more information.



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.

IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Monday, Sept. 5 in observance of Labor Day. Remember to register and join us for the OBA Annual Meeting to be held in Oklahoma City Nov. 2-4.

MEET THE NEW OBA DIRECTOR OF ADMINISTRATION

The OBA welcomes Chris Brumit to the role of director of administration. Prior to joining the OBA, Mr. Brumit was an audit supervisor at a local CPA firm in Oklahoma City. His career as a CPA includes auditing a vast array of industries as well as experience in taxation.



He has a bachelor's degree in accounting from the University of Central Oklahoma and an MBA with an emphasis in accounting from Oklahoma Christian University. Mr. Brumit is a member of the National Association of Bar Executives, the American Institute of CPAs and the Oklahoma Society of CPAs. He is a father of two, and in his spare time, he enjoys golfing, football and being involved with his children's extracurricular activities.

OBA PRESIDENT MEETS WITH VISITING MONGOLIAN JUDGES

Five judges from Mongolia visited Tulsa in late July, stopping at the Tulsa County District Courthouse and the Tulsa County Bar Association along the way. Tulsa Global Alliance, a nonprofit organization that works to foster ongoing relationships between Tulsa residents and international visitors, coordinated the tour, which the judges saw as a great educational experience.



OBA President Jim Hicks and members of the Tulsa County Bar Association meet with the Mongolian judges.

The visit included a tour of the courthouse and a meeting with members of the Tulsa County Bar Association and OBA President Jim Hicks to discuss the differences between the U.S. and Mongolian court systems. Mongolia, which descended from the Mongol Empire that was founded by Genghis Kahn in 1206, was a Communist state from the 1920s until the fall of the Soviet Union in the 1990s. The country adopted a democratic constitution, which included an independent judiciary, in 1992. The president appoints all the country's judges to lifetime terms.

ON THE MOVE

Leslie Griffin has joined The Title Law Group in Oklahoma City. She has extensive experience working in the exploration and production sector of the oil and gas industry. Ms. Griffin's skills and knowledge will help bolster the firm's transactional team. Her practice includes helping operators and owners of all sizes in mineral management, negotiation, drafting contracts and curative documents, due diligence and mergers.

Shawn M. Dellegar was named vice president of administration for the Tulsa office of Crowe & Dunlevy. Mr. Dellegar focuses his practice on handling domestic and international patent and trademark portfolios, along with administrative proceedings at the U.S. Patent and Trademark Office. He advises many companies as their intellectual property general counsel, handling licensing and due diligence, helping them determine where they should file applications internationally and offering strategy and advice about their competitors. He will continue serving clients through his intellectual property practice while also continuing the expansion of the firm's Tulsa office.

Tyler L. Gentry has joined Goodwin Lewis PLLC. Mr. Gentry's practice focuses on civil and commercial litigation in all state and federal courts. He represents individuals and businesses and practices primarily in the areas of commercial law, oil and gas, real estate, personal injury, family law and criminal law.

Logan P. Blackmore has joined the Oklahoma City office of McAfee & Taft. Ms. Blackmore is a transactional lawyer who will be a member of the firm's Energy and Natural Resources Group. Her practice is focused on the representation of clients of all sizes operating in the oil and gas and renewable energy industries, including oil and gas exploration and production companies, oilfield service companies, midstream pipeline and transportation companies and developers of wind farms and other renewable and sustainable energy projects. She received her J.D. from the OU College of Law in 2020.

Leisa Gebetsberger has joined AmeriTrust Holding Company, a subsidiary of Argent Financial Group, as a trust administrator.

She will assist clients in a variety of areas, including trusts, probate and estate planning and administration. Ms. Gebetsberger has more than three decades of experience in business development, regulatory compliance and service delivery. She also has 25 years of experience with the Oklahoma Tax Commission.

Josh Ihler has joined the Tulsa office of GableGotwals as an associate. He will focus on mergers and acquisitions, commercial financing and commercial agreements. Mr. Ihler has experience with commercial real estate transactions, asset-based loan sales, single-lender and syndicated credit facilities, loan agreements and other commercial lending matters.

Jake Jones has opened Jake Jones Mediation. The firm is located at 4801 Gaillardia Parkway, Ste. 200, Oklahoma City, 73142. Mr. Jones has 40 years of experience practicing law in a variety of areas, and he currently serves as chairman of the Oklahoma Indigent Defense System Board of Directors. He may be reached at 405-866-5253 or jake@jakejonesmediation.com.

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 November issue must be received by Oct. 1.

KUDOS

Armand Paliotta was appointed vice president and general counsel for OU, pending the approval of the Board of Regents. Mr. Paliotta received his J.D. from the OU College of Law in 1992, has served on the school's Board of Visitors since 2012 and has taught at the OU College of Law and the OCU School of Law as an adjunct professor. He has more than 30 years of legal experience that spans a wide range of practice areas, including business and financial transactions, health care, real estate finance, tax planning and sports franchise matters. He previously worked for the Oklahoma City law firm of Hartzog Conger Cason, where he authored the legal opinion on the agreement to form OU Health, Oklahoma's first comprehensive academic health system.

Kate Springer has joined the Council on Law Enforcement Education and Training in Ada as assistant general counsel. Established in 1963, CLEET supports Oklahoma law enforcement in serving its communities by providing basic peace officer academy training, peace officer certification and regulation and the licensing and regulation of security guards, private investigators, bail enforcers and security and investigative agencies. Ms. Springer received her J.D. from the OCU School of Law in 2021.

Judge F. Pat VerSteeg, associate district judge for Roger Mills County, was honored during the Oklahoma Judicial Conference for his many years of service on the Juvenile Justice Oversight and Advisory Committee. The award recognized his dedication and commitment to making a difference in the lives of children in the juvenile system.

Burns Hargis, OSU president *emeritus*, was named a Hall of Fame inductee by the OSU Spears School of Business. He served as president of the university from 2008 until his retirement in 2021. Mr. Hargis practiced law for 28 years in Oklahoma City, where he worked with the law firm of McAfee & Taft. In 1997, he joined Bank of Oklahoma, where he rose to become vice chairman. He has served as president of the Oklahoma County Bar Association and Oklahoma Bar Foundation. He was inducted into the Oklahoma Hall of Fame in 2009.

Roland K. Arnold III of Sterling, Virginia, died March 22. He was born June 4, 1955, in Duncan. Mr. Arnold received a bachelor's degree in finance from OU in 1977. **After graduation, he enlisted in the U.S. Army and served in the Airborne Division of the U.S. Army Rangers until 1981. He continued as a U.S. Army reservist until 1997, ultimately achieving the rank of lieutenant colonel.** He received his master's degree in business from the University of Dallas in 1983 and his J.D. from the OCU School of Law in 1986. Mr. Arnold began his legal career at the Oklahoma City law firm of Holloway, Dobson, Hudson & Bachman. He went on to hold legal, corporate counsel and management positions with USAA and AT&T in San Antonio and Jacksonville, Florida. In 1998, he served as president and CEO of MERSCORP and its subsidiary, Mortgage Electronic Registration Systems Inc., before retiring in January 2011.

Kenneth Ray Blan of Stillwater died Aug. 6, 2020. He was born May 9, 1939, in Bakersfield, California. Mr. Blan graduated from OU and Kansas State University and received his J.D. from the Mississippi College School of Law. He had a long and successful career with the Soil Conservation Service, after which he returned to Stillwater. Mr. Blan was an active member of the First Baptist Church and Gideons International. He also served on the boards of Pushmataha County Hospital, Pushmataha County Conservation District and Oklahoma Farm Bureau Insurance.

Will Douglas Bradley of Yukon died May 28. He was born Sept. 28, 1954, at Tinker Air Force Base. After moving several times, his family settled in Stratford, where he completed elementary school and graduated from high school. Mr. Bradley received his J.D. from the OCU School of Law in 1986 by attending night classes while working as an English teacher and football coach. During his 32-year legal career, he served 14 years as assistant district attorney with the Canadian County District Attorney's Office and 17 years in private practice, focusing on adoptions and family law.

James G. Caster Jr. of Oklahoma City died July 19. He was born April 29, 1928, in El Reno. Mr. Caster received his J.D. from the OU College of Law in 1955. **He served in the Korean War for two years before he began working on a doctorate in history and political science at the University of New Mexico.** In 1969, he completed his doctoral dissertation and accepted a faculty position at the University of Central Oklahoma. Following his retirement in 1992, Gov. David Walters proclaimed a Dr. James G. Caster Day throughout the state. He continued to teach part-time at OSU-OKC and Redlands Community College until he was 85. He served on five different state boards and committees, was the editor-historian of the Oklahoma City Civil War Round Table for 43 years, led the UCO Conclave of the Ancient and Beneficent Order of the Red Rose for 42 years and was a long-time member of the Oklahoma American Legion Boys State, serving as program director from

1988 until 1998. Memorial contributions may be made to the St. Luke's United Methodist Foundation.

Michael Jerry Daley of Oklahoma City died July 17. He was born Feb. 12, 1939. **A proud member of the U.S. Army, Mr. Daley was stationed in Germany.** After returning to Oklahoma City, he finished college and received his J.D. from the OCU School of Law in 1973. Mr. Daley enjoyed a long, successful career in oil and gas working for Kerr McGee, Trigg Drilling Co. and finally Douglass, Dietz and Daley Inc.

John C. Drennan Jr. of Medford died July 17. He was born Aug. 13, 1932, in Medford, where he attended public schools and played on the football, basketball and baseball teams – he was a member of three Oklahoma state championship football teams. After graduating from high school in 1950, Mr. Drennan attended OU, where he studied law and accounting before graduating in 1954. **He then joined the U.S. Army in Fort Benning, Georgia, as an officer and artillery instructor.** He received his J.D. from the OU College of Law and joined the law firm of Drennan & Drennan with his father in 1959. For the next 60 years, he practiced primarily in the areas of oil, gas and probate law. Mr. Drennan was known for his passion for four things: the law, helping children excel at sports and academics, nice restaurants and Oklahoma Sooners football. He attended his first OU football game in 1938 and continued to be a season ticket holder and donor since the '50s, rarely missing a home game.

Diana G. Mueller Eastwood of Piedmont died June 8. She was born June 2, 1946, in Los Angeles. After living in San Diego for several years, Ms. Eastwood moved to Oklahoma and entered college at the age of 27. She received her J.D. from the OU College of Law. Upon retiring, she volunteered and was a docent at the National Cowboy & Western Heritage Museum.

Toney Daniel Foster of Olympia, Washington, died April 30. He was born Oct. 17, 1950, in Oklahoma City. Mr. Foster earned his bachelor's degree from OCU in 1992 and received his J.D. from the TU College of Law in 1994. He practiced at the Tulsa law firm of Taylor, Foster, Mallett, Downs, Ramsey and Russell. Memorial contributions may be made to Books for Africa, the Regional Food Bank of Oklahoma or the Montrose Center.

Lorrie Gray of Talihina died Aug. 1. She was born May 21, 1957, in Oklahoma City. Ms. Gray received her J.D. from the St. Mary's University School of Law in San Antonio and practiced for more than 25 years before retiring. She was passionate and outspoken in her personal and professional life and always put her family first.

David Marshall Hammer of Shawnee died July 3. He was born Aug. 1, 1974, in Oklahoma City. Mr. Hammer received his bachelor's degree in business management from the University of Phoenix and continued to work for his family's business, Jones Theatres. He began working there at the age of 16 and remained an

active part of the business until his death. In 1995, he began a career as a police officer in Tecumseh, where he was named Officer of the Year in 1997. Mr. Hammer received his J.D. from the OCU School of Law in 2014. From 2016 until 2018, he served as an assistant district attorney in Shawnee before returning to private practice, where he primarily defended individuals who could not afford to obtain their own legal counsel. Just five days before his death, Mr. Hammer was elected district attorney for Pottawatomie and Lincoln counties.

David B. Hickens of Houston died May 10. He was born July 8, 1955, in Enid. A graduate of Enid High School, Mr. Hickens received his bachelor's degree in laboratory technology from OU and a master's degree in medical diagnostics from the University of Houston. In 1991, he received his J.D. from the OCU School of Law and spent the next 29 years working for the federal government, rising to the position of chief of the Environmental Affairs Office at the NASA Johnson Space Center. Memorial contributions may be made to the Adaptive Sports Center of Crested Butte.

Jay Rollin Holtzouser of Creve Coeur, Missouri, died July 1. He was born Aug. 3, 1957, in Atlanta. Mr. Holtzouser developed a passion for music as a child and earned a bachelor's degree in music education from Murray State University and the University of Missouri. After graduating, he worked as a band director and educator for several years before moving to New York City, where he applied his musical

skills to business consulting. In 1991, he received his J.D. from the TU College of Law and became an assistant district attorney. In the late '90s, he moved to Robinson, Illinois, where he practiced civil and criminal law until his retirement. In his spare time, Mr. Holtzouser regularly performed in many community orchestras and theater projects. Memorial contributions may be made to the American Cancer Society's Hope Lodge or your local animal shelter.

Curtis L. Horrall of Enid died Aug. 9. He was born Aug. 4, 1930, in Enid. **Mr. Horrall attended OSU for two years and then joined the U.S. Army. He served in the 325th Hospital Training Unit and was stationed as a medic at the Presidio in San Francisco during the Korean War.** Upon being discharged, he attended the University of Central Oklahoma and received his J.D. from OCU School of Law in 1957. He founded the Trust Department at Central National Bank in Enid, where he worked until 1977. He also served on the CNB Board of Directors. In 1977, he assumed ownership of the Bank of Drummond and provided rural banking and insurance services until his retirement in 1995. Mr. Horrall was an early supporter of the YMCA, Enid Symphony and Gaslight Theater. He was also active in the Lion's Club, Rotary and Central Christian Church, where he was a lifelong member.

Sandra Jo Ingraham of McLoud died June 22. She was born Sept. 1, 1947. Ms. Ingraham received her J.D. from the OU College of Law in 1993.

Russell R. Linker II of Tulsa died July 17. He was born Aug. 31, 1933, in Sand Springs. Mr. Linker received his J.D. from the OU College of Law in 1958. **Soon after graduating, he enlisted in the U.S. Air Force as an attorney.** After leaving the Air Force, he opened a private law practice with his father, and then he and a close friend opened their own practice. Later in his career, he served as city attorney for Tulsa. He retired in 1998 and became a Trustee with Memorial Park Cemetery until retiring again in 2022. Mr. Linker was also an active member of the Harvard Avenue Christian Church. Memorial contributions may be made to the Tulsa SPCA.

Robert Lawrence Locke Jr. of Muskogee died July 15. He was born Sept. 3, 1943, in Corpus Christi, Texas. Mr. Locke attended Irving Elementary School and graduated from Muskogee Central High School in 1961. He received his bachelor's degree from OSU and his J.D. from the TU College of Law. For the next 40 years, Mr. Locke practiced law and received accolades for his pro bono representation of women and children in need. He also frequently volunteered at organizations that offered a safe place for victims of domestic violence and other traumas, such as WISH (Women In Safe Homes). Memorial contributions may be made to WISH.

Keith D. Magill of Edmond died July 1. He was born July 31, 1982, in Jones. Mr. Magill graduated from Edmond Santa Fe High School in 2000 and earned his bachelor's degree from OCU in political science. He received his J.D. from the OCU School of Law in 2008 and joined the law firm his father founded in 1999. He was an advocate, volunteer and board member for March of Dimes Oklahoma for more than a decade. He also served on the Metro Technology Centers board. Memorial contributions may be made to March of Dimes Oklahoma.

Dale Richard Marlar of Claremore died July 7. He was born July 18, 1949, in Tahlequah. After graduating from Claremore High School, Mr. Marlar attended OU. He received his J.D. from the OU College of Law in 1974 and practiced law for the next 48 years, including several years as Claremore's city attorney. He also owned several Minit Mart convenience stores and taught Sunday school at the First United Methodist Church. Memorial contributions may be made to the First United Methodist Church in Claremore.

James R. McKinney of Tulsa died July 27. He was born July 16, 1941, in Tulsa. **After graduating from TU, he joined the U.S. Air Force in 1964 and served as an officer at McGuire Air Force Base in New Jersey.** Mr. McKinney left the military in 1968 and received his J.D. from the TU College of Law in 1972. In 1980, he cofounded the Trust Company of Oklahoma, where he worked for 37 years. Memorial contributions may be made to Clarehouse, Seasons Hospice or the Endowment Trust of the Harvard Avenue Christian Church.

James P. Messler of Tulsa died June 30. He was born Oct. 30, 1940, in Tulsa. Mr. Messler loved playing baseball and was a bat boy for the Tulsa Oilers in the '50s. In 1970, he received his J.D. from the TU College of Law and entered private practice. He was appointed special district judge in 1990, and three years later, he was appointed to the U.S. Court Appellate Division of the Oklahoma Court of Criminal Appeals. He served as district judge for 12 years before joining the Drummond Law Firm in Tulsa, where he served as of counsel until his death. Mr. Messler helped establish the National Wild Turkey Federation Tulsa Chapter in 1992, serving as its president until 1997. He was elected to the NatureWorks Board of Directors in 1998 and served as the Art Show director from 2013 to 2020. In 2018, he received the NatureWorks Stewardship Award. Memorial contributions may be made to NatureWorks or your favorite charity.

Jerry D. Mullins of Tucson, Arizona, died June 3. He was born May 16, 1934, in Purcell. **Mr. Mullins enlisted in the U.S. Navy in 1951 and served during the Korean War aboard the USS Cunningham, a destroyer deployed to the Pacific.** After completing his military service, he attended OCU, where he earned his bachelor's degree in mechanical engineering in 1959. He received his J.D. from the OU College of Law in 1962. Mr. Mullins served as a councilman for Ward 1 in Del City in the late '60s and early '70s. He also worked at Tinker Air Force Base, where he rose to the position of center administrator for the Military Aircraft Storage and Disposition Center.

John Paul Pinkerton of Dallas died July 9. He was born Nov. 24, 1944, in Jacksonville, Texas. Mr. Pinkerton received his bachelor's degree in general engineering from OU and his J.D. from the OU College of Law in 1969. **After graduating, he entered the U.S. Army as part of the Judge Advocate General's Corps, studying the Code of Military Justice at the University of Virginia. In 1970, he was assigned to Fort Jackson in Columbia, South Carolina. The following year he was stationed in Da Nang, Vietnam, where he spent 11 months representing the government in courts-martial of U.S. soldiers.** Upon completing his military service in 1973, Mr. Pinkerton moved to Dallas and practiced in the area of intellectual property for the next 47 years. In 1997, he received a bachelor's degree in electrical engineering from the University of Texas at Dallas. He left private practice in 2014 and became an administrative patent judge on the Patent Trial and Appeal Board of the United States Patent and Trademark Office, where he served until his retirement in 2021. Memorial contributions may be made to the Pulmonary Fibrosis Foundation.

Kent Aubrey Polley of Edmond died Aug. 5. He was born Feb. 26, 1934, in Graham, Texas. Mr. Polley graduated from Okmulgee High School, where he was on the cheerleading squad and had parts in many plays. He received his J.D. from the OU College of Law in 1957 and then returned to Okmulgee, where he worked in his family's store and served as president of the Junior Chamber of Commerce and other civic organizations. In 1962, he joined a law firm in Oklahoma City and practiced in the areas of trusts, wills and estates. He

worked at different times for the city's three major banks: First National, Fidelity and Liberty. In 1986, he opened his own practice. Mr. Polley was a member of Chapel Hill United Methodist Church, where he taught Sunday school and served as a counselor for the Methodist Youth Fellowship.

Teresa Anne Rendon of Oklahoma City died June 17. She was born March 9, 1949, in Tulsa. Ms. Rendon received her J.D. from the OCU School of Law in 1988. She practiced family law as well as immigration law, helping hundreds of immigrants achieve their dream of becoming U.S. citizens. Ms. Rendon's familial connection to Mexico, Mexican culture and the Mexican community in Oklahoma City was an important part of her life and identity, as was her Cherokee ancestry.

Galen E. Ward of Bullhead City, Arizona, died Feb. 17. He was born Dec. 7, 1934, in McPherson, Kansas. In high school, Mr. Ward played on the basketball team and was a member of the Boy Scouts, earning the rank of Eagle Scout. He attended Kansas State University, received his bachelor's degree in geophysical engineering and accepted a job with GSI in New Orleans. He was then transferred to Norman. Mr. Ward received his J.D. from the OU College of Law in 1965 and went to work for Phillips Petroleum Co. in Oklahoma City. In 1993, he retired from the company as regional chief attorney. Memorial contributions may be made to the Alzheimer's Association.



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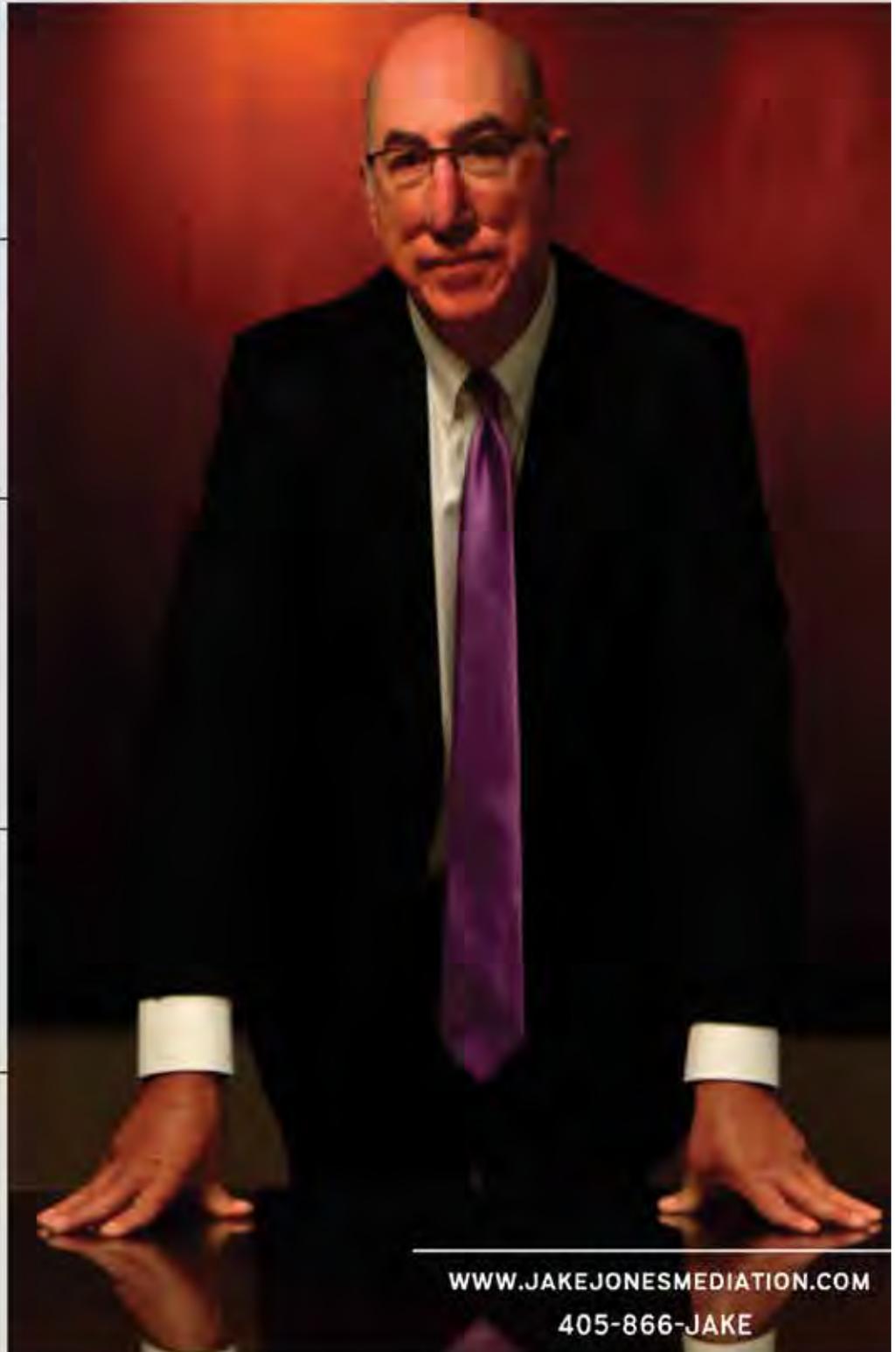
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TIME AND WORK TO MAKE A
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-PHIL R. RICHARDS

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MY CLIENTS THROUGHOUT
THE PROCESS."

-PHIL WATTS



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Deadline: Aug. 1, 2022

DECEMBER

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Editor: Scott Jones
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Deadline: Oct. 1, 2022

APRIL

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Deadline: Oct. 1, 2022

MAY

Attorneys & Aging
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melissde@aol.com
Deadline: Jan. 1, 2023

AUGUST

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Editor: David Youngblood
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Deadline: Aug. 1, 2023

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

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SEEKING

WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to P.O. Box 13557, Denver, CO 80201.

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

RETIRED JUDGE SEEKING NEW CHALLENGE. Twenty-plus years of heavy oil and gas experience followed by twenty-plus years on the bench. Licensed in Oklahoma, Texas, and Colorado. Looking for a full-time, part-time employee or contract situation. Available for in-office or remote. Email advertising@okbar.org.

OFFICE SPACE

OFFICE SPACE FOR LEASE IN NW OKLAHOMA CITY. Adler Markoff & Associates, 25-year personal injury and criminal firm in the Rees Building on Lake Hefner has space available. Includes use of reception area, receptionist, copiers, phones, and beautiful conference room. Also, would include possible referrals of P.I., Estate Planning, Family Law, and other areas. Please call Cathy: 405-607-8757.

POSITIONS AVAILABLE

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.

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.

SMALL AV FIRM IN NW OKC/EDMOND seeks experienced attorney. Family law trial background helpful but not required. Send Resume and cover letter to Jon Hester, 16311 Sonoma Park Drive, Edmond, OK 73013 or jhester@hesterlaw.net.

POSITIONS AVAILABLE

THE LAW FIRM OF COLLINS, ZORN & WAGNER, P.L.L.C. is currently seeking an associate attorney with a minimum of 5 years' experience in litigation. The associate in this position will be responsible for court appearances, depositions, performing discovery, interviews and trials in active cases filed in the Oklahoma Eastern, Northern, and Western Federal District Courts and Oklahoma Courts statewide. Collins, Zorn & Wagner, P.L.L.C., is primarily a defense litigation firm focusing on civil rights, employment, constitutional law and general insurance defense. Salary is commensurate with experience. Please provide your resume, references and a cover letter including salary requirements to Collins, Zorn & Wagner, PLLC, Attn: Stephen L. Geris, 429 NE 50th, Second Floor, Oklahoma City, OK 73105.

MID-SIZE TULSA AV, PRIMARILY DEFENSE LITIGATION, FIRM seeks 3-5 year lawyer with emphasis on Insurance Defense for our OKC office. If interested, please send confidential resume, references, and writing sample to advertising@okbar.org with the subject line "Position CE."

ASSISTANT GENERAL COUNSEL needed to represent the Department, its Board, and the Department personnel in legal proceedings and tackles a wide array of legal issues to include employment law, constitutional law and civil rights, EMTALA, mental health law, department investigations, legislation, policies, ethics, and litigation in all state and federal courts along with other tribunals. As an employer of the State of Oklahoma, ODMHSAS is able to offer: Generous benefits allowance to off-set insurance costs, Flexible spending, 11 paid holidays, 15 days paid vacation, 15 days paid sick leave, Retirement savings plan with generous company match, Longevity bonus for years of service. Applicants may send their resume to humanresources@odmhsas.org.

ASSOCIATE ATTORNEY, Busy AV-rated Midtown law firm seeks full-time WORKERS' COMPENSATION defense attorney. 3-5 years of experience. Salary commensurate with experience. Send résumé with one page cover letter to gofortha@cmwalaw.com.

POSITIONS AVAILABLE

THE CIVIL DIVISION OF THE TULSA COUNTY DISTRICT ATTORNEY'S OFFICE is seeking applicants for an Assistant District Attorney. Qualified applicants must have a J.D. degree from an accredited school of law and be admitted to the practice of law in the state of Oklahoma. Ideal candidates will have experience in civil litigation, discovery, motions, oral arguments, trials and settlements. Excellent research and writing skills are required. Representing the County in civil matters will acquaint you with virtually every legal subject under the sun, from A to Z, animals to zoning and everything in between. This position participates in civil litigation, conducts research, and provides legal advice to county officials. Excellent State benefits. Please send cover letter, resume, professional references and a recent writing sample to seldridge@tulsacounty.org.

LATHAM, STEELE, LEHMAN SEEKS LITIGATION ASSOCIATE in its Oklahoma City office with 0 to 5 years experience to work for busy workers' compensation defense practice. Associate will be handling files and conducting depositions, mediations and court hearings and is expected to start immediately. Resumes and references requested. Send replies to Box M, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

MIDTOWN TULSA LAW FIRM IS SEEKING AN ATTORNEY with a strong legal research and writing foundation. Flexible schedule may be possible. Law Firm focuses on business law, real estate law, construction law and commercial litigation. Candidate will work closely with other attorneys in the firm while having responsibility for significant legal research and writing, case management, deadlines and occasional court appearances. Send resume and writing sample to tgurley@hmkoklaw.com.

MID-SIZE LAW FIRM SEEKS LITIGATION ASSOCIATE with 4-5+ years of experience for diverse commercial litigation practice. Bankruptcy experience is a plus, but not a requirement. Salary commensurate with experience and qualification. This is an excellent opportunity at one of Oklahoma City's premier local law firms. Please send resume and cover letter to: okclawfirmresume@gmail.com.

POSITIONS AVAILABLE

OKLAHOMA CITY-BASED, MULTI-JURISDICTIONAL LAW FIRM actively seeking motivated and detail-oriented ATTORNEYS EXPERIENCED IN PROBATE to join our fast-paced and growing practice group. Our team provides clients the respect, time and attention needed for all probate matters. 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 3 years of experience in probate law. Please send resume and references to office@ballmorselow.com. If you are up to the challenge, please submit your resume for consideration.

OKLAHOMA CITY-BASED, MULTI-JURISDICTIONAL LAW FIRM actively seeking motivated and detail-oriented ATTORNEYS EXPERIENCED IN ESTATE PLANNING to join our fast-paced and growing practice group. Our team provides clients the respect, time and attention needed to develop cohesive and thoughtful estate plans that achieve their estate planning goals. 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 3 years of experience in Estate Planning. Please send resume and references to office@ballmorselow.com. If you are up to the challenge, please submit your resume for consideration.

MULTI-STATE LAW FIRM SEEKING OIL AND GAS ATTORNEY to join our dynamic practice group. Ball Morse Lowe has established a well-respected, multi-basin practice and is continuing to expand its team across Denver, Colorado; Norman, Oklahoma; Oklahoma City, Oklahoma; and will also consider remote working options for the right candidates. Benefits include a competitive salary/fee structure commensurate with experience including bonus opportunities, full health benefits, 401K match, full back-end client support and support staff, and the opportunity for practice growth. Please send cover letter, resume and references to office@ballmorselow.com. Please be prepared to provide writing sample upon request. Oklahoma and/or New Mexico experience or license is invaluable. A minimum of 3-5 years direct experience working oil and gas is required.

POSITIONS AVAILABLE

THE OKLAHOMA OFFICE OF THE ATTORNEY GENERAL has multiple full-time Attorney positions open for application in our Solicitor General, Civil Rights Enforcement, Litigation and Legal Counsel Units. Qualified candidates must at least be a licensed attorney. Preference may be given to candidates with related experience. To apply, please send resume and a writing sample to resumes@oag.ok.gov and indicate which particular position you are applying for in the subject line of the email. The Oklahoma Office of Attorney General is an equal opportunity employer. All individuals are welcome to seek employment with the Oklahoma Office of Attorney General regardless of race, sex, sexual orientation, gender identity, color, age, national origin, genetic information, religion, or disability, so long as the disability does not render the person unable to perform the essential functions of the position for which employed with or without a reasonable accommodation. All employees of the Oklahoma Office of Attorney General are “at will” employees.

• NOTICE OF PETITION FOR REINSTATEMENT •

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF LISA GOLD MADDEN, SCBD # 7288 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 Lisa Gold Madden 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, OCTOBER 21, 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

New Online Platform Makes OBA CLE a Breeze

By Janet K. Johnson

IT SEEMS LIKE THE HUMAN brain is always working. It begins the moment you are born and never stops until you need to find a way to write an article during a prolonged summer heatwave. Let's see if I can redeem myself, shall we? Because triple-digit temperatures aside, I am very happy to have this opportunity to tell you about WebCredenza, the OBA CLE Department's brand-new learning management system.

It's no secret: For our members, online learning has become the preferred method for satisfying your MCLE requirements. Demand for virtual and remote learning was on the rise even before the COVID-19 pandemic erupted over two years ago. We recognize that many of our members prefer a digital interface even when in-person learning sessions are available. That means to best serve our members, we need to offer the best online experience available. We believe WebCredenza is the solution we have been looking for, and it went live for our members on Aug. 1.

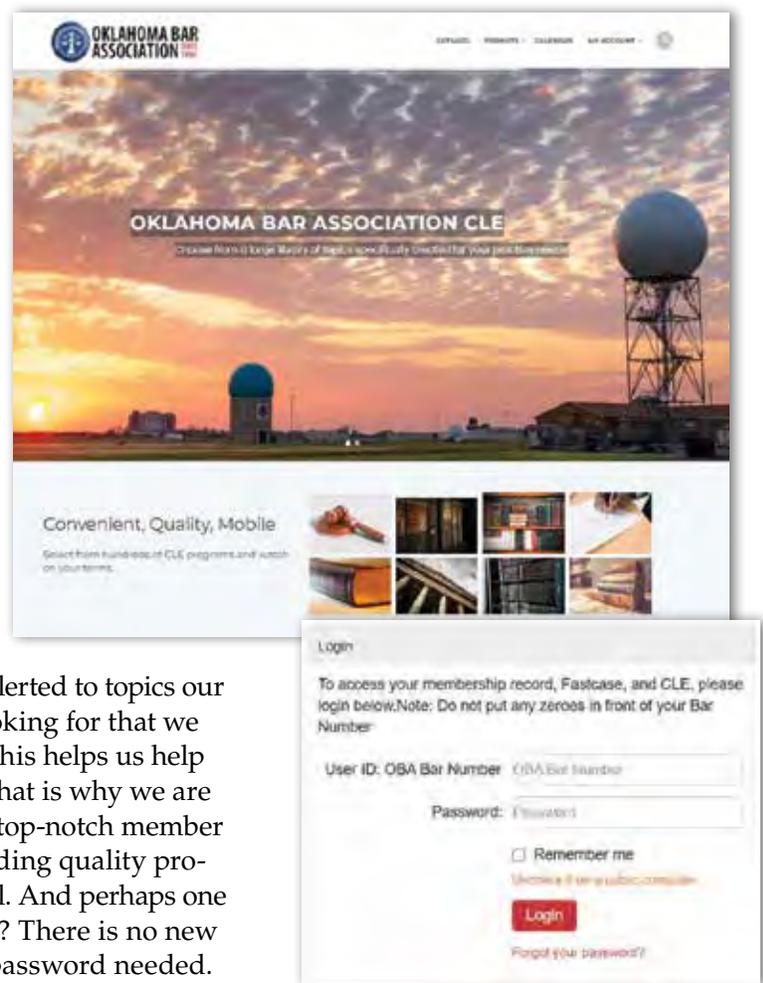
Check it out at ok.webcredenza.com. If you haven't taken a tour yet, I highly recommend that you do. It comes with a more user-friendly interface and built-in artificial intelligence (AI) to learn your viewing and search habits. What does that mean? A highly customized and personalized experience.

Bottom line?
It will save you time by learning what topics are most interesting and relevant to you, the user.
The more you play, the better it gets!

Have you ever searched for a CLE of interest and received no results? With WebCredenza, the CLE

Department is alerted to topics our members are looking for that we don't yet offer. This helps us help YOU. After all, that is why we are here: to achieve top-notch member service by providing quality programming for all. And perhaps one of the best parts? There is no new username and password needed. The same way you've been logging in to your MYOKBar account remains the same.

As a member and your CLE director, I hope you find this new CLE platform to be as helpful and user-friendly as I have. If you have any questions about WebCredenza, please reach out to me at janetj@okbar.org. I can't



help you beat 100-degree weather, but I can help you make the most of this exciting new learning system that was developed with you, our members, in mind!

Ms. Johnson is the OBA director of Educational Programs.

Save these Dates

"A calm mind
brings inner
strength and
self-confidence,
so that's very
important for
good health."

— Dalai Lama



WELLNESS WEDNESDAYS

Wednesday, September 21

MCLE 1/1

WE ARE ALL IN THIS TOGETHER:

HANDLING IMPOSTER SYNDROME IN THE LEGAL PROFESSION

Featured Presenters:

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

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

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

Wednesday, October 19

WHAT MY FACEBOOK POSTS TEACH ABOUT LAWYER MENTAL HEALTH

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

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

Wednesday, November 16

HOW BEING TRAUMA-INFORMED IMPROVES JUDICIAL DECISION-MAKING

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

PAST PROGRAMS AVAILABLE ON-DEMAND

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM: AN OVERVIEW

Featured Presenter: Scott B. Goode, *Principal, Military Law Group*

8 DIMENSIONS OF WELLNESS

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



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