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THE OKLAHOMA BAR Journal

Volume 93 — No. 9 — November 2022

Municipal Law



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6/1 DAY ONE

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9 A.M. - 3:20 P.M.

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Oklahoma Tax Law

Rachel Mathew, Partner, Polston Tax Resolution & Accounting

Criminal Law

Barry L. Derryberry, Assistant Federal Public Defender, Tulsa

Cannabis Law

Amber Peckio Garrett, Amber Law Group, Tulsa

Felina Rivera, Renaissance Legal Solutions, Oklahoma City

Wellness Workshop

Robyn Goggs, A Chance to Change, Oklahoma City

DAY TWO - TULSA

Ethics

Gina Hendryx, General Counsel, OBA

Business and Corporate Law

Gary Derrick, Derrick and Briggs, LLP, Oklahoma City

Law Office Management and Technology

Jim Calloway, Director of Management Assistance Program, OBA

Real Property Law

Kraettli Epperson, Mee Mee Hoge & Epperson, PLLP, Oklahoma City

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Terrell Monks, Oklahoma Estate Attorneys, PLLC, Oklahoma City

Family Law

Professor Robert Spector, University of Oklahoma College of Law, Norman

DAY ONE - OKLAHOMA CITY

Health Law

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Bankruptcy Law

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Oklahoma Tax Law

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contents

November 2022 • Vol. 93 • No. 9

THEME: **MUNICIPAL LAW**

Editor: Roy Tucker

On the cover: Stillwater Municipal Building, photo by Lori Rasmussen.

FEATURES

- 6 | MUNICIPAL LAW: COME JOIN US UNDER THE BIG TOP!
By BETH ANNE CHILDS
- 10 | MUNICIPAL PLANNING AND ZONING: AN OVERVIEW
OF STATE STATUTES AND STANDARDS FOR REVIEW
By BETH ANNE CHILDS
- 16 | MUNICIPALITIES AND THE OPEN MEETING ACT
By JULIE TROUT LOMBARDI
- 22 | OKLAHOMA GOVERNMENTAL TORT CLAIMS ACT
By JEFF HARLEY BRYANT
- 32 | THE ESSENTIAL EMINENT DOMAIN CONCEPTS
By NICK ATWOOD
- 40 | EVALUATING THE JURISDICTION OF MUNICIPAL COURTS
AFTER CASTRO-HUERTA
By MATTHEW LOVE

DEPARTMENTS

- 4 | FROM THE PRESIDENT
- 58 | FROM THE EXECUTIVE DIRECTOR
- 60 | LAW PRACTICE TIPS
- 64 | BOARD OF GOVERNORS ACTIONS
- 68 | OKLAHOMA BAR FOUNDATION NEWS
- 71 | YOUNG LAWYERS DIVISION
- 72 | FOR YOUR INFORMATION
- 74 | BENCH & BAR BRIEFS
- 78 | IN MEMORIAM
- 83 | EDITORIAL CALENDAR
- 88 | THE BACK PAGE

PLUS

- 44 | OBA DIVERSITY AWARD WINNERS ANNOUNCED
- 49 | ANNUAL MEETING
- 50 | NEW LAWYERS TAKE OATH
- 54 | 2023 COMMITTEE SIGN-UP



Civics, Civility and Collaboration: Lawyers Can Lead the Way

By Jim Hicks

THE PRACTICE OF LAW has a way of confronting us with our insecurities and imperfections. For me, practicing law has been simultaneously painfully awkward, hilariously comical and immensely powerful. However witty we think we are, whatever memorable lines we employ in arguments or briefings to the court, we cannot escape moments of self-doubt. I jokingly say that my motto has been “often wrong, seldom in doubt.” In mediations and in courtrooms, agreeing to disagree is what attorneys do every day. While our society appears divided over numerous issues that manifest in the workplace, courtroom and in threats against law enforcement and judges, lawyers are uniquely positioned to lead the way in civility and collaboration. Our clients look to us for guidance on how to behave and how to handle the stress associated with legal issues and concerns. Those who decry a lack of civility in today’s social interactions need members of our organization to keep calm and uphold the rule of law.

The memorable opening scene of the Martin Scorsese film *Casino*, about early 1970s Las Vegas, shows a bomb blast engulfing the car of the character played by Robert DeNiro as he starts the ignition. Similar events occurred in Tulsa County. On Aug. 25, 1970, Tulsa County District Judge Fred Nelson was the target of an Election Day assassination attempt. As he turned the ignition switch of his blue station wagon, an explosion tore the front end of the car apart, throwing more than 20 pieces of shrapnel into him. The bombing took place in the driveway of his home, across the street from Edison High School. Judge Nelson survived the attack but was left critically injured. Presiding Judge Robert Simms issued



Tulsa County District Judge Fred S. Nelson was critically wounded in an August 1970 car bombing but later recovered and returned to the bench. Photo courtesy of the Tulsa World.

strict rules requiring armed guards at the homes and in the courtrooms of Tulsa’s district judges. The Tulsa County Bar Association immediately posted a \$25,000 reward leading to the arrest and conviction of the bomber. Judge Nelson returned to the bench Oct. 6, 1971, having been re-elected. A Tulsa native, he had been appointed in 1967 by Gov. Dewey Bartlett. His daughter, Jill Nelson Thomas, continues to be a member of the OBA.

As a grand jury was impaneled to investigate the bombing, even more shocking events filled the news. On Sept. 26, 1970, E.C. Mullendore III was beaten and shot to death in his Osage County home on the Cross Bell Ranch. His bodyguard, Chub Anderson (now deceased), claimed two intruders killed Mullendore, but Anderson continues to be a primary suspect. The story was the biggest murder case in the history of northeastern Oklahoma and remains unsolved to this day.

The Mullendore Murder Case, written in 1974 by Johnathan Kwitny, is a definitive account
continued on page 57



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THE OKLAHOMA BAR Journal

Volume 93 — No. 9 — November 2022

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The Oklahoma Bar Journal (ISSN 0030-1655) is published monthly, except June and July, by the Oklahoma Bar Association, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. Periodicals postage paid at Oklahoma City, Okla. and at additional mailing offices.

Subscriptions \$60 per year. Law students registered with the OBA and senior members may subscribe for \$30; all active members included in dues. Single copies: \$3

Postmaster Send address changes to the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.



Municipal Law: Come Join Us Under the Big Top!

By Beth Anne Childs

AT THE END OF THE MOVIE *ARGO*, CIA operative Tony Mendez is told by his boss, Jack O'Donnell, that he will be receiving the Intelligence Star, one of the highest honors of the clandestine services. Tony requests to push receipt of the award off a week so his son can attend. Jack advises him that the award is classified, and no one can know about it. Tony's response is, "So they are going to give me an award and then take it back." Jack acknowledges that is the case and says, "If we'd wanted applause, we would have joined the circus."

I have spent the better part of my 29-year career in public service, particularly representing municipalities. I frequently remind my elected and appointed officials that what they do is important, and if they want applause, they should join the circus. Although that analogy is not always well received, it drives home the point that public service should be performed not to receive accolades but to make decisions that advance their communities for the public good. Although to some, municipal governments can be viewed as a circus, it is far from a series of entertaining events. It is rather the level of government that most directly impacts its citizens on a daily basis. Elected and appointed officials are public servants and need to appreciate that the decisions they make are not always popular or easy and certainly may not result in a standing ovation.

THE MUNICIPAL ATTORNEY

An important part of any well-run municipality is the local government lawyer. In recent years, I have concentrated my practice on the representation of smaller municipalities. One evening, I had a gentlemen approach me following a board meeting, where the feasibility of hiring a police chief was discussed at length. He told me that hiring a police chief was very important to the town, and while he didn't have much, he had worked hard for what he had. I have never forgotten what he said and frequently use his remarks as a reminder to work hard to help communities find solutions to their most important and challenging issues.

Most attorneys don't fully appreciate that municipal law is highly specialized, requiring knowledge, information and experience in a vast number of areas. It is common for municipal attorneys to advise on matters involving public finance, land use, planning and zoning, eminent domain, torts, complex transactions, open

meetings, open records, criminal, labor, employment, public trusts, purchasing, competitive bidding and constitutional interpretation and application. Municipal budgets are, more often than not, heavily dependent upon sales tax collections, a fairly volatile source of revenue. This creates budgetary constraints on cities and towns struggling to provide basic services like fire and police protection, water and sanitary sewer service and solid waste removal. Further complicating the problem is the attitude of elected officials who expect attorneys to represent their cities and towns either for free or at a greatly reduced rate as part of their civic duty. This perspective does a disservice to the attorneys and the city and town officials who fail to appreciate the complexity of the issues handled by local government practitioners, the time required to research and prepare municipal legal documents and the many nuances of the practice that can protect cities and towns from liability.

THE THREE RINGS

Support Your City or Town Attorney

In my experience, the average municipal attorney handles 33 different matters in any given week. Because of the diversity in practice, it can take numerous hours to get up to speed on a particular issue. The average reported law school debt of \$160,000¹ further complicates the ability of small cities and towns to recruit and retain attorneys. Also, the larger Oklahoma municipalities are playing a decreased role as a training ground for municipal attorneys who may be able to later serve smaller cities and towns. In the past, attorneys would gain experience in larger cities and then gravitate toward smaller municipalities. For a variety of reasons, there has been lower turnover in the larger offices. Increasingly, openings in entry-level positions are being filled with experienced attorneys, which, in turn, further reduces the pool of qualified municipal attorneys available to provide representation to smaller cities and towns.

Except for those attorneys who have stable practices, few can afford to represent cities and towns, keep up with the vast array of changes to laws affecting municipalities, learn all the different types of law associated with the representation of municipal clients and attend quality continuing legal education on topics of importance to local government lawyers. The politics, egos, negative press, diminishing qualified workforce and other challenges also make representing municipalities far less attractive.

Supporting your municipal attorney with words of wisdom, offering to conduct research on a particular issue and providing “heads-up” conversations in advance of public meetings all make a big difference and go a

long way toward retaining quality municipal attorneys. I would encourage you to support your community by recognizing the difficulty and complexity of local government practice and offering to lend a hand when necessary.

Volunteer

There are many ways you can support your municipality. One of the biggest challenges I have noticed is the inability of city councils and boards of trustees to find qualified individuals to serve on their respective planning commissions and boards of adjustment. Municipalities cannot enforce their zoning codes without having active commissions and boards. In the smaller municipalities, these bodies meet once

a month or less. Participation provides a tremendous benefit to your locality, and experience as an attorney can be invaluable to evaluation of the numerous types of issues decided.

Also, be an advocate for your community! Pay attention to job postings in your city or town, encourage good people to apply, watch for economic development opportunities and support the folks who pick up your trash, fix your water leaks and stand in the freezing cold to repair sanitary sewer lines. Rather than simply expressing frustration with local governments and their employees, commit to providing support and working to make things better. Shop locally and work to ensure that your tax dollars support your local government.



Join Us!

Representation of municipalities is challenging, rewarding and important. We are a very collegial, experienced group who tirelessly work to recruit and retain quality municipal practitioners. Those of us who have done this for many years will assist you with the resources you need to be successful. All you need is the commitment to learn and the desire to practice law for the public good.

In recent years, the Oklahoma Association of Municipal Attorneys (OAMA), the Oklahoma Municipal Assurance Group (OMAG) and the Oklahoma Municipal League (OML) have worked diligently to increase educational opportunities and provide additional support to local government attorneys. These organizations, as well as the International Municipal Lawyers Association (IMLA), tirelessly work in support of the municipal attorney. The resources provided are enormously beneficial and additionally provide opportunities to collaborate on issues facing all municipalities.

CONCLUSION

Several years ago, I was sitting in a board meeting when an astonishingly large roach ran past me. Being raised in Alabama, I am adept in all manners of personal roach eradication and was prepared to use my high heel to rapidly address this situation. Fortunately for the roach, the successful bidder on the sanitary sewer lagoon mowing contract was much quicker than me. He leaped out of his chair, removed his hat, scooped up the roach and tossed it out the back door. It was a remarkable feat of quick thinking, physical agility and selflessness.

Over the years, my municipal law career has been defined by kangaroos, miniature horses,

algae-eating grass carp, hospitals, falling walls, sewer backups and witnesses showing up to municipal court in all forms of attire, including (my personal favorite) SpongeBob SquarePants pajama pants, flip-flops and a very thin, grey shirt (no undergarments). While some might say my career has been – in a word – a circus, it has been much more than a series of entertaining events. More accurately and importantly, it has been rewarding, challenging and important. I am professionally fulfilled, grateful for the municipal attorneys who trained and supported me and hopeful that my one or two words of guidance over the years have made a difference for those serving in the circus of municipal government.

ABOUT THE AUTHOR



Beth Anne Childs represents the Oklahoma municipalities of Bristow, Wynona and Luther and is the city prosecutor for the cities of Owasso and Coweta. She has represented numerous other municipalities and serves on the Board of Directors for the International Municipal Lawyers Association and the Oklahoma Association of Municipal Attorneys.

ENDNOTE

1. *Student Debt: The Holistic Impact on Today's Young Lawyer*, published by the American Bar Association's Young Lawyers Division in 2021.

CONGRATULATIONS, Kayce!

Kayce L. Gisinger, Director at Phillips Murrah P.C., has become a Fellow of the American College of Trial Lawyers, the preeminent organization of trial lawyers in North America. Find out more about Kayce's legal experience on phillipsmurrah.com.

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Municipal Planning and Zoning: An Overview of State Statutes and Standards for Review

By Beth Anne Childs

THE IDEA OF THE PLANNING COMMISSION originated in the Standard Planning and Zoning Enabling Acts.¹ These were developed under Herbert Hoover in the 1920s when he served as secretary of commerce.² The model ordinances were drafted in order to standardize land use planning procedures across the United States.³ Almost all states adopted the Standard Acts, which authorized cities, towns and counties to establish planning commissions and adopt zoning and subdivision requirements. The acts defined and established essential duties of the planning commissions and boards of zoning appeals or adjustment.⁴

The purpose of zoning regulations is to promote the health, safety and welfare of Oklahoma communities. This generally requires boards and commissions to weigh the rights of those seeking rezoning or a particular land use with the rights of nearby property owners. Most citizens, however, do not think much about planning and zoning decisions until their own properties are impacted. This article provides a basic summary of state statutes and a basic overview of the standards for review, particularly at the trial court level.

Municipalities are authorized to enact zoning regulations to promote the health, safety and welfare of the community.⁵ However, in order to enforce zoning codes, cities and towns must have both a Planning Commission (Zoning Commission) and a Board of

Adjustment.⁶ The municipality's power to enact zoning ordinances is legislative, while the Board of Adjustment's power is adjudicative in nature.⁷

PLANNING AND ZONING COMMISSION

The Planning Commission is tasked with recommending the boundaries of the various original districts as well as appropriate regulations to be enforced therein.⁸ The commission consists of not less than five citizens, all of whom must be residents of the municipality.⁹ The members are to be nominated by the mayor and confirmed by the governing body.¹⁰ Each member serves for a term of three years, with appointments to fill vacancies for any unexpired term.¹¹ Planning Commission members serve without pay, except in cities having a

population of more than 200,000, and in that case, the commissioners may receive *per diem* as set by the governing body.¹² In addition to the duties set forth in 11 O.S. §45-101 through 45-106, highlighted duties and responsibilities of the Planning Commission include making recommendations to the governing body on community development issues, including:

- The zoning ordinance and zoning map amendments;
- Preliminary and final subdivision plats;
- Special permits;
- Land use plans;
- Capital improvement plans;
- Updating the comprehensive plan;
- Providing an opportunity for long-term, in-depth study of major issues; and

- Providing an opportunity to promote intergovernmental cooperation with school districts, utilities and neighboring jurisdictions.

There are some very basic legal standards to consider when advising a planning commission, governing body or private client. One of the most important is that the Oklahoma Supreme Court has consistently held that unless a zoning decision of a municipality is found not to have a substantial relation to the public health, safety, morals or general welfare or to constitute an unreasonable, arbitrary exercise of the police power, its judgments will not be overturned by the district court.¹³ Also, courts may not substitute their judgment for that of the municipal legislative body.¹⁴ The court's duty will be to determine whether the restriction on the use of the property is a reasonable exercise of power under the zoning statute.¹⁵ When the validity of a legislative classification for zoning purposes is fairly debatable, legislative judgments must be allowed to stand.¹⁶

In representing public bodies, the best way to explain to elected and appointed officials how to evaluate planning and zoning





matters is to ensure that decisions are not arbitrary but based upon good reasons for approval or denial. This standard was highlighted in *McNair v. City of Oklahoma City*.¹⁷ In *McNair*, the Oklahoma Supreme Court held, “When the validity of a municipal zoning ordinance is challenged, it is the duty of the Court to determine whether passage of such ordinance is an arbitrary, unreasonable and capricious exercise of the police power.”¹⁸

Practitioners also need to be aware that imposition of a particular zoning regulation, if not thoughtfully considered, can constitute a taking without just compensation. A government taking is generally thought of as a physical taking of a landowner’s property. However, if a regulation goes too far, it will be recognized as a taking. Regulatory takings were first recognized by the United States Supreme Court in 1922.¹⁹ A regulatory taking occurs when a governmental regulation limits the use of private property to such a degree that it effectively deprives the property of any value.²⁰ The United States Supreme Court has

recognized regulatory takings in two situations: 1) when a regulation leaves the landowner with no economically viable use of the land (also known as a categorical taking) and 2) based upon the balancing test established in *Penn Central Transportation Co. v. New York City*.²¹

A categorical taking occurs when a regulation denies all economically beneficial or productive use of land.²² For example, in *Lucas v. S.C. Coastal Council*, the United States Supreme Court held that a law prohibiting the owner of beachfront property from erecting any permanent structures rendered the property valueless, which therefore resulted in an unconstitutional taking.²³

If the regulation does not deprive the property of all economic value, courts will analyze the regulation under the *Penn Central* balancing test.²⁴ *Penn Central* is arguably one of the more interesting land use cases to be decided by the United States Supreme Court. It involved a challenge to New York City’s landmark preservations law, which prevented the Penn Central Transportation

Company from constructing a skyscraper on top of Grand Central Station.²⁵ The court determined that a city will not be required to pay compensation to a property owner under the Takings Clause of the Fifth Amendment when it designates the property as a landmark and limits its development.²⁶ In so ruling, the Supreme Court established a three-part balancing test that requires consideration of 1) the character of the state action, 2) the economic impact of the regulation and 3) the extent to which the regulation has interfered with a distinct investment-backed expectation.²⁷

Some of the most contentious cases involve applications to rezone property from residential to commercial development. There were several cases that were decided in the 1980s by the Oklahoma Supreme Court and the Oklahoma Court of Civil Appeals that highlighted matters that remain relevant today. One such case is *Lynch v. City of Oklahoma City*.²⁸ The *Lynch* case involved two sisters who inherited property with the family home from their mother. The home was torn down

after the death of the mother due to vandalism. It stood vacant for several years, during which time the sisters continuously attempted to sell the property, which was on a corner lot adjacent to an existing strip shopping center. The owner of the strip center offered to purchase the property subject to the lot being successfully rezoned to commercial.²⁹ Several blocks in this area had strip centers zoned for various levels of commercial usage.³⁰

The sisters made application to the city to rezone the lot and asked that the single-family dwelling classification be rezoned to local commercial.³¹ Intervenor Maureen Anderson and Putnam Heights Preservation Area Inc. entered the case in support of the city and strenuously objected to the rezoning application.³² After a full hearing before the City Council, the application was denied.³³ The sisters filed suit in Oklahoma County District Court, challenging the decision by the City Council and sought injunctive relief to prohibit the city from interfering with their use of the lot for uses found within the requested commercial zoning classification.³⁴ The trial court enjoined the city from enforcing the residential zoning and ordered rezoning of the property to commercial with a list of prohibited uses and other restrictions.³⁵ The Court of Appeals upheld the order of the trial court, enjoining the city from enforcing residential development, but reversed and remanded with instructions to vacate the portion of the order rezoning the property to a particular commercial category.³⁶

In its opinion, the court noted that the standards by which the trial court's exercise discretion must be guided in zoning matters were clearly and succinctly set out in *Garrett v. City of Oklahoma City*.³⁷

It also provided a reminder that, "In rezoning actions of this kind, the Court must look beyond the findings and conclusions of the trial court and consider the basic physical facts appearing in the record to ascertain whether the reasonableness of the ordinance is fairly debatable."³⁸

It is interesting that many elements of the *Lynch* case remain relevant 40 years later. There were property owners struggling with changing development in the area and, originally, an inability to make it viable for use in the then-current market. There were also surrounding property owners who meticulously worked to maintain the integrity of their homes and neighborhood and vehemently opposed increased intrusion of commercial development. The trial judge attempted to fashion a remedy allowing commercial use subject to restrictions that addressed many of the concerns raised by the city and neighborhood residents. The record does not reflect ultimate

resolution following remand. It does, however, highlight the competing interests of landowners seeking rezoning and the impact on their neighbors.

BOARD OF ADJUSTMENT

Pursuant to state statute, the Board of Adjustment consists of five members, each appointed for a term of three years.³⁹ Board members are removable for cause by the governing body upon written charges and after a public hearing.⁴⁰ Vacancies are filled for any unexpired term.⁴¹ The Board of Adjustment is statutorily responsible to hear and decide 1) appeals of decisions made by an administrative official in the enforcement of any zoning ordinance, 2) special exceptions to zoning ordinances and 3) variances from the terms, standards and criteria pertaining to an allowed use category within a zoning district.⁴² One of the most important roles, however, is to review and consider variances to the zoning code. A variance from the terms, standards and criteria

Some of the most contentious cases involve applications to rezone property from residential to commercial development. There were several cases that were decided in the 1980s by the Oklahoma Supreme Court and the Oklahoma Court of Civil Appeals that highlighted matters that remain relevant today.

of an allowed use category within a zoning district authorized by the zoning code may be granted only upon a finding that:

- 1) Application of the ordinance to the particular piece of property would create an unnecessary hardship;
- 2) Such conditions are peculiar to the particular piece of property involved;
- 3) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the ordinance or the comprehensive plan; and
- 4) The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.⁴³

Appealing decisions from the Board of Adjustment is different than review of other types of municipal decisions because the time limits for appeal are set by ordinance rather than state statute.⁴⁴ Additionally, notice of appeal must be filed with both the municipal clerk and the clerk of the Board of Adjustment and set out the grounds for the appeal.⁴⁵ Upon receipt of the notice of appeal, the board must file all records pertaining to the record to the district court clerk.⁴⁶ The matter is then tried *de novo* by the court.⁴⁷

One of the more recent cases on appeals from a Board of Adjustment is *Mustang Run Wind Project, LLC v. Osage County Board of Adjustment*.⁴⁸ Although this case involved an appeal from the decision of a county Board of Adjustment to deny a request for a conditional use permit,⁴⁹ the reasoning of the court is no less instructive. Citing the United States Supreme Court in *City of Edmonds v. Oxford House, Inc.*, the *Mustang Run Wind* court noted,

“Land use restrictions aim to prevent problems caused by the ‘pig in the parlor instead of in the barnyard.’”⁵⁰ Decisions of the board cannot be arbitrary or unreasonable and must be based upon the evidence submitted and fixed premises.⁵¹ In evaluating conditional use permits, the decision of the Board of Adjustment is not legislative but quasi-judicial based upon facts presented.⁵²

CONCLUSION

Planning and zoning are critically important to the orderly development of all communities. In summary, planning commissions, boards of adjustment and governing bodies must carefully consider the relevant facts and the standards very generally discussed in this article and ensure compliance with state statutes and notice requirements. Following these standards will help ensure the due process rights of applicants and facilitate development that is in the best interests of the health, safety and welfare of the community.

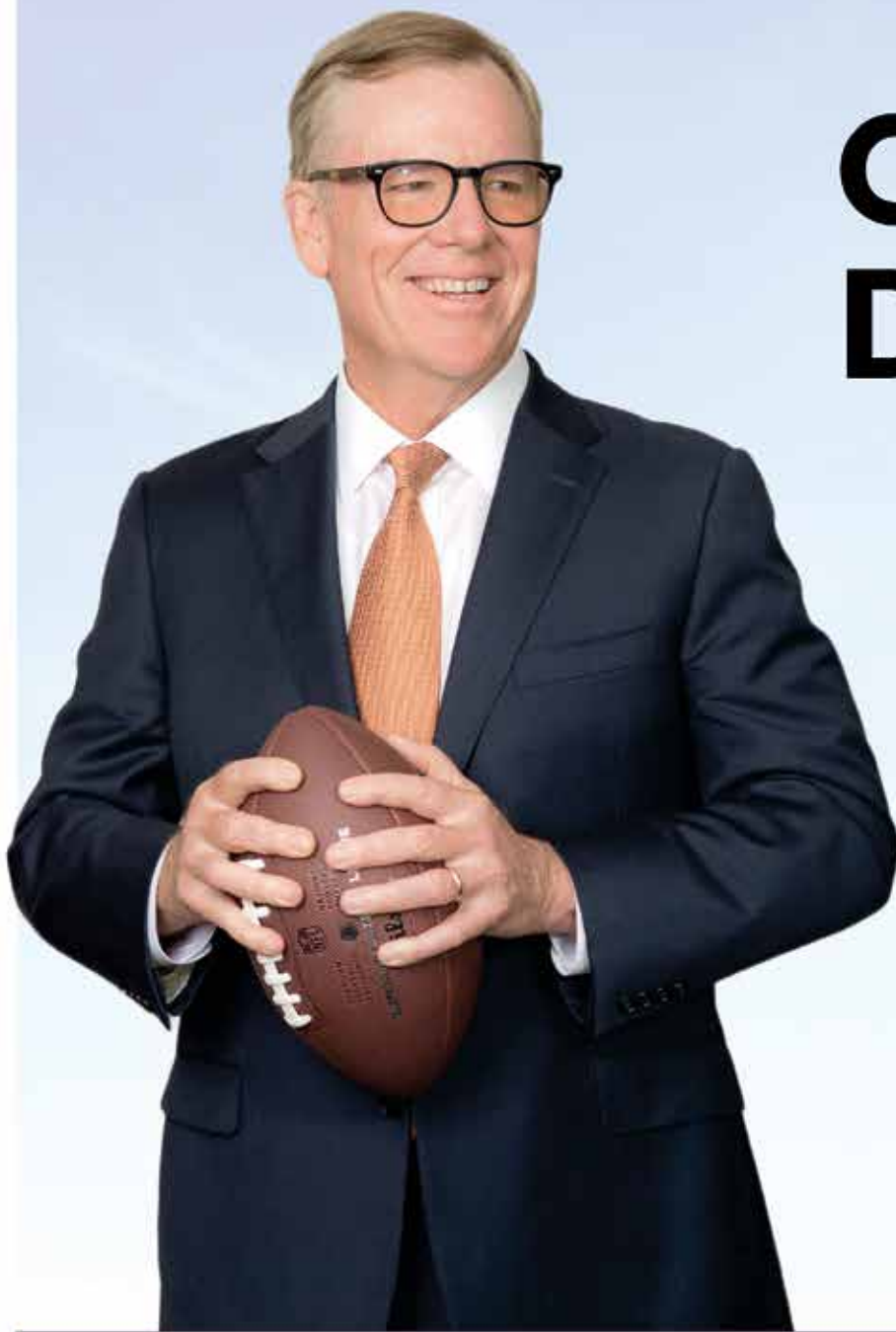
ABOUT THE AUTHOR



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ENDNOTES

1. Standard State Zoning Enabling Act and Standard City Planning Enabling Act.
2. *Id.*
3. *Id.*
4. *Id.*
5. 11 O.S. §43-101.
6. *Town of Wellston v. Wallace*, 2007 OK CIV APP 2, ¶7.
7. *Town of Wellston v. Wallace*, 2007 OK CIV APP 2, ¶7, citing *Vinson v. Medley*, 1987 OK 41.
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9. 11 O.S. §45-102.
10. *Id.*
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13. *Mid-Continent Life Ins. Co.*, 1985 OK 41, ¶9.
14. *City of Tulsa v. Mobley*, 1969 OK 85, ¶7.
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17. *McNair v. City of Oklahoma City*, 1971 OK 134.
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21. *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).
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23. *Id.*
24. *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).
25. *Id.*
26. *Id.*
27. *Id.*
28. *Lynch v. City of Oklahoma City*, 1981 OK CIV APP 11.
29. *Id.* at ¶5.
30. *Id.*
31. *Id.* at ¶3.
32. *Id.* at ¶2.
33. *Id.* at ¶3.
34. *Id.*
35. *Id.* at ¶11.
36. *Id.* at ¶19.
37. *Id.* at ¶18.
38. *Id.* at ¶15.
39. 11 O.S. §44-101.
40. *Id.*
41. *Id.*
42. 11 O.S. §44-101.
43. 11 O.S. §44-107.
44. 11 O.S. §44-110(B).
45. *Id.*
46. 11 O.S. §44-110(C).
47. 11 O.S. §44-110(D).
48. 2016 OK 113.
49. *Id.* at ¶10.
50. *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 732, (1995), quoting *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).
51. 2016 OK 113, ¶30.
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Municipalities and the Open Meeting Act

By Julie Trout Lombardi

“If you’re guided by a spirit of transparency, it forces you to operate with a spirit of ethics. Success comes from simplifying complex issues, address problems head on, be truthful and transparent.”
– Rodney Davis

“Trust happens when leaders are transparent.”
– Jack Welch

The Oklahoma Open Meeting Act (OMA), found in Title 25 of the Oklahoma Statutes, Sections 301 through 314, was intended to “encourage and facilitate an informed citizenry’s understanding of the governmental processes and government problems.”¹ A version of the OMA was originally enacted in 1959 and has been substantially revised on numerous occasions since then. The bulk of what comprises the OMA today was signed into law by Gov. David Boren in June 1977.

The spirit of the OMA, from the beginning, was to create, ensure and protect transparency at all levels of Oklahoma government. The act is intended to encourage the public to participate in state government while better understanding the governmental processes. In furtherance of this important goal, the OMA contains provisions governing notice of meetings, meeting agendas, business to be discussed and resolved during meetings and what transpires during meetings.

It is the responsibility and duty of all attorneys representing municipalities to have a thorough mastery of the act and its mandates. The Oklahoma Court of Appeals has made clear that public officers must have a clear understanding of the OMA:

The Open Meeting Act is not obscure or incomprehensible. On the contrary, anyone with ten minutes to spare can read the whole thing and understand virtually every word. Each member of a covered public body should have taken that ten minutes as soon as the Act became effective ... Lack of familiarity is no excuse.²

While the language and requirements of the OMA are generally clear and understandable, potential peril awaits those who fail to fully comprehend each discrete section of the act. Having a comprehensive appreciation for the OMA and all it compels and

prohibits will keep your city, town and elected officials secure from adverse penalties, including conviction of a misdemeanor crime with an accompanying fine and invalidation of actions taken by the public body.

MEETINGS THAT ARE SUBJECT TO THE OMA

The OMA comes into play whenever a public body holds a meeting. “Public body” is defined in §304(1) of Title 25 and includes all governing bodies of all municipalities as well as all boards, commissions, authorities and public trusts. Essentially, any public body charged with the responsibility of expending public funds or administering public property is included within the reach of the OMA. This encompasses city councils or commissions, planning commissions, boards of adjustment and other municipal bodies with decision-making authority, bodies supported in whole or part by public funds and those entrusted



with expending public funds. The definition of a public body does not include the judiciary, Legislature or meetings of administrative staff employed by a public body. A public body additionally does not include committees that are purely informational or charged solely with fact-finding or advisory committees with no decision-making authority.³

In conjunction with §304(1), §304(2) defines a “meeting” as conducting business of a public body by a majority of its members meeting together. Meetings shall not include informal gatherings of a majority of the members of the public body when no business regarding the public body will be discussed. However, attorneys should be aware of several potential pitfalls when determining whether or not a meeting is actually being held. First and foremost, attorneys for public

bodies should be vigilant when a majority of the members are in attendance at a social event such as a reception, chamber of commerce meeting, ribbon cutting or opening of a new business, or holiday parade or celebration. Members of a public body should be cautioned not to gather closely in groups sufficient to constitute a quorum and to refrain from discussing any business affecting the public body. Members of a public body are best advised not to travel to such events in the same vehicle or congregate within a small group at the event. Having a staff member or citizen stand with members of a public body is also advisable because they may later testify that no public business was discussed while they were present.

Far more insidious than gathering at community and social functions are the accidental meetings

that occur when members of a public body congregate prior to a meeting or linger afterward while visiting. If a quorum is present in such a group and public business is discussed, a new meeting has been convened and necessarily violates the OMA because the required notice has not been given, and no agenda advising the public of the meeting and topics to be discussed has been posted. This often, unfortunately, occurs when several members of the public body begin rehashing an item on the agenda once the meeting has ended. Likewise, one member of a public body may not meet with other members outside of a public meeting to obtain a consensus on an item of business.⁴ Caution should also be exercised with email. A meeting is created and the OMA is violated whenever a public body

member sends an email regarding business of the public body to the other members or even responds with “reply all” to such emails. Municipal attorneys, and all attorneys representing public bodies, should be vigilant both prior to and after scheduled meetings to prevent members from congregating, discussing and creating an illegal meeting.

BASICS OF THE OMA

Four types of meetings are addressed under the OMA: regularly scheduled meetings, special meetings, emergency meetings and continued or reconvened meetings. For regularly scheduled meetings, §311 of the OMA requires that notice of all meetings scheduled for the following year be filed with the municipal clerk no later than Dec. 15 of each year. Such notice must include the date, time and place of each meeting, and the meeting time and date may only be changed with 10 days’ notice.

In addition to regularly scheduled meetings, a public body may hold a special meeting after giving 48 hours’ notice of the date, time and place of the meeting. Notice of the special meeting must be given in writing, in person or by telephone to the municipal clerk as well as those who have submitted written requests to receive notice of a meeting.⁵ New business is not permitted at special meetings.⁶

Reconvened or continued meetings are governed by §311(A)(11) of the OMA, which provides that only matters contained on the original agenda may be discussed. Notice of such a meeting, like regularly scheduled and special meetings, must be given. Care should be taken by the public body’s attorney to ensure that discussion and action by the body do not exceed the boundaries of the original meeting. When the original

Four types of meetings are addressed under the OMA: regularly scheduled meetings, special meetings, emergency meetings and continued or reconvened meetings.

meeting is recessed, the time, date and place of the meeting to be reconvened must be announced.

An emergency meeting of a public body may be held if needed. An emergency sufficient to justify a meeting is defined as a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss.⁷ Prior to an emergency meeting, a public body must only give notice that is reasonable under the circumstances, but it must be given as soon as possible per §311(A)(13) of the OMA.

A public body must post notice and the meeting’s agenda in prominent view for a regular or special meeting.⁸ The 24-hour period excludes weekends and holidays, the agenda must be visible the entire 24 hours in advance⁹ and it must be posted at the principal office or at the meeting location.¹⁰ In addition, a public body must post regularly scheduled meetings on its website, but this does not substitute for the posting requirements above under §311.¹¹

Equally as important as posting adequate notice is the wording of a public body’s agenda. Section 311(B) of the act requires that the agenda contain sufficient information for the public to identify the items of business to be discussed and resolved. In *Haworth Bd. of Ed. v. Havens*,¹² the court stated, “Agendas must be worded in plain language, directly stating the purpose ... The language used should be simple, direct, and comprehensible to a person of ordinary education and intelligence.” Simply stated, a public body cannot discuss an item or take action upon it if the item is not on the agenda. Items must be sufficiently detailed to give a reasonable person information regarding what specifically will be discussed and voted upon at the meeting. Descriptors such as “Fire Chief Report” are likely insufficient and require additional details describing what information will be covered in the report. While a citizen might be uninterested in the fire department’s latest response statistics, the same citizen may very much care that a new fire station has been proposed for construction and may wish to attend the meeting where the item is discussed.

Any discussion of the OMA would be remiss not to include the

recent case involving the city of Norman. In *Fraternal Order of Police v. City of Norman*, 2021 OK 20, the district court determined that language in the city's Dec. 4, 2020, agenda "was deceptively worded or materially obscured the stated purpose of the meeting and is, therefore, a willful violation of the Act." At issue was an agenda item listing consideration of the city's proposed budget. The district court found that while a reasonable citizen might have anticipated that the budget might or might not be approved, such person would not have understood that there might be a defunding (of the police department) or a reallocation or modification of any department's budget. The city of Norman appealed the matter and ultimately obtained a ruling from the Supreme Court of Oklahoma. That court upheld the district court's ruling and found the agenda language had been deceptively vague and did not provide notice to the public that new, additional amendments would be entertained at the meeting. As a result of this opinion, many municipalities modified language on their agendas to show that all items may be approved, denied, amended, postponed, acknowledged, affirmed or tabled. This change is designed to provide notice of any possible action a public body might take and avoid "deceptively vague" language. In addition, most municipalities have tightened up their agenda language in general and are much more observant in advising when the public body is "off the agenda."

New business is covered in §311(A)(10) of the OMA and is described as "any matter not known about or which could not have been reasonably foreseen prior to the time of posting (the agenda)." "Reasonably foreseen" does not cover items mistakenly

omitted from the agenda or a subject that staff or a member of the public body recently learned about and considers important. New business should only be used occasionally, at best, and only when an item is not reasonably foreseeable prior to posting the agenda.

The vote of each individual member in a meeting must be publicly cast and recorded in the meeting minutes.¹³ Failure to meet either requirement may result in invalidation of the action.¹⁴ The vote of each member should be individually recorded in the minutes. The minutes should also include identification of all members present and absent, a listing of all matters considered and all actions taken and an official summary of the proceedings.¹⁵ Minutes of public meetings should always be open and available to the public, and it is presumed that they should be available for quick access once drafted and subsequently approved. Delaying a request for meeting minutes to "check with the city manager or mayor" is a dangerous practice and will not be indulged by the courts.

If a public body or its attorney discovers that action taken by the body did not comply with the OMA, corrective action should be taken swiftly. In fact, the public body must completely redo and repeat the action in its entirety while adhering to OMA requirements. Failure to do so will result in invalidation of the item and other potential issues.

A quorum is required to hold a meeting of a public body. Generally speaking, a quorum is defined as a majority of all the members of a public body,¹⁶ although charter cities may enact different requirements. If a quorum is not present at a scheduled meeting of a public body, the meeting cannot be held and must

be rescheduled. The cancellation of a meeting should adhere to the same posting requirements provided for the notification of meetings. Strict attention must be paid to the existence of a quorum if a member of the public body recuses themselves from discussion and consideration of an item. Specifically, best practices require a recusing member to physically remove themselves from the meeting room, and the quorum must still exist after the recusing member leaves the room.

EXECUTIVE SESSION

Generally speaking, executive sessions are not permitted unless they are specifically authorized in §307 of the OMA. Permissible purposes for an executive session, in pertinent part, include:

- Personnel matters including hiring, appointment, promotion, demotion, disciplining or resignation
- The purchase or appraisal by the public body of real property
- Confidential communications with the public body's attorney concerning a pending investigation, claim or action
- Discussion of matters where disclosure would violate confidentiality requirements of state or federal law
- Discussion of negotiations concerning employee groups

Proposed executive sessions must be noted on the agenda and include a specific citation of authority under §307 allowing the executive session. An affirmative vote of a majority of the public body is required to convene an executive session. Votes on an item cannot be taken in executive

session but must be taken in the open meeting once reconvened. Notes must be kept of all discussions in executive session but may be general in nature and reflect that the subject matter of the executive session, as listed on the agenda, was discussed.

If an executive session is convened to discuss a personnel matter, several restrictions must be recognized and honored. First, the employee to be discussed must work directly for the public body and not one of its employees. For example, most city managers, and some city attorneys, are employed by a municipality's city council or commission. An executive session to discuss a city manager's hiring, termination, discipline, salary or annual evaluation is permissible, and the job title should be listed with specificity on the agenda. However, an employee of the city manager, such as the finance director or parks superintendent, would not be appropriate or permissible because those employees do not work directly for the public body. An executive session is inappropriate for the public body to discuss such an employee or even to advise the city manager of the public body's position regarding the employee's employment, promotion, demotion, discipline, etc. Failure to follow this strict requirement may greatly assist an aggrieved employee in stating a cause of action against the municipality if litigation ensues and may even violate the municipality's charter. At best, such action is invalid.

Executive session is also an appropriate vehicle for a public body to discuss legal claims and litigation matters with its attorney. Pursuant to §307 of the act, the specific litigation or claim must be listed with specificity under the item on the agenda, and the public body's attorney must be present in the executive session. If the public

body's attorney is not in attendance, the executive session is both invalid and illegal. Executive session is only lawful under §307 if the public body's attorney has determined that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation in a pending or imminent legal matter.

Discussion of the purchase or appraisal of real property restricts who may be present in an executive session. The public body may include staff and its attorney in an executive session discussion, but under no circumstances may a landowner, real estate salesperson, broker, developer or other people who may profit directly or indirectly by a proposed transaction be present or participate in an executive session under this section unless they have executed an agreement to represent the city.

ALLOWING PUBLIC COMMENT AT MEETINGS

A public body is not required to provide an opportunity for citizens to speak at meetings but may do so if the public body chooses.¹⁷ However, this issue is fraught with potential pitfalls for the unwary.

If a public body chooses to permit public comment at meetings, it is advisable to implement a policy limiting the time allowed for each speaker and what subjects may be covered. One option is to limit citizen comment only to items listed on the agenda. If public comment is not restricted to the agenda items, members of the public body must not engage in the discussion or comment lest they violate the OMA's notice and agenda provisions.

While citizens are not restricted to discussion of items listed on the agenda, members of the public body must always adhere to that requirement. However, even if members of the public body refrain from commenting on non-agenda matters, other hazards exist. If no time limit is imposed, a citizen may speak for a long period of time and resist attempts by the mayor, chair or parliamentarian to cease. Public body members may additionally find themselves involved in a recitation of a citizen's personal grievances against themselves or another citizen, listening to potentially defamatory comments against a staff member, neighbor, citizen or, as occurred in at least one case in another state, be



forced to endure a diagnosis of the citizen's marital woes and claimed spousal deficiencies. None of this content is appropriate for a public meeting, and care should be taken to guide and limit citizen comment. A better alternative may be to eliminate the agenda item authorizing general citizen comment altogether.

PENALTIES

Actions taken in willful violation of the OMA are invalid, and any citizen may bring a civil suit to enforce this provision.¹⁸ Additionally, a willful violation of the OMA is a misdemeanor offense and is punishable by a fine up to \$500 and/or up to one year incarceration in the county jail.¹⁹ "Willful" does not require a showing of bad faith, malice or wantonness but instead encompasses "conscious, purposeful violations of law or blatant or deliberate disregard of the law by those who know or should know ..."²⁰

VIDEOCONFERENCING

Pursuant to §307.1 of the act, a public body may hold meetings by videoconference if each member of the public body is visible and audible to each other and the public through a video monitor. If a public body wishes to conduct a videoconference, several requirements must be met. First, a quorum must be present at the meeting site, and the notice and agenda must both list each video site as well as the location, address and telephone number of each site. In addition, the notice and agenda must list the identity of each member of the public body and the site where they will be physically present during the meeting.

Each videoconferencing site shall be located within the municipality or other political subdivision from which the member is elected, and each site shall be open and accessible to the public.

Any materials shared electronically between members of the public body shall be immediately accessible to the public on the public body's website. The public shall be allowed to participate and speak in the meeting to the same extent they would if the public body members were all physically present at one site. If a videoconference feed stops working, the meeting must immediately cease until the connection is re-established. The public must be able to watch the meeting in real time via videoconference link. If a meeting notice states that a meeting will be held at least partially by videoconference, the public must be able to hear/watch the meeting electronically even if all members ultimately opt to attend in person. Keep in mind that the OMA in no way prevents staff or other non-members of the public body from appearing electronically in meetings and only governs the appearance of elected officials.

Public bodies are not allowed to conduct executive sessions by audioconference. Temporary legislation effective during the pandemic did allow executive sessions to be conducted by videoconferencing subject to several restrictions. However, the public health emergency compelling this change is no longer deemed to be an immediate and serious threat, and that is no longer permitted.

CONCLUSION

The OMA is designed to provide transparency and allow citizens to be informed about discussions and actions taken at meetings. Given that the purpose of the act is to create accountability and clarity regarding the actions and discussions of public bodies, the act is quite likely to be liberally construed in favor of citizens and should be treated as such. A municipal

attorney, or another attorney for a public body, should always err on the side of transparency and openness when advising a public body. Convenience for a public body and its staff is definitely not a limiting factor or consideration under the act, and the expectation that municipalities provide transparent and pellucid government through its council, commissions and boards should govern decision-making. Attorneys advising municipalities and other public bodies should understand and recognize both the unambiguous technical requirements within the OMA as well as its overarching intentions to create a clear and comprehensive government in Oklahoma. Failure to do so may have draconian results for the municipality, public body and individual members of the public body.

ABOUT THE AUTHOR



Julie Trout Lombardi was admitted to the bar in 1986 and has practiced in the areas of civil litigation, employment, constitutional and municipal law. She has been the city attorney in Owasso since 2005.

ENDNOTES

1. Okla. Stat. tit. 25 §302.
2. *Matter of Order declaring Annexation, etc.*, 637 P.2d 1270, 1273 (Okla. App. 1981).
3. *Andrews v. Ind. School District No. 29 of Cleveland Co.*, 737 P.2d 929 (Okla. 1987).
4. 1981 OK AG 69.
5. Okla. Stat. tit. 25 §311(A)(12).
6. 19 OK AG 141.
7. Okla. Stat. tit. 25 §304(5).
8. Okla. Stat. tit. 25 §311(A)(9).
9. 1997 OK AG 98.
10. Okla. Stat. tit. 25 §311(A)(9).
11. Okla. Stat. tit. 74 §106.2.
12. *Haworth Bd. of Ed. v. Havens*, 637 P.2d 902 (Okla. Civ. App. 1981).
13. Okla. Stat. tit. 25 §305.
14. *Oldham v. Drummond Bd. Of Ed.*, 542 P.2d 1309 (Okla. 1975).
15. Okla. Stat. tit. 25 §312.
16. Okla. Stat. tit. 11 §1-102.
17. 2002 OK AG 26.
18. Okla. Stat. tit. 25 §313 and §314(B).
19. Okla. Stat. tit. 25 §314.
20. *Rogers v. Excise Bd. Of Greer County*, 701 P.2d 754 (Okla. 1984).

Oklahoma Governmental Tort Claims Act

Balancing Competing Interests: Protecting the Public Purse While Compensating Citizens Injured by Torts Committed by Public Employees

By Jeff Harley Bryant



INTRODUCTION

The Oklahoma Governmental Tort Claims Act (OGTCA) represents the efforts of the Legislature to set public policy that seeks to balance the monetary strain on the public purse from allowable tort claims with when and what level of relief will be available to injured claimants when those injuries are sustained by negligent or tortious conduct of governmental employees. Originally, the Legislature enacted the Political Subdivision Tort Claims Act of 1978, which laid out the structure for how claimants who were injured by the tortious conduct of governmental employees could seek relief in certain circumstances. That 1978 act was replaced in 1985 with the Governmental Tort Claims Act. Since 1978, there have been over 20 amendments to the Oklahoma Statutes governing this area of the law. This article will explore the history and parameters of this ongoing discussion between the courts and the Legislature.

BACKGROUND

Though its origins can be traced to Old English law, the OGTCA concerns important areas of potential state, county and municipal liability today. In 1765, Sir William Blackstone, the most widely read author in Revolutionary America, wrote, “The king, moreover, is not only incapable of doing wrong, but of thinking wrong. He can never mean to do an improper thing.”¹ Today, Sir Blackstone’s idea is known as sovereign immunity and was made the law of the land in

the United States through the 11th Amendment.² This statement of the king’s infallibility was further interpreted under Oklahoma law by Justice Lavender in *Vanderpool v. Oklahoma Historical Society*,³ in which it was stated, “It is not that the king can do no wrong, but more appropriately, even if the king does something wrong that harms another, he cannot be sued for his wrongdoing without his permission.”⁴

In Oklahoma, a state with a strong populist history, this doctrine of governmental immunity

did not set so well and was under much review and criticism in the 1970s. Originally, the Legislature enacted the Political Subdivision Tort Claims Act of 1978, which laid out the structure for how claimants who were injured by the tortious conduct of governmental employees could seek relief in certain circumstances. The Political Subdivision Tort Claims Act of 1978 allowed the government to be sued in certain circumstances but embodied much of early Oklahoma jurisprudence that recognized

some functions as “governmental” versus “proprietary” functions. Governmental functions were identified as those functions that embodied policy-making decisions with suit not being allowed in those instances, while proprietary functions were identified as operational-type functions for which suit could be allowed. The lines between these two categories blurred over the years and became more and more heavily scrutinized by legal scholars and the courts.⁵

In 1983, the Oklahoma Supreme Court in *Vanderpool* determined the doctrine of sovereign immunity was no longer viable in the state and ruled for a plaintiff who suffered a severe injury from a rock thrown by a mower that was mowing the grounds of the Oklahoma Historical Society – an act of clear negligence that resulted in severe injury. Interestingly, the Oklahoma Supreme Court made its ruling prospective to Oct. 1, 1985, for future cases to give the Oklahoma Legislature an opportunity to address the doctrine of sovereign immunity. Although the Legislature had previously adopted the Political Subdivision Tort Claims Act in 1978 addressing this same subject, it did not take the Oklahoma Legislature long to respond to the Oklahoma Supreme Court’s invitation to take a second

look, and the OGTCa was adopted and codified in Title 51, Section 151-Section 172 of the Oklahoma Statutes in 1985. The OGTCa⁶ expressly provides:

The State of Oklahoma does hereby adopt the doctrine of Sovereign Immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts. The state, only to the extent and in the manner provided in this act, waives its immunity and that of its political subdivisions. In so waiving immunity, it is not the intent of the state to waive any rights under the Eleventh Amendment to the United States Constitution.⁷

As political subdivisions, the OGTCa generally immunizes municipalities from tort liability. To determine whether a city or town is immune from liability, the complained-of-conduct or occurrence must fall within the definition of a tort itself. A “tort” is “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.”⁸ Cities may commit a tort against an individual or other entity when the harm is committed “through an employee, agent, or instrumentality under [municipal] control.”⁹ However, under the provisions of the OGTCa, a city will not be liable to the injured party in certain circumstances.¹⁰

Torts may be intentional, unintentional (negligence) or strict liability, but to be actionable, all require some sort of harm or damages. An intentional tort may be committed by a municipality when the government actor had knowledge with substantial certainty that a tort would occur. An unintentional tort may occur when a municipality fails to use reasonable care in the performance of a duty owed to a potential plaintiff.¹¹ This is known as negligence, and the claim requires the plaintiff to prove that the city’s conduct was the cause of their damages. Strict liability torts impose liability without regard to the actor’s state of mind. For each type of tort, the OGTCa allows sovereign immunity to be raised as a defense.¹²

Torts may be intentional, unintentional (negligence) or strict liability, but to be actionable, all require some sort of harm or damages.

WAIVER OF IMMUNITY

Although the OGTC codifies the concept of sovereign immunity, the statute also waives doctrinal immunity for municipalities in certain circumstances, thus allowing a plaintiff to hold a city or town legally responsible for their damages. The OGTC applies to claims for “money damages” and is the exclusive avenue for liability. In more recent enactments, the Legislature has made it clear that liability must emanate from the OGTC, not from “common law,” not from other statutes and not from the Oklahoma Constitution or otherwise.¹³ Thus, “The state or a political subdivision *shall* be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act.”¹⁴ Under the act, an employee is “any person who is authorized to act on behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis,” including elected or appointed officers.¹⁵ An employee is acting within the scope of their employment when they are “acting in good faith within the duties of the [their] office or employment or of tasks lawfully assigned by a competent authority.”¹⁶ Recovery is allowed for money damages. Normally, only the municipality is a proper party. Governmental employees are immune from liability and cannot be sued if they are acting in good faith and within the scope of their employment.¹⁷ “Scope of employment ... shall not include corruption or fraud.”¹⁸

Accordingly, if torts are committed by city employees outside the course and scope of the employee’s

duties, the city is not liable. In that instance, a city employee may be individually liable. Examples of such “bad faith” action include:

- Defamation
- Malicious prosecution
- Intentional infliction of emotional distress
- Assault and battery

For example, in *Parker v. Midwest City*, the court ruled that because malicious prosecution involves an element of malice, which is inconsistent with good faith, there could be no municipal liability.¹⁹

Sometimes determination of good or bad faith can be a fact question for the trier of facts. In *Nail v. City of Henryetta*, the court ruled that shoving a person during an arrest involves a fact question about course and scope. The arrest was within the scope of employment, but a fact issue remained whether the shove went beyond the scope of employment, thereby putting the officer outside of the scope of employment at that time.²⁰

In some cases, liability of both the municipality and the employee is possible. In *Decorte v. Robinson*, punitive damages were assessed against an officer while also rendering a verdict against the city. The officer was found liable for assault and battery, while the city was found liable for false arrest. The officer did not appeal the verdict, but the city did appeal, arguing the award of punitive damages required bad faith and thus showed the officer was outside the scope of employment. The Oklahoma Supreme Court found it was possible to have falsely arrested the suspect within the course and scope of employment, while also moving outside the course and scope as to the assault and battery.²¹

EXEMPTIONS FROM WAIVER OF IMMUNITY

Despite the waiver of municipal immunity, §155 of the OGTC contains 37 exemptions from the waiver, meaning the city shall not be liable if the claim results from one of the listed exemptions.²² A good discussion of how these exemptions could be grouped at the time of passage of the OGTC in 1974 can be found in a *Tulsa Law Review* article cited below.²³ The legal scholar who wrote that article categorized the 28 exemptions for liability included in the 1985 act into four different categories: governmental, police – military, transportation – weather, and miscellaneous. There are now, in 2020, 37 listed exemptions.

The *governmental category* of exemptions focuses more on what is considered basic governmental functions that involve the use of judgment or discretionary actions, which are considered essential for a government to function. Often, governmental decisions are politically contested, such as legislative actions. Some governmental actions require finality and respect for decision-making processes, where the ability to sue regarding decisions one simply does not agree with would bog down the system and make it unworkable. The exemptions in this category cover the following:

- Legislative, judicial, quasi-judicial or prosecutorial functions
- Execution or enforcement of any lawful court orders
- Adoption or enforcement of or the failure to adopt or enforce any law, whether or not such law is valid
- Assessment or collection of any taxes or fees
- Licensing or inspection powers

- Claim relating to the placement of children
- Discretionary powers or functions
- Court-ordered community sentence

Governmental actions that fall into these areas, even if considered tortious or injurious to others, are still shielded by sovereign immunity due to the specific exemptions from liability in these areas contained in the OGTC.

The second general category of exemptions, *police – military*, recognizes that there are certain circumstances where the police, fire departments and military need to be able to act and react without exposure to civil liability. The exemptions are outlined as follows:

- Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection
- Express or implied lawful entry onto any property
- Operations at any correctional or incarceration facility
- Tortious conduct related to any court-ordered or administered work release program
- Activities administered by the Military Department of the state during a riot, national disaster or military attack
- Provision, equipping, operation or maintenance of any juvenile detention facility or injuries resulting from the escape of a juvenile detainee or injuries by a juvenile detainee to any other juvenile detainee



Governmental actions that fall into these areas, even if considered tortious or injurious to others, are still shielded by sovereign immunity due to the specific exemptions from liability in these areas contained in the OGTC.

The *transportation – weather category* of exemptions from liability recognizes a very practical consideration of not holding a governmental entity liable for weather conditions over which the government has no control, or whether to initially construct a particular roadway or public work, or whether to initially place a traffic control device at a particular location, or from roadway defects for which the governmental entity has no notice and a reasonable time to either correct the problem or warn of the potentially hazardous condition. There is also a special exemption for state highways whose condition remains unchanged since 1985. These exemptions include:

- Accidents or events occurring on public ways or in public places due to weather conditions (snow or ice or flooding)

- Claims or losses resulting from the maintenance of state highways
- Claims or losses relating to the operation or non-operation of traffic signs and signals, unless failure to correct within a reasonable time after notice
- The initial placement, alteration or change of traffic signs or signals, based on the fact that such decisions are discretionary
- Actions or recoveries against the Oklahoma Transportation Commission from pre-existing defects or dangerous conditions, whether known or unknown, from the effective date of the act (Oct. 1, 1985) (§155.1)

Governmental actions that fall into these areas, even if considered tortious or injurious to others, are still shielded by sovereign immunity due to the specific exemptions from liability in these areas contained in the OGTC.

The next set of exemptions was categorized as *miscellaneous*, as they

do not fall into either of the three prior categories but do provide significant protection to governmental entities for torts of its employees that arise all in these situations:

- Workers' compensation or employers' liability acts (as there are separate statutory enactments that cover these situations)²⁴
- Claims that are limited or barred by law
- Acts or omissions that conform "with then current recognized standards"
- Act or omission of independent contractors
- Product liability or breach of warranty
- Theft of money left in the custody of a government employee
- Attractive nuisance
- Unintentional misrepresentations
- The natural condition of unimproved property
- Claims arising from inter-scholastic and other athletic contests

Governmental actions that fall into these areas, even if considered tortious or injurious to others, are still shielded by sovereign immunity due to the specific exemptions from liability in these areas contained in the OGTCa.

In addition to the exemptions from liability that were enumerated in 1985 with the passage of the OGTCa, there have been a handful of additional exemptions added by the Legislature since that time. Those include:

- Additional school protections:
 - Participation in approved activity in school buildings or on the grounds before or after normal school

hours or on weekends of indoor or outdoor school property and facilities made available for public recreation before or after normal school hours or on weekends or school vacations

- School district employee for controlling a student during school or in transit or other authorized school function and the out-of-school suspension of a student
- Use of a public facility opened to the general public during an emergency
- Action and related maintenance of property under environmental remediation requirement of a federal or state environmental agency
- Indemnification or subrogation

Like the others discussed, governmental actions that fall into these areas, even if considered tortious or injurious to others, are still shielded by sovereign immunity due to the specific exemptions from liability in these areas contained in the OGTCa.

Under this statutory scheme, analysis of the claim starts with the recognition that the governmental entity is immune from tort liability under the doctrine of sovereign immunity. However, the immunity is waived if the claim is for money damages due to tortious conduct of a governmental employee who is acting in good faith within the scope of employment, and the tortious conduct is the proximate cause of the damage. Then, the claimant may only recover money damages if the tortious conduct is not otherwise exempt from liability as defined in §155. If the

tortious conduct does not fall into an exemption, the municipality can only be liable to the extent provided for in the OGTCa.

LIABILITY LIMITS

The maximum amount recoverable for a property damage-related claim is capped at \$25,000 per single act or occurrence, while any other loss is capped at \$125,000 for a single act or occurrence. However, the liability cap for cities with populations above 300,000 (currently Oklahoma City and Tulsa) is set at \$175,000.²⁵ There is also an aggregate cap of \$1 million for any number of claims arising out of a single occurrence or accident. If the aggregate cap is insufficient to compensate for damages from the single occurrence, the aggregate cap may be pled into district court for a fair and equitable apportionment among the injured parties. Property damage claims allow for recovery of costs and attorneys' fees, but the \$25,000 cap includes these costs and attorneys' fees that could be assessed. Punitive damages, or those meant to punish a city for its tortious conduct, may not be awarded.²⁶ The OGTCa liability caps are only applicable to governmental liability. These caps will not apply if a governmental entity has obtained private insurance that is in excess of the statutory caps.

PROCEDURE

For an injured party to take advantage of the waiver of tort immunity available for injuries caused by governmental entities, the procedural rules outlined in the OGTCa must be followed. To be successful, a claimant must follow the rules.

The OGTCA waives sovereign immunity, providing for limited recovery for an injured claimant caused by tortious conduct of governmental employees. However, the OGTCA also provides significant protection for cities and towns from such liability.

Procedural rules: 51 O.S. §156

- A claim must be filed within one year of the date of loss (or it is forever barred). This OGTCA provision contrasts with a two-year statute of limitation for torts committed by nongovernmental entities.²⁷
- The OGTCA notice requirements are jurisdictional in nature.²⁸
- A claim must be in writing and filed with the clerk of the governing body. The tort claim must include:
 - Municipality or governmental entity involved
 - Date, time, place, circumstances of the loss
 - Amount of compensation requested
 - Information necessary to meet reporting requirements for the Medicare Secondary Payor Act (MSPA)
 - Claimant contact information
 - Settlement agent contact information

Failure to state most, if not all, of these items is not fatal to the claim unless it is not provided after being requested. There are some exceptions to the filing requirements:

- A claimant may have a 90-day extension due to incapacity from the injury.
- In a wrongful death action, a personal representative has one year *from date of death* to file the claim.

Once a claim has been properly filed, under §157, a municipality has 90 days to review the claim. The municipality has two options:

- Deny the claim outright, provided written notice is given to the claimant; or
- If the municipality takes no action, the claim will be deemed constructively denied after 90 days.

Once a claim is denied (actual or constructive), the claimant must file a lawsuit within 180 days. Although there has been a series of cases over the years regarding settlement discussions that may extend the time for filing

a lawsuit, the current provision in the statute provides that the parties may extend the time to file the lawsuit during a period of continuing settlement discussions as long as it is in writing, and in no event may the time to file the lawsuit be extended longer than two years from date of loss.²⁹

Summarizing the procedural rules under the OGTCA, any person having a claim against a city or town must properly “present” their claim within one year of the date of loss.³⁰ A potential claimant must file their claim, in writing, with the proper municipal official, typically the city clerk.³¹ A person may not initiate a suit in tort against a city until their claim has been denied. If the city fails to approve a claim within 90 days of receipt, it will be deemed denied.³² After denial, a claimant has 180 days to file a suit against the city.³³

INTERACTION BETWEEN THE COURTS AND THE LEGISLATURE

On a final note, since the Tort Claims Act is a public policy statement by the Legislature concerning the extent of the waiver of the doctrine of sovereign immunity (*i.e.*, historically there was no tort liability of the government to injured claimants until 1978), it is very important that one pay close attention to cases that construe the meaning of specific provisions of the OGTCa comparing that language to the current language of the OGTCa. In its time since 1978, and then its replacement in 1985, there have been many instances where a particular construction of OGTCa language by the Oklahoma appellate courts was followed by a change in language by the Legislature in the legislative sessions following a particular court decision.

A fairly recent example of this dynamic is highlighted in *Payne v. Kerns*.³⁴ In that case, a prisoner brought an action against the sheriff and county jail administrator alleging civil rights violations, including *violation of state constitutional prohibition* against cruel or unusual punishment, arising from his extended incarceration past his sentence expiration. In a prior case, *Bosh v. Cherokee County Governmental Building Authority*, 2013 OK 9, the Oklahoma Supreme Court recognized an actionable Oklahoma Constitution tort that was not addressed by the OGTCa. Following *Bosh*, the Legislature amended the OGTCa to make it clear that constitutional torts, such as those recognized in *Bosh*, fell under the OGCTA. In *Payne*, the Oklahoma Supreme Court, in holding the prisoner's private right of action for cruel or unusual punishment at the time of his delayed release was still viable, noted the alleged tort

occurred after *Bosh* but prior to legislative enactment barring constitutional torts under the OGTCa.

So the tortious conduct occurred during a narrow period of time between when the Oklahoma Supreme Court recognized a private action and the Oklahoma Legislature, as a matter of public policy, amended the language of the Tort Claims Act to close that window.³⁵ Legislative amendments to the OGTCa following an appellate court decision have occurred many times over the years as the public policy conversation continues at the Legislature to set the parameters for protecting the public purse (taxpayer dollars) balanced with when, how and at what level recovery will be available to citizens who are injured due to the tortious conduct of employees of governmental entities in the state of Oklahoma. For this reason, it is important to compare the language construed in cases to the language in the statute at the time the tortious conduct is alleged to have occurred to determine whether the court's ruling is construing statutory language that has since been modified by the Legislature.

CONCLUSION

The OGTCa waives sovereign immunity, providing for limited recovery for an injured claimant caused by tortious conduct of governmental employees. However, the OGTCa also provides significant protection for cities and towns from such liability.

Sovereign immunity is an Old English law doctrine that was firmly seated in American jurisprudence that stood for the axiom, "The King can do no wrong." In Oklahoma, the OGTCa asserts sovereign immunity but then provides a limited waiver of that immunity if a claimant follows both the procedural rules, such as

filing requirements, and shortened limitation periods and respects liability limits. Governmental employees acting in good faith are protected both from suit and liability. The OGTCa is the Legislature's effort to balance taxpayer dollars with available remedies for governmental tortious conduct. This public policy discussion is ongoing, and a legal practitioner would be well-served to compare statutory language being construed by court decisions with statutory language in effect at the time the alleged injury from tortious governmental employee conduct occurred. The Legislature may very well have rebalanced the public interest between providing compensation to injured citizens with protecting the public purse holding taxpayer dollars.

Author's Note: The Oklahoma Association of Municipal Attorneys (OAMA) is an organization of municipal attorneys whose primary mission is to provide those across the state of Oklahoma who are practicing municipal law with resources to assist them in providing sound advice to the cities and towns they represent. OAMA has established a program that provides such information accessible through the OAMA website at www.okmunicipalattorneys.org.

ABOUT THE AUTHOR



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ENDNOTES

1. Robert G. Spector, "State Sovereign Immunity in Tort: Oklahoma's Long and Tortuous Road," 34 *Okla. L. Rev.* 526 n. 6 (1981).
2. U.S. Constitution, Amendment XI.
3. *Vanderpool v. Oklahoma Historical Society*, 1983 OK 82, 672 P.2d 1153.
4. *Id.*
5. George J. Meyer, "Sovereign Immunity for Tort Actions in Oklahoma: The Governmental Tort Claims Act," 20 *Tulsa L. J.* 561, p. 568 (2013).
6. Title 51 Oklahoma Statutes §§151 – Section 172.
7. Okla. Stat. tit. 51, §152.1.
8. Okla. Stat. tit. 51, §152 (14).
9. Tort, *Black's Law Dictionary* (11th ed. 2019).
10. Okla. Stat. tit. 51, §152.1 (2011).
11. *Kampus v. Town of Granite*, 2022 OK 45, wherein the Oklahoma Supreme Court ruled a town has no duty to secure a headstone in a town-operated cemetery where the town did not own the headstone.
12. Okla. Stat. tit. 51 §151.2 (2011).
13. See Act of April 21, 2014, ch. 77, §§1-2, 2014 O.S.L. 245, 249-250 (codified at 51 O.S. Supp. 2014 §§152(4), 153(B)).
14. Okla. Stat. tit. 51 §153 (2011).
15. Okla. Stat. tit. 51 §151 (7) (2011).
16. Okla. Stat. tit. 51 §152 (12) (2011).
17. Okla. Stat. tit. 51 §152 (7).
18. Okla. Stat. tit. 51 §152 (12) (2011).
19. *Parker v. Midwest City*, 1993 OK 29.
20. *Nail v. City of Henryetta*, 1996 OK 12.

21. *Decorte v. Robinson*, 1998 OK 87.
22. Okla. Stat. tit. 51 §155 (1)-(37) (2011).
23. George J. Meyer, "Sovereign Immunity for Tort Actions in Oklahoma: The Governmental Tort Claims Act," 20 *Tulsa L. J.* 561 (2013).
24. *Farley v. City of Claremore* 2020 OK 30, 465 P.3d 1213.
25. Okla. Stat. tit. 51 §154 A.
26. Okla. Stat. tit. 51 §154 (C) (2011).
27. Okla. Stat. tit. 12 §95(3).
28. See *Crawford v. OSU Medical Trust*, 2022 OK 5 stating, "Notice was untimely, and as a result, the Plaintiff's claims against OSUMC are forever barred. We affirm dismissal of OSUMC for lack of jurisdiction."
29. Okla. Stat. tit. 51 §157(B) (1995).
30. Okla. Stat. tit. 51 §156 (2011).
31. Okla. Stat. tit. 51 §156 (D) (2011).
32. Okla. Stat. tit. 51 §157 (A) (2011).
33. Okla. Stat. tit. 51 §157 (B).
34. *Payne v. Kerns*, 2020 OK 31, 467 P.3d 659.
35. See also *Rocket Properties v. LaFortune*, 2022 OK 5, wherein a unanimous Supreme Court held, "The question before this Court is whether the GTCA applies to inverse condemnation claims in light of the 2014 legislative amendments to the GTCA following this Court's decision in *Bosh v. Cherokee County Gov. Building Auth.*, 2013 OK 9, 305 P.3d 994. We hold that it does not ... condemnation proceedings do not involve a tort. Condemnation involves the taking of private property for public use."

MANDATORY CONTINUING LEGAL EDUCATION CHANGES

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



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The Essential Eminent Domain Concepts

By Nick Atwood

EMINENT DOMAIN CASES ARE A CLASH of two bedrock principals of our legal tradition: the sacrosanct right of property owners to own and exercise control over their property and the sovereign state's power to take private property from an individual for the benefit of the public. The origins of eminent domain date back to the Old Testament of the Bible. King David offered and paid Araunah compensation for his threshing floor to ultimately build an altar to the Lord to stop the plague.¹ In the United States, the concept of eminent domain is recognized by the Takings Clause of the Fifth Amendment to the United States Constitution. The Takings Clause states that private property shall not be taken for public use without just compensation.²

Oklahoma's Constitution recognized the state's power of eminent domain in Article II Section 24. Section 24 is similar to the Taking Clause, stating private property shall not be taken without just compensation.³ In the state of Oklahoma, it is well-settled law that the constitutional eminent domain powers and provisions "are not grants of powers, but limitations placed upon the exercise of government of power."⁴ Alexander Hamilton observed that one of the greatest objectives to the constitutional constraints on the power of eminent domain is to protect "the security of property."⁵ Likewise, the framers of the Oklahoma Constitution recognized their first duty was to protect life and property.⁶ The state's power of eminent domain "lies dormant in the State until the Legislature, by specific enactment, designates the occasion,

modes and agencies by which it may be placed in operation."⁷

An eminent domain action is to take private property for public use – it is not a civil action but a special statutory proceeding.⁸ The right of eminent domain is a fundamental power of the sovereign state and strictly controlled by Oklahoma Constitution and statutes.⁹ Our Supreme Court has the longstanding general rule of strict statutory construction of the eminent domain statutes.¹⁰ Specifically, the established general rule is to construe the state constitutional eminent domain provisions strictly in favor of the landowner and against the condemnor.¹¹ The state's eminent domain statutes must conform to the restrictions placed on them by the Oklahoma constitutional eminent domain provisions.¹²

Eminent domain is limited by Article II Section 24 of the Oklahoma Constitution, which states, in part, "Private property shall not be taken or damaged for public use without just compensation." The constitution sets forth the definition of just compensation as the following: "Just compensation is the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken."¹³ Eminent domain actions are a special proceeding strictly controlled by the Oklahoma Constitution and statutes set forth by the Legislature.¹⁴

Condemning authorities are subject to the eminent domain provisions set forth in Title 27 of the Oklahoma Statutes. The



statutes require the condemning authority shall make every reasonable effort to acquire real property by negotiations.¹⁵ Furthermore, the Oklahoma Statutes require an appraisal of the real property be developed prior to negotiations with the landowner.¹⁶ The initial offer must be reasonable and based on an appraisal of the subject property.¹⁷ However, the policy set forth in Okla. Stat. Tit. 27 §13 is not fatal if the condemning entity does not explicitly follow it. In *State ex rel. Depart. Of Transp. v. Metcalf*,¹⁸ the Oklahoma Supreme Court held that so long as the condemning entity makes a bona fide offer, it has satisfied the only jurisdictional prerequisite to a condemnation action.¹⁹

Okla. Stat. Tit. §53 sets forth the general procedure for a condemning entity to take private property for public use. The general eminent domain procedure outlined in Section 53 is used by counties, municipalities, school districts, boards of education or any other board or official in charge of a cemetery created under Oklahoma law. The specific eminent domain procedure for the Oklahoma Department of Transportation and Oklahoma Turnpike Authority are found at Okla. Stat. Tit. 69 §1203 and Okla. Stat. Tit. 69 §1708, respectively. In

Although the condemnor is authorized to take possession of the acquired property, the landowner has the right to challenge the taking by filing an exception to the report of commissioners.

an eminent domain proceeding, there are only three recognized pleadings that may be filed: petition, exception to the commissioners' report and demand for jury trial.²⁰ Thereafter, the trial court has the discretion whether additional pleadings may be filed.²¹

An eminent domain case starts by the condemning entity filing a petition in the district court where the land is located that it desires to take. The petition requests the district court to appoint three disinterested freeholders to value the property being taken. A legal description is either incorporated into the petition or attached as an exhibit to the petition. Additionally, a resolution or affidavit of necessity is typically included, stating the need for the real property, although it is not required by Oklahoma law. A summons is not required in an eminent domain action. Rather, Oklahoma Statute requires 10 days advance notice to the landowners before the district court will appoint commissioners to appraise the land being acquired.²² Notice may be served in person, by mail and/or publication.²³

At the hearing to appoint commissioners, the district court selects three disinterested freeholders of the county who "shall not be interested in a like question."²⁴

As used by the statute, the term "freeholder" means an individual who possesses real property in the county of which the eminent domain action is pending. How the district court chooses the commissioners is completely discretionary. When selecting commissioners, the district court is acting in a ministerial role, not a judicial role.²⁵ There is no formal procedure in selecting commissioners in an eminent domain action. If the parties cannot reach an agreement on the commissioners, typically the commissioners are selected one of two ways. The first method is for the district court to solely select the commissioners. The second, and more common method, is for the condemnor to select one commissioner, the landowner to select a second commissioner and the third commissioner is selected by the district court. It is the established practice for the district court to set forth instructions to the commissioners for their assessment of the real property, however, it is not mandatory.

The court-appointed commissioners do not decide whether the taking is proper, rather they are to inspect the property, assess the just compensation due to the landowner and file a report of their findings with the clerk of the district court.²⁶

The report of commissioners is an estimate of just compensation for the condemned property. The report of commissioners is undivided and is an estimate of just compensation for all ownership interests, including those of a tenant, mortgagee or tax commission.²⁷ Within 10 days of the report of commissioners being filed, the court clerk of the county is required to forward to the attorneys of record and all unrepresented parties a copy of the filed report.²⁸ The notice from the court clerk shall set forth the time limits for challenging the necessity of the taking and the amount of damages assessed.²⁹

The filing of the report of commissioners is the measuring stick for both parties and their respective cases. The assessment made by the court-appointed commissioners allows both parties time to review the estimate of just compensation placed on the condemned land. Either party has 30 days of the report of commissioners being filed to file an exception to the commissioners' report.³⁰ Further, either party must file a written demand for jury trial within 60 days of the commissioners' report to secure that the ultimate decision on just compensation is determined by a jury.³¹ Failure to file a proper exception, thereupon perfecting the appeal, forever bars the district

court's inquiry on any exception to the report of commissioners.³² Additionally, failing to timely file a demand for jury trial eliminates either party's constitutional right for a jury to determine the amount of just compensation owed to the landowner for the taking.³³

Upon the condemnor paying the amount of the commissioners' award into the district court, the condemnor is entitled to possession of the acquired land.³⁴ Once the award is paid into the court, the landowner is entitled to immediately withdraw the award for their use.³⁵ The condemnor has no interest in the apportionment of damages between the landowner and remaining defendants.³⁶

EXCEPTIONS TO THE REPORT OF COMMISSIONERS

Although the condemnor is authorized to take possession of the acquired property, the landowner has the right to challenge the taking by filing an exception to the report of commissioners. Should the condemnor fail to establish the right to condemn, the landowner shall be restored to possession and paid for any damages caused by the condemnor by its possession.³⁷

In *Bd. of County Comm'rs of Creek County v. Casteel*,³⁸ the Oklahoma Supreme Court held, "Only an objection to the report of commissioners meet the statutory requirements necessary for bringing forth the issue of the necessity of the taking."³⁹ Should either party fail to bring a written objection to the report of commissioners within 30 days of the filing of the report of commissioners, either party thereby waives "any constitutional or other challenge to the plaintiff's right of eminent domain ... on the necessity of the taking."⁴⁰ Upon a party filing an exception to the commissioners' report, a hearing is set, and the district court shall

confirm, reject or for good cause order a new appraisal by the appointed commissioners.⁴¹ The character of the use of the condemned property is a judicial question as set forth in Article II Section 24 of the Oklahoma Constitution.

In eminent domain proceedings, the condemnor has the initial burden of proof to show it has the power to condemn, and the taking is necessary.⁴² The condemnor meets the initial burden of proof and makes a *prima facie* case of necessity by introducing into evidence a resolution of necessity or affidavit of necessity from the condemning authority.⁴³ Thereafter, the burden of proof then shifts to the condemnee to prove that the taking is not necessary.⁴⁴

In accordance with the Oklahoma Supreme Court's holding in *Public Serv. Co. of Okla. v. B. Willis*,⁴⁵ the conditions at the time of the taking determine whether the taking of private property for public purposes is necessary.⁴⁶ The *B. Willis* court discussed the meaning of necessity, declaring that the necessity of the eminent domain power is not absolute but reasonable necessity and may properly be used unless there is a showing of "fraud, bad faith or an abuse of discretion."⁴⁷ General public policy and statute govern the necessity, expediency and propriety of the power to condemn private property for public use.⁴⁸ It is a question of fact whether it is necessary to take a particular piece of property for a lawful purpose.⁴⁹ Once the trial court rules on the necessity, it will not be disturbed on appeal where evidence exists to support its findings.⁵⁰

A condemning authority's valid declaration of necessity "will be viewed as conclusive by the courts in the absence of showing of actual fraud, bad faith, or an abuse

of discretion by the condemning authority."⁵¹ Furthermore, the *B. Willis* court stated in reviewing a challenge of the condemning authority right to condemn, the court examines two conjoined concepts: 1) the character of use of the proposed taking as a public use and 2) the necessity of the taking to carry out the proposed use.⁵²

Upon the condemnor paying the amount of the commissioners' award into the court, the condemnor is entitled to possession of the acquired land.⁵³ Although the condemnor is authorized to take possession of the acquired property, the landowner has the right to challenge the taking by filing an exception to the report of commissioners. Should the condemnor fail to establish the right to condemn, the landowner shall be restored to possession and paid for any damages caused by the condemnor by its possession.⁵⁴ Once the award is paid into the court, the landowner is entitled to immediately withdraw the award for their use.⁵⁵ The condemnor has no interest in the apportionment of damages between the landowner and remaining defendants.⁵⁶

MOVING TOWARD JURY TRIAL

Once either party seeks a demand for jury trial, the next step is assembling your team for trial. As each eminent domain case presents unique challenges, significant time and thought must be given to each aspect of your case. There are two types of eminent domain cases: a total taking or a partial taking. A total taking is just as it sounds – the condemning authority is acquiring all the land the landowner owns in a given area. This includes any and all improvements associated with the land and any possible relocation costs. In a total taking case, the landowner is entitled to relocation,

refitting and reestablishment costs due to the loss of either their home or business in the eminent domain case. Unlike in every other state, in Oklahoma, relocation costs and expenses are compensable items inside the eminent domain case for the jury to consider when determining the total amount of just compensation owed to the landowner.⁵⁷

Alternatively, a partial taking consists of the condemning authority acquiring only a part of the land owned by the landowner. Partial taking cases usually consist of the condemning authority acquiring a strip of land, either by fee or easement, from the landowner. In addition to the land acquired by the condemnor, the landowner may be compensated for any damages associated with the eminent domain action to the remaining property.

The attorney must consider which witnesses are needed and, most importantly, which appraiser will be used at trial to establish just compensation in either type of case. Typical witnesses in eminent domain cases are the landowners, appraisers, representatives from the condemning authority and civil engineers. Other potential witnesses are property development professionals, billboard valuers, government zoning representatives, real estate brokers, realtors, architects, planners and relocation, refitting and reestablishment experts.

As the only issue to determine in an eminent domain trial is just compensation owed to the landowner for the property taken plus damages to the remainder, if any,⁵⁸ the appraisers become the crucial witnesses in the case. An eminent domain appraisal is unlike a traditional appraisal. There are significant requirements for an eminent domain appraisal compared with

a traditional appraisal, such as for a banking institution to secure a mortgage.

Whether the attorney represents the condemnor or condemnee, there are numerous issues for the attorney to consider before an appraiser is selected. Some of the things the attorney should consider when choosing the right appraiser for a case is local knowledge of the appraiser, professional designation of the appraiser, type of property being appraised, previous eminent domain appraisal experience, geographic competency, level of state licensing and prior trial experience. Other important aspects to consider when choosing an appraiser is the expertise they possess in valuing different types of properties. Valuing a residential home for eminent domain purposes is far different than valuing a convenience store or wind farm. The experience an appraiser has in valuing different types of real property is a key consideration. Once an appraiser is selected, a meeting with the appraiser and landowner is essential. This meeting is a great opportunity to ensure that both the attorney and appraiser are on the same page.

At the initial meeting, the parties should discuss the specific property and the type(s) of property rights associated with the property the condemning authority is acquiring from the landowner. Typical types of acquisitions in partial taking cases are fee acquisition, utility easements and temporary easements. The attorney should ask the appraiser what types of documents are needed to help them in developing an accurate and supportable appraisal. Appraisers commonly request surveys, previous appraisals on the property, the acquisition appraisal and notes and the

legal description of the taking. Additionally, it is common for the appraiser to visit the property for a physical inspection. This list is not exclusive because each eminent domain case is unique.

It is important for the appraiser to know what definition of value is required by the court. Market value is the most generally used definition of value found in the appraisal process. The Oklahoma Uniform Civil Jury Instructions defines fair market value as, "The amount of money which a buyer, who is willing but does not have to buy, would pay an owner, who is willing but does not have to sell, to buy the property. The fair market value of a property should be determined according to the highest and best use for which it is suitable, regardless of what it may have been used for in the past or what future use the landowner may have intended for it."⁵⁹ It is imperative that the appraiser recognizes this definition of fair market value when making their opinion of just compensation.

In the state of Oklahoma, there are three different levels of appraisal licensure: trainee, certified residential and certified general.⁶⁰ Each level of licensure has specific training and educational requirements and limits to what type of property the appraiser may appraise. A certified general appraiser is licensed to appraise all property types throughout the state of Oklahoma, whether residential or commercial. A certified residential appraiser is limited to only appraise residential properties. A trainee is an individual, typically learning through a certified general appraiser, who is starting their journey to becoming a licensed appraiser in the state of Oklahoma.

In addition to licensure type, the attorney should consider whether the appraiser holds any

professional designations such as the MAI or SRA designation from the Appraisal Institute. These professional designations exceed the knowledge, training and experience of the minimal state licensure requirements. The MAI designation is for appraisers who evaluate all property types, while the SRA designation is focused on residential properties. The MAI and SRA designations from the Appraisal Institute are optimal for the appraiser who provides opinions of value, consulting, review appraisals and investment advice.⁶¹ Both designations require the appraiser to have either a bachelor's degree or be a licensed certified general appraiser, pass intensive appraisal-specific classes, pass a final comprehensive examination, have good moral character and continuing education requirements.⁶²

One of the first steps an appraiser takes is performing an analysis of the larger parcel. Identification of the larger parcel also plays into the highest and best use conclusion that will be developed later. The larger parcel theory is defined by the property's

use, contiguity and ownership. The identification of the larger parcel will have a significant impact on the property's market value. Next, the subject's highest and best use is developed. Highest and best use of the property must be reasonable, probable, physically possible, legally permissible, financially feasible and maximally productive. An accurate determination of the highest and best use is critical to proper valuation.

When developing the market value of the property, it is essential for the appraiser to use proper data to support their conclusions. In eminent domain cases, unique damage issues arise. In those instances, special studies are needed to develop an opinion of market value. Those can include studies such as a proximity study, damage study, tree analysis, regression analysis, trending analysis, location quotient and hedonic price modeling. Each of these analyses will support the appraiser's ultimate conclusion of just compensation owed to the landowners.

Another vital service the appraiser provides is making

an analysis of the other side's appraisal. Appraisers may have differing opinions based on differing professional standards, supported or unsupported damage conclusions or the lack of competence in eminent domain appraisals. The appraiser will assist the attorney in reviewing the other side's appraisal to see whether the appraiser is using direct market evidence or unsupported speculation for their conclusions. An appropriately developed appraisal should have market support for each and every conclusion made by the appraiser.

MOVING THE CASE THROUGH DISCOVERY

After either party demands trial, an eminent domain case proceeds identically like all other civil litigation except for one change: The burden of proof is on the landowner, the defendant in the case, to prove the value of the property being acquired. All discovery tools of the Oklahoma Discovery Code are available to both sides.

From either the condemnor or condemnee's perspective, requesting any appraisal of the property is a useful resource. The condemnor's acquisition appraisal is admissible against the condemnor at trial.⁶³ If the landowner is claiming the property as an income-generating resource, copies of previous tax returns can verify the landowner's claim.

Depositions are a valuable tool to have a complete understanding of the opposing side's opinion of just compensation. At the deposition, obtaining a full and complete copy of the opposing appraiser's report and work file is necessary in understanding their opinion of value. The workfile will contain all the supporting information for the appraiser's findings and conclusions. The contents of the workfile, or more importantly what is



missing, will be of great aid when challenging the appraiser's credentials as an expert or attacking the appraiser on cross examination.

NEGOTIATIONS AND SETTLEMENT

Throughout the eminent domain case, the possibility of settlement continually exists. A helpful tool in finding a settlement is either settlement conferences or mediation. As we all know, litigation is expensive. A settlement conference or mediation is an ideal place for all parties to come to the table and have an independent party evaluate the case to aid in finding a possible resolution.

In settlement discussions, the attorney for the condemnor should consider how the settlement of one case will affect the other eminent domain cases on the same project. The attorney for the landowner should consider the settlement conference or mediation to be the last real chance to save their client money prior to trial because of the time and costs incurred in litigation. It is increasingly common in eminent domain cases that both sides agree that mediation or settlement conference is required prior to going to trial.

It is essential both sides recognize that whoever is chosen to help yield a potential settlement for the case, it is imperative that the mediator has a complete understanding of the complexities of eminent domain law. If this person is unfamiliar with eminent domain cases, a majority of the time will be spent educating this person instead of finding a resolution. An experienced individual can access each side's case and point out the strengths and weaknesses to both parties in an attempt for settlement.

PRETRIAL MOTIONS

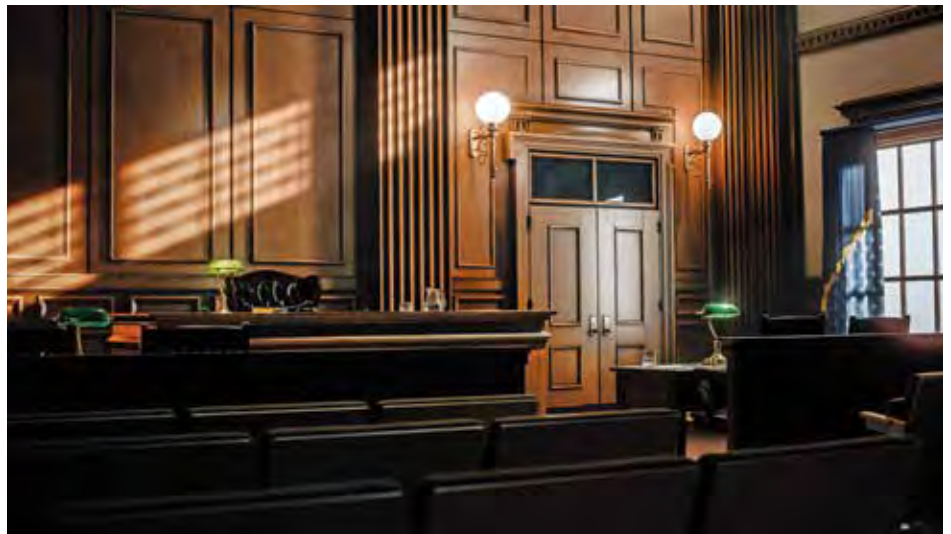
Just as with any other civil case, motions *in limine* are a great opportunity to shape the case in the most fashionable way possible for your client. As stated previously, eminent domain cases can present unique challenges, especially in partial taking cases. There are no restrictions as to the type of motions *in limine* a party may file with the court. Additionally, the use of expert witness testimony from appraisers and other professionals gives an attorney the opportunity of challenging the credentials and/or methodology via a *Daubert* challenge.

TRIAL

An eminent domain trial proceeds like any other case except that the landowner, the defendant, starts the trial because they have the burden of proof to prove their damages. From the opening moments of trial, it is crucial to establish your credibility and theory and themes of your case with the jury.

biases the potential jurors have for awarding large sums of money for land and associated damages. The attorney for the condemning authority should question whether there are biases associated with the eminent domain process. Many individuals believe it is fundamentally wrong for the government or other authorized condemning entities to acquire private property through eminent domain proceedings.

In opening statements, highlight the key points of your case to the jury and tell them what to watch out for during the trial. This is a good opportunity to explain away a weakness in your case and what evidence the jury should look for regarding that topic. If you believe the opposing experts have holes, ask the jury to question all the experts and their credentials and methodologies. If your case has a significant advantage, point it out to the jury in the opening statement. Remind them to compare this strength of your case to how the other side views this issue.



Voir dire is the first opportunity to start telling your story. The attorney for the landowner should begin with telling the landowner's story and why this property is special and unique. The landowner's attorney should attempt to flush out any

Demonstrative exhibits are essential to tell your story to the jury. It is highly unlikely the jury will be allowed to view the property being condemned. Thus, the demonstrative exhibits allow for the attorney to bring

the property into the courtroom. There are numerous options for demonstrative exhibits in eminent domain cases. Some common types of exhibits are ground and aerial photography. As technology advances, eminent domain cases are consistently on the forefront of that technology. Today, it is common to see overlaid construction of right-of-way or construction plans on aerial photos, videos of the property, videos of cars traveling up and down the highway, Google Earth drives, aerial flights and drone flights of the property or highway project.

Closing arguments are your last opportunity to lay your case out to the jury. It is important though to have a precise plan and not just regurgitate your entire case to the jury. Focus on the strengths of your case and key points your experts made throughout the trial. Use a key exhibit to illustrate these points. If opposing experts made mistakes, highlight these mistakes and ask the jury why they were made. At the end of your closing, make sure to thank the jury for their service and ask for a specific verdict.

CONCLUSION

As you can see, eminent domain practice is a highly detailed and specific area of law. There are many intricacies the attorney must be aware of, or their client could be harmed or precluded from challenging the eminent domain case.

ABOUT THE AUTHOR



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ENDNOTES

1. 2 Samuel 24: 20-24.
2. U.S. Const. Fifth Amendment.
3. Okla. Const. Art. II §24.
4. *City of Pryor Creek v. Pub. Serv. Co.*, 1975 OK 81, ¶18, 536 P.2d 243.
5. *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 2671 (2005) (O'Connor, J., dissenting) (alteration in original) (quoting 1 Records of the Federal Convention of 1787, p. 302 (M. Farrand ed., 1934)).
6. *Bd. of Co. Comm'rs of Muskogee Co. v. Lowery*, 2006 OK 31, ¶10, 136 P.3d 639 (quoting Albert H. Ellis, *A History of the Constitutional Convention of the State of Oklahoma*, p. iv (Introduction and Endorsement by William H. Murray, president of the Constitutional Convention) (1923)).
7. *City of Pryor Creek* at ¶9.
8. *Oklahoma Turnpike Authority v. Dye*, 1953 OK 109, ¶9, 256 P.2d 438; *McCraday v. Western Farmers Electric Co-operative*, 1958 OK 43, ¶13, 323 P.2d 356; *Graham v. City of Duncan*, 1960 OK 149, ¶16, 354 P.2d, 458; *Gaylord v. State ex rel. Dept. of Highways*, 1975 OK 63, ¶16, 540 P.2d 558.
9. *City of Tahlequah v. Lake Region Elec. Co-op, Inc.*, 2002 OK 2, ¶7, 47 P.3d 467; *Drabek v. City of Norman*, 1996 OK 126, ¶8, 946 P.2d 658.
10. *City of Cushing v. Gillespie*, 1953 OK 121, ¶10, 256 P.2d 418.
11. *Stinchcomb v. Oklahoma City*, 1921 OK 154, ¶10, 198 P. 508.
12. *Allen v. Transok Pipe Line Co.*, 1976 OK 53, ¶12, 552 P.2d 375.
13. Okla. Const. Art. II §24.
14. *Public Service Co. of Oklahoma v. B. Willis*, 1997 OK 78, ¶16, 941 P.2d 995.
15. Okla. Stat. Tit. 27 §13.
16. *Id.*
17. *Id.*
18. *State ex rel. Depart. Of Transp. v. Metcalf*, 2013 OK CIV APP 28, 298 P.3d 550.
19. *Id.* at ¶120.
20. *Bd. of County Comm'rs of Creek County v. Casteel*, 1974 OK 31, ¶15, 522 P.2d 608.
21. *Rummage v. State ex rel. Dep't of Transp.*, 1993 OK CIV APP 39, ¶18, 849 P.2d 1109.
22. Okla. Stat. Tit. 66 §53; Okla. Stat. Tit. 69 §1203; Okla. Stat. Tit. 69 §1708.
23. *Id.*
24. *Id.*
25. *Town of Ames v. Wybrandt*, 1950 OK 197, 220 P.2d 693.
26. Okla. Stat. Tit. 66 §53(C); Okla. Stat. Tit. 69 §1203(c); and Okla. Stat. Tit. 69 §1708(b)(1); *Public Serv. Co. of Okla. v. B. Willis, C.P.A., Inc.*, 1997 OK 78, ¶18, 941 P.2d 995.
27. *Grand River Dam Authority v. Gray*, 1943 OK 219, 138 P.2d 100.
28. Okla. Stat. Tit. 66 §55(A); Okla. Stat. Tit. 69 §1203(e)(1); and Okla. Stat. Tit. 69 §1708.
29. *Id.*
30. Okla. Const. Art. II §24; Okla. Stat. Tit. 65 §55; Okla. Stat. Tit. 69 §1203; Okla. Stat. Tit. 69 §1708.
31. *Id.*
32. *Bd. of Co. Com'rs of Creek Co. v. Casteel*, 1974 OK 31, ¶16, 522 P.2d 608; *Blankenship v. Bone*, 1974 OK CIV APP 54, ¶6, 530 P.2d 578.
33. *Id.*
34. *State Dep't of Highways v. O'Dea*, 1976 OK 133, 555 P.2d 587; *State ex rel. Dep't of Transp. v. Post*, 2005 OK 69, 125 P.3d 1183.
35. Okla. Stat. Tit. 66 §54.
36. *Perkins Whistlestop, Inc. v. State*, 1998 OK CIV APP 7, ¶6, 954 P.2d 1251 (citing *Grand River Dam Auth. v. Gray*, 1943 OK 219, 138 P.2d 100).
37. Okla. Stat. Tit. 66 §55; Okla. Stat. Tit. 69 §1203; Okla. Stat. Tit. 69 §1708.

38. *Bd. of County Comm'rs of Creek County v. Casteel*, 1974 OK 31, 522 P.2d 608.
39. *Id.* at ¶16.
40. *Blankenship v. Bone*, 1974 OK CIV APP 54, ¶6, 530 P.2d 578.
41. Okla. Stat. Tit. 66 §55; Okla. Stat. Tit. 69 §1203; Okla. Stat. Tit. 69 §1708.
42. *Delfeld v. City of Tulsa*, 1942 OK 402, 131 P.2d 754; *Oklahoma Gas & Electric Co. v. Beecher*, 2011 OK CIV APP 233, *Public Serv. Co. of Okla. v. B. Willis*, 1997 OK 78, 941 P.2d 754; *Rueb v. Oklahoma City*, 1967 OK 233, 435 P.2d 139; and *Bush v. Oklahoma City*, 1944 OK 302, 154 P.2d 960.
43. *Id.*
44. *Id.*
45. *Public Serv. Co. of Okla. v. B. Willis*, 1997 OK 78, 941 P.2d 754.
46. *Id.* at ¶18.
47. *Id.*
48. *Arthur v. Bd. of Comm'rs*, 1914 OK 181, ¶9, 141 P. 1.
49. *Public Serv. Co. of Okla. v. B. Willis*, 1997 OK 78, 941 P.2d 754.
50. *City of Tulsa v. Williams*, 1924 OK 136, 227 P. 876; *McCraday v. Western Farmers Electric Cooperative*, 1958 OK 43, 323 P.2d 356; *Luccock v. City of Norman*, 1978 OK 66, 578 P.2d 1204.
51. *Public Serv. Co. of Okla. v. B. Willis*, 1997 OK 78, ¶20, 947 P.2d 955, (citing *Rueb v. Oklahoma City*, 1967 OK 233, 435 P.2d 139; *Luccock v. City of Norman*, 1978 OK 66, 578 P.2d 1204).
52. *Id.*
53. *State Dep't of Highways v. O'Dea*, 1976 OK 133, 555 P.2d 587; *State ex rel. Dep't of Transp. v. Post*, 2005 OK 69, 125 P.3d 1183.
54. Okla. Stat. Tit. 66 §55; Okla. Stat. Tit. 69 §1203; Okla. Stat. Tit. 69 §1708.
55. Okla. Stat. Tit. 66 §54.
56. *Perkins Whistlestop, Inc. v. State*, 1998 OK CIV APP 7, ¶6, 954 P.2d 1251 (citing *Grand River Dam Auth. v. Gray*, 1943 OK 219, 138 P.2d 100).
57. *State ex rel. Dep't. of Transp. v. Little*, 2004 OK 74, 100 P.3d 707.
58. *Eberle v. State of Oklahoma ex rel. Dept. of Highways*, 1963 OK 224, ¶14, 385 P.2d 868.
59. Oklahoma Uniform Civil Jury Instructions 25.5.
60. Okla. Stat. Tit. 59 §858-713.
61. Appraisal Institute, "AI Designations," www.appraisalinstitute.org/our-designations.
62. *Id.*
63. *Oklahoma Transportation Authority v. Turner*, 2008 OK CIV APP 31, 183 P.3d 168.

Evaluating the Jurisdiction of Municipal Courts After *Castro-Huerta*

By Matthew Love

AS POLITICAL SUBDIVISIONS OF THE STATE, municipalities typically rely on the state's sovereign authority when prosecuting ordinance violations in municipal court. Following *McGirt v. Oklahoma*,¹ municipalities within the reservations of the Five Civilized Tribes² may no longer rely on the state's preexisting sovereignty when prosecuting Indians³ for ordinance violations. In response, many of those municipalities take the position that they may lawfully assume jurisdiction over local ordinance violations by Indians pursuant to §14 of the Curtis Act.

This argument has been the subject of criticism⁴ and has not yet been addressed by the appellate courts.⁵ The argument was originally developed based on a prior understanding of how criminal jurisdiction within Indian country is evaluated. The United States Supreme Court recently modified that jurisdictional evaluation in *Oklahoma v. Castro-Huerta*.⁶ This article seeks to provide an overview of the evaluation of the jurisdiction of municipal courts within the reservations of the Five Civilized Tribes in light of *Castro-Huerta*.

SUBJECT MATTER JURISDICTION OF MUNICIPAL COURTS IN INDIAN COUNTRY

Subject matter jurisdiction goes to a court's authority to hear a given type of case.⁷ The subject matter jurisdiction of Oklahoma

municipal courts over ordinance violations is limited to offenses that are not declared to be felonies under state statutes.⁸ For offenses committed by an Indian in Indian country, the court's subject matter jurisdiction is subject to the *Castro-Huerta* preemption analysis.

Indian country is a part of, not separate from, the state.⁹ Unless preempted, the 10th Amendment guarantees that state sovereignty includes the right to exercise the state's inherent, preexisting jurisdiction over all its territory, including Indian country.¹⁰ The exercise of preexisting jurisdiction can be preempted if the exercise of that jurisdiction 1) has been preempted by federal law or 2) would unlawfully infringe on tribal self-government.¹¹ To the extent the exercise of preexisting jurisdiction would unlawfully infringe on tribal self-government, jurisdiction may nevertheless be

lawfully assumed if authorized by Congress. Congress has authorized the lawful assumption of jurisdiction through Public Law 280¹² and, prior to that, through one-off enactments.¹³

Except for the Major Crimes Act,¹⁴ federal law does not preempt the state from exercising preexisting jurisdiction over crimes by or against Indians within Indian country.¹⁵ As a result, the preemption analysis turns on whether the exercise of state jurisdiction would unlawfully infringe on tribal self-government. This is evaluated utilizing the *Bracker*¹⁶ balancing analysis, which weighs the impact the exercise of state jurisdiction would have on tribal, federal and state interests.

In *Castro-Huerta*, the court held that the exercise of state jurisdiction over crimes committed by non-Indians against



Indians in Indian country would not unlawfully infringe on tribal self-government.¹⁷ More significantly, by shifting from a bright line approach (*i.e.*, that states lack jurisdiction over all crimes by or against Indians occurring in Indian country) to a *Bracker* analysis, the court potentially opened the door to future challenges based on the argument that the exercise of state jurisdiction over an Indian who committed a crime outside of their own tribe's reservation but (within the reservation of another tribe) would not constitute an unlawful infringement on tribal self-government.¹⁸ This argument, if adopted by the court, would likely require the court to overrule numerous prior precedents that have made clear that states lack jurisdiction over crimes by Indians in Indian country.¹⁹

MUNICIPAL COURT JURISDICTION OVER INDIANS IN INDIAN COUNTRY

The evaluation of whether municipal courts have jurisdiction over Indians for ordinance violations in Indian country must start with an evaluation of the state's preexisting jurisdiction. If preexisting jurisdiction is preempted, municipal courts may only exercise jurisdiction over those offenders if Congress has authorized the lawful assumption of that jurisdiction.

Preexisting Jurisdiction

As noted above, *Castro-Huerta* might have opened the door for an argument in a future case that the states have preexisting jurisdiction over crimes committed by an Indian within another tribe's reservation. That argument, while intriguing, is one that must be resolved by the United States

Supreme Court and not by municipal judges. The court's prior precedents make clear that states lack preexisting jurisdiction over crimes committed by Indians in Indian country. The court might have signaled a potential interest in revisiting those precedents,²⁰ but it did not do so in *Castro-Huerta*.²¹ Unless and until the court reconsiders those precedents, municipal courts should proceed very cautiously before relying solely on the state's preexisting jurisdiction when an Indian is accused of violating a local ordinance.

Lawfully Assumed Authority/ §14 of the Curtis Act

The state's preexisting jurisdiction likely remains preempted as to crimes by Indians within Indian country. As such, municipal courts within the reservations of the Five Civilized Tribes may only exercise

It is important to note, in closing, that the appellate courts have yet to resolve the question of whether §14 continues to grant municipalities within the reservations of the Five Civilized Tribes the authority to lawfully assume jurisdiction over ordinance violations by Indians.

jurisdiction over Indians for ordinance violations if they may lawfully assume such jurisdiction pursuant to an act of Congress.²² Many municipalities responded to *McGirt* by taking the position that §14 of the Curtis Act of 1898 authorizes their courts to lawfully assume jurisdiction over those ordinance violations. Section 14 provided, “All inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments[.]”²³

The Curtis Act was a comprehensive and special statute governing matters throughout Indian Territory.²⁴ As to the reference to “race,” one year earlier, a Congressional enactment had applied the local, territorial laws in effect within the Indian Territory “to all persons therein, irrespective of race[.]”²⁵ The Supreme Court interpreted that language as expressing Congress’s clear intent to apply those laws to Indians as well as non-Indians.²⁶ Section 14 expressed Congress’s clear intent to subject Indians to municipal ordinances.

While §14 was adopted prior to Oklahoma becoming a state, Congress clearly intended that

§14 would continue to authorize municipalities within the reservations of the Five Civilized Tribes to lawfully assume jurisdiction over Indians for ordinance violations post-statehood. In enacting §14, Congress was expressly contemplating that the lands of the Five Civilized Tribes would be included within a future state. Section 29 of the Curtis Act contained Congress’s approval of an allotment agreement with the Chickasaw and Choctaw nations. Within that agreement, Congress agreed to allow those two nations to maintain their governments for eight more years with the following understanding: “This stipulation is made in the belief that the tribal governments so modified will prove so satisfactory that there will be no need or desire for further change till the lands now occupied by the Five Civilized Tribes shall, in the opinion of Congress, be prepared for admission as a State to the Union.”²⁷

Congress’s intent to retain the authorization in §14 in full force and effect is further evidenced by the fact that every allotment agreement approved by the tribes on or after the date the Curtis Act

was adopted included express language whereby the tribes expressly agreed that §14 would remain in full force and effect within their lands.²⁸ The authority for cities and towns within the reservations of the Five Civilized Tribes to lawfully assume jurisdiction over ordinance violations by Indians is thus founded both on §14 of the Curtis Act itself as well as the consent to §14 by the tribes evidenced in those agreements with the United States.

Sections 13 and 21 of the Oklahoma Enabling Act²⁹ replaced the existing territorial laws with the first set of local state laws applicable in the new state of Oklahoma. This shift in applicable local laws did not affect §14 of the Curtis Act. When Congress adopted local, territorial laws and, later, when it admitted the Oklahoma and Indian territories as a new state and established the first set of local state laws, Congress exercised authority granted to it by Article IV, Section 3, of the United States Constitution.³⁰ Those territorial laws were not laws of the United States but rather local laws, applicable only within the territory.³¹ By contrast, when Congress applied those territorial laws to Indians and subjected Indians to ordinances adopted by cities and towns within the borders of the Five Civilized Tribes, Congress exercised authority granted to it by Article I, Section 8, of the United States Constitution.

Sections 13 and 21 in the Enabling Act affected only the local territorial laws. Congress was merging two territories with two distinct sets of local territorial laws into one state. As such, pursuant to Article IV, Congress had to designate which body of local laws would be the first set of state laws.³² The relevant provision from §14 was not a local law applicable in the Indian territory. It was an

exercise of Article I power, which authorized the enforcement of local ordinances as to Indians. The shift in local laws affected the general organization and authority of the affected municipalities.³³ It did not alter Congress's exercise of Article I authority authorizing those municipalities to lawfully assume jurisdiction over ordinance violations by Indians.³⁴ Congress could repeal the authorization from §14, but to date, it has never done so.

It is important to note, in closing, that the appellate courts have yet to resolve the question of whether §14 continues to grant municipalities within the reservations of the Five Civilized Tribes the authority to lawfully assume jurisdiction over ordinance violations by Indians. The relevant provision from §14 was a unique enactment by Congress applicable to a unique area of the United States at the time of its enactment. As such, the appellate courts have never had occasion to consider this kind of unique legal argument. Until the appellate courts resolve this issue, hundreds of cities and towns across the reservations of the Five Civilized Tribes will be forced to decide whether to avail themselves of this argument or to decline to enforce the local ordinances their inhabitants have adopted as to those inhabitants who are Indian.

ABOUT THE AUTHOR



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ENDNOTES

1. 140 S.Ct. 2452 (2020).
2. Indian country includes all land within the borders of an Indian reservation. 18 U.S.C. §1151. As Chrissi Ross Nimmo noted in endnotes 8 and 9 of her *OBJ* article, *infra* at n. 5, the courts have recognized the continued existence of the reservations of the Five Civilized Tribes (Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, Muscogee Creek Nation and Seminole Nation) in light of *McGirt*.
3. A person is legally Indian if 1) they have some Indian blood and 2) they are recognized as an Indian by a tribe or the federal government. *Parker v. State*, 2021 OK CR 17, ¶135, 495 P.3d 653, 665 citing *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).
4. I would encourage readers to review Chrissi Ross Nimmo's article in the March 2022 bar journal, wherein she offers an opposing view on this topic. Chrissi Ross Nimmo, "Oklahoma Cities and Towns in Indian Country are not Immune From the U.S. Supreme Court's Holding in *McGirt*," *OBJ* 93 Vol 3 (2022), <https://bit.ly/3LS7EJu>.
5. United States District Judge William Johnson and Okmulgee County District Judge Pandee Ramirez both dismissed class action lawsuits against municipalities based (in whole or in part) on §14 of the Curtis Act. *Hooper v. City of Tulsa*, No. 21-CV-165-WPJ-JFJ, 2022 WL 1105674 (N.D. Okla. Apr. 13, 2022) and *Nicholson et al v. City of Beggs et al*, Okmulgee County Dist. Court Case No. CJ-20-94, Order Dismissing Case (Nov. 24, 2020). The Oklahoma Supreme Court affirmed Judge Ramirez's order on other grounds, expressly declining to address the Curtis Act argument. *Nicholson v. Stitt*, 2022 OK 35, fn.6, 508 P.3d 442.
6. 142 S.Ct. 2486 (2022).
7. *United States v. Morton*, 467 U.S. 822, 828 (1984).
8. 11 O.S. §14-111(B)(1) & (C). There are additional restrictions on the subject matter jurisdiction of municipal courts over certain types of misdemeanors. For example, a municipal court not of record has no subject matter jurisdiction over misdemeanor driving under the influence (DUI). See 47 O.S. §11-902(C)(7).
9. *Castro-Huerta*, 142 S.Ct. at 2493.
10. *Id.*
11. *Castro-Huerta*, 142 S.Ct. at 2494.
12. 25 U.S.C. §1321. Oklahoma has never sought or obtained jurisdiction pursuant to PL 280.
13. See Act of July 2, 1948, ch. 809, 62 Stat. 1224 (25 U.S.C. §232) (New York); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (Iowa), repealed, Act of Dec. 11, 2018, Pub. L. 115-301, 132 Stat. 4395; Act of May 31, 1946, ch. 279, 60 Stat. 229 (North Dakota).
14. 18 U.S.C. §1153 (authorizing federal jurisdiction over 13 enumerated offenses when committed by one Indian against another Indian). *In dicta*, the majority appeared to question whether the MCA actually preempts the exercise of state jurisdiction over Indian-on-Indian major crimes. *Castro-Huerta*, 142 S.Ct. at 2496, "even assuming that the text of the Major Crimes Act provides for exclusive federal jurisdiction over major crimes committed by Indians in Indian country." The court cited *United States v. John*, 437 U.S. 634 (1978) and *Negonsott v. Samuels*, 507 U.S. 99 (1993), as support for its statement that the preemptive effect of the MCA was an assumption – a curious move given that those cases establish that point as precedent. To the extent that the majority was suggesting its willingness to revisit those prior precedents, there would be little effect on municipal court jurisdiction should those prior precedents be modified or overruled in the future. The MCA only applies to 13 offenses, almost

all of which are felonies in Oklahoma. As such, municipal courts would not have jurisdiction over those felony major crimes even if the Supreme Court revisited its prior MCA holdings.

15. *Id.* at 2494-99 (crimes by non-Indians with Indian victims). The court noted in footnote 2 that federal law does not preempt the state from exercising jurisdiction over crimes committed by an Indian against a non-Indian, and any preemption would have to be the result of the second step in the *Castro-Huerta* analysis.

16. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

17. *Id.* at 2499-2502. States have long possessed the unquestioned authority to prosecute crimes involving only non-Indians. *United States v. McBratney*, 104 U.S. 621 (1882).

18. See e.g., *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1172 (10th Cir. 2012) "When Indians ('who') act outside of their own Indian country ('where'), including within the Indian country of another tribe, they are subject to non-discriminatory state laws otherwise applicable to all citizens of the state."

19. See e.g., *United States v. Kagama*, 118 U.S. 375 (1886).

20. Consider footnote 9 from *Castro-Huerta*, where the majority characterized Justice Gorsuch's suggestion that, "States may not exercise jurisdiction over crimes committed by Indians against non-Indians in Indian country" as being "not accurate." In doing so, however, the court made clear that it was not addressing that issue.

21. *Castro-Huerta*, 142 S.Ct. at 2521 (Gorsuch, J. dissenting) "The Court may choose to disregard our precedents, but it does not purport to overrule a single one."

22. *Castro-Huerta*, 142 S.Ct. at 2500 (Public Law 280 exists to grant state jurisdiction, where its exercise would otherwise be preempted as an unlawful infringement on tribal self-government, citing *Bracker*).

23. Act of June 28, 1898, §14, 30 Stat. 499-500.

24. *U.S. v. City of McAlester*, 604 F.2d 42 (10th Cir. 1979).

25. Act of June 7, 1897, 30 Stat. 83.

26. See *Marlin v. Lewallen*, 276 U.S. 58, 62 (1928) and *Stewart v. Keyes*, 295 U.S. 403, 409 (1935), both interpreting, when Congress stated in an 1897 enactment, Act of June 7, 1897, 30 Stat. 83, that the territorial laws in place within the Indian territory would apply to all "irrespective of race," Congress was intending to state that the laws would apply to Indians as well as non-Indians.

27. Act of June 28, 1898, §29, 30 Stat. 512.

28. Act of June 28, 1898, §29, 30 Stat. 505 (Chickasaw and Choctaw nations); Act of March 1, 1901, §41, 31 Stat. 872 (Muscogee (Creek) Nation); Act of July 1, 1902, §73, 32 Stat. 727 (Cherokee Nation).

29. Act of June 16, 1906, §13 and §21, 34 Stat. 275 and 277-78.

30. *Shulthis v. McDougal*, 225 U.S. 561, 571 (1912).

31. *United States v. Pridgeon*, 153 U.S. 48 (1894).

32. *Jefferson v. Fink*, 247 U.S. 288, 292-93 (1918).

33. *Lackey v. State*, 1911 OK 270, ¶13, 116 P. 913.

34. For this reason, cities and towns incorporating within the borders of the Five Civilized Tribes post-statehood are authorized to lawfully assume jurisdiction over ordinance violations by Indians. This is true both because of §14 itself and because each of the tribes agreed to maintain §14 in full force and effect within their respective reservations.

OBA DIVERSITY AWARD WINNERS ANNOUNCED

THE OBA DIVERSITY

Committee hosts the 2022 Ada Lois Sipuel Fisher Diversity Awards Dinner on Thursday, Nov. 3, in conjunction with this year's OBA Annual Meeting. During the ceremony, this year's OBA Diversity Award recipients are recognized. The winners include:

Member of the Judiciary



Judge Sharon K. Holmes

Judge Sharon K. Holmes is a 1977 graduate of Booker T. Washington High School in Tulsa. She

received her bachelor's degree from Loyola University in New Orleans and her J.D. from the OCU School of Law. She is also a member of Alpha Kappa Alpha Sorority Inc. and proudly served in the United States Air Force.

Before being elected to the bench, Judge Holmes was a criminal defense attorney, and prior to that, she was an assistant district attorney for Tulsa County. In 2015, she took the bench after an election, which made her Tulsa County's first Black female district court judge. Judge Holmes was recently unopposed in a bid for her third term, which will begin in 2023. She currently presides over a criminal docket.

Judge Holmes is also a 2020 recipient of the Mona Salyer Lambird Spotlight Award.

Attorneys



M. Alexander Pearl

Professor M. Alexander Pearl is an enrolled citizen of the Chickasaw Nation. He is a nationally

recognized scholar in the fields of water law, climate change law and policy, Indigenous legal/social issues and statutory interpretation. His research focuses both on distinct concepts within these fields as well as intersectional issues that cross legal fields and social dynamics. He regularly works collaboratively with scientists and scholars in related fields to produce both practical and theoretical scholarship.

After graduating from OU with a bachelor's degree in philosophy, Professor Pearl obtained his J.D. from the University of California Berkeley School of Law. While at Berkeley Law, he was on the *California Law Review*, chaired the Native American Law Student Association and was a research assistant for the late esteemed scholar of Indian law and statutory interpretation, Professor Philip Frickey. From Berkeley

Law, Professor Pearl returned to Oklahoma, where he clerked for Judge William J. Holloway Jr. of the United States Court of Appeals for the 10th Circuit. After completing his clerkship, he worked as an associate at Kilpatrick Townsend in Washington, D.C., where he exclusively represented Indian tribes and individual Indians in a variety of capacities and a diverse array of fora.

Professor Pearl joined the faculty at the OU College of Law in 2020. For the previous six years, he was a member of the faculty at the Texas Tech University School of Law. While there, he was the director of the Texas Tech University School of Law Center for Water Law and Policy. He was also affiliate faculty with the Texas Tech Climate Science Center, where we worked with faculty from a variety of academic departments to address climate change and environmental justice issues. During his career, Professor Pearl has won several awards for teaching and scholarship, including being voted by the students as the 1L Professor of the Year. Since arriving at OU, Professor Pearl is affiliate faculty at the Department of Native American Studies and has had the pleasure of being the faculty advisor for the Ada Lois Sipuel Fisher Chapter of the Black Law Students Association.



**James Osby
Goodwin Sr.**

James Osby Goodwin Sr. is an attorney and award-winning publisher and editor of *The Oklahoma*

Eagle Publishing Company, which he has been associated with for six decades. The newspaper, founded in 1921 after the Tulsa Race Massacre, is one of the 10 oldest African American newspapers in the United States. His father, Edward L. Goodwin Sr., served as owner and publisher from 1936 to 1972 before turning it over to his children. Mr. Goodwin first served as *The Oklahoma Eagle*'s president and legal counsel for about 10 years before becoming co-publisher starting in 1979 with his younger brother, Robert Kerr Goodwin, and later with his older brother, Edward Lawrence Goodwin Jr. He was named sole publisher in 2014.

Mr. Goodwin received his formal education at the University of Notre Dame and the TU College of Law. His accomplishments and community involvements are voluminous. He is a member of the Tulsa County Bar Association, American Inns of Court, Johnson-Sontag Chapter, OSU-Tulsa Board of Trustees and Oklahoma Court of Criminal Appeals Criminal Jury

Instructions Committee. He is also a founding member of the Community Health Foundation and a former member of the Bank of Oklahoma Board of Directors, the U.S. Federal Magistrate Judge Selection Committee, the State Department of Health Advisory Council and the Buck Franklin Lecture Series.

He is admitted to practice in the Oklahoma Supreme Court; United States District Court for the Northern, Eastern and Western Districts of Oklahoma; United States Court of Appeals for the 10th Circuit; United States Supreme Court; and United States Court of Appeals for the Federal Circuit.

Among his many law-related initiatives, he was co-plaintiff against the state of Oklahoma, resulting in legislative reapportionment immediately after the U.S. Supreme Court's declaration of one-man vote rule. He initiated the first desegregation lawsuit in the city of Tulsa, resulting in school desegregation, and he was co-counsel in litigation resulting in Tulsa's new city council form of government. He successfully challenged before the U.S. Supreme Court and the Oklahoma Court of Criminal Appeals the constitutionality of a state statute and city ordinance regarding freedom of speech and was co-counsel with Charles Ogletree, Willie Gray and Johnnie Cochran, among other

notables, in the matter of reparations for victims of the 1921 Tulsa Race Massacre.

In the late 1970s, Mr. Goodwin laid the foundation to preserve Tulsa's Historic Greenwood District, famously known as America's "Black Wall Street," with his initiative, the "Greenwood Market Community." For two decades, he held an option to purchase all of Greenwood's remaining vacant properties before negotiating an agreement for the Greenwood Chamber of Commerce (which was co-founded and incorporated by his father in 1938) to gain control to own and develop the district.

In 2003, he received the Lifetime Excellence Award, with the East Regional Health Center in Tulsa being renamed the James O. Goodwin Health Center. He served 50 years on the Tulsa City-County Board of Health – the first African American and longest-tenured member in the board's history. He is also the first Tulsan to have three different mayors from both political parties dedicate an official day (1986, 2008 and 2018) that recognizes his lifetime contributions and civic commitment to his hometown.

Among numerous accolades, Mr. Goodwin has been inducted into the TU College of Law Hall of Fame, the Oklahoma Journalism Hall of Fame (along with his father and two brothers) and the TU Collins College of Business Hall of Fame. He is the recipient of

the Tulsa Association of Black Journalists Lifetime Achievement Award for Excellence in Journalism and the recipient of the OSU Paul and Louise Miller Endowment from the School of Journalism and Broadcasting. He has also received numerous awards for his editorial writing.

Mr. Goodwin, 82, and his late wife of 50 years, Vivian Palm (née), have five children (one deceased), seven grandchildren and one great-granddaughter. He is a member of the Cathedral of the Holy Family.



Jason Lowe

Jason Lowe is a criminal defense attorney practicing law in Oklahoma. He received his bachelor's degree in

political science at Virginia State University and continued his education at the OCU School of Law. Rep. Lowe is the founding member of The Lowe Law Firm, established in 2009 and with offices located in Oklahoma City and Tulsa. He also serves as an Oklahoma state representative for House District 97, chairman of the Oklahoma Legislative Black Caucus and is the first African American attorney from District 97 to be appointed to the House Judiciary Committee.

In recognition of his dedication to the community, Mr. Lowe is the recipient of the prestigious John Green Community Service Award presented by the Oklahoma City Association of Black Lawyers and the Outstanding Service to the Public Award presented by the OBA.

Every year Rep. Lowe hosts a Family Fun Day, a nonprofit charity that, over the last eight years, has

provided more than 10,000 families with free school supplies, health screenings and haircuts so kids can be equipped to start the school year. He also founded the "Know Your Rights" forum that educates Oklahomans on legal matters and obtains feedback on important issues facing the community.

Furthermore, Rep. Lowe founded the Triple E Youth Initiative, a program that provides funds to various local youth departments, including at least \$500 given to local churches monthly to empower, encourage and educate teens and future leaders of tomorrow.

Most recently, Rep. Lowe has successfully secured four consecutive not guilty verdicts for wrongly accused defendants. His success in such trials has allowed him to become a resource for local news stations, including KFOR Channel 4, KOCO Channel 5 and Oklahoma City Fox 25, concerning officer-involved shootings and various legal issues.

Organizations



Greenwood Rising

Greenwood Rising improves race relations in Tulsa through compelling exhibits, engaging programs and interactive reconciliation initiatives. Greenwood Rising is an 11,000-square-foot immersive, educational experience that tells the full story of Tulsa's racial history, with the goal to educate in a way that creates intimacy, builds relationships and develops trust. Tulsans and

visitors from around the world now have the chance to learn from the past, reflect on the present and engage in reconciliation and healing for a better tomorrow.

It provides a visually captivating, emotionally engaging experience that allows visitors to share in the Black Wall Street saga. Greenwood Rising also serves as the cornerstone for the Tulsa Race Massacre educational curriculum to be implemented by the Oklahoma State Department of Education as a core component of social studies for all students in Oklahoma.

Greenwood Rising was the main project of the 1921 Tulsa Race Massacre Centennial Commission, with a total budget of \$18.6 million and an additional \$4 million for programming and operations.

Its success is measured by its ability to: create an unflinchingly honest understanding and knowledge of our shared past, offer education and insight that will transcend divisions throughout Oklahoma and beyond, create an environment that promotes heritage tourism and catalyze citizens to be the change they want to see in the community.

The mission of Greenwood Rising is to educate people about Tulsa's Historic Greenwood District and America's hard racial history to inspire them toward social justice and racial reconciliation at home and beyond. The vision is that Greenwood Rising will be an iconic destination within the Greenwood District ecosystem that evokes thought and catalyzes change around America's hard racial history. Grounded in truth-telling, Greenwood Rising will be a platform for an inclusive, intergenerational, intercultural exchange of historical racial narratives, with personal responsibility, justice and healing in mind. Greenwood Rising's purpose is to:

- Celebrate pioneers and the spirit of the Greenwood District in its different incarnations throughout history;
- Commemorate the Greenwood District by telling the full story – before and beyond the 1921 massacre;
- Improve race relations in Tulsa through immersive education that includes compelling exhibits, engaging programs and interactive reconciliation initiatives;
- Provide educational programs and resources for K-12, adult and lifelong learners;
- Include Greenwood District and the city of Tulsa creation stories, focusing on the different people groups and how they lived together;
- Reference urban renewal, acknowledging it as another layer of racial oppression, replete with psychological, economic and physical stress on an already-marginalized community;
- Offer inspiration and hope for future generations;
- Provide a space for discussion and consideration of “next steps”; and
- Create, through writing and design, a facility that educates visitors and encourages reflection, repeat visitation and engagement, tapping into updatable content and changing gallery space.



Dragon Yoga

Since its founding in 2013, Dragon Yoga has served as a catalyst for advancing diversity, equity, accessibility and inclusion in the Oklahoma City community. Dragon’s commitment to its mission of growth, creative self-expression and evolution through an alignment-based yoga practice that opens the heart has led it to open its doors to Oklahoma City’s most vulnerable communities. Throughout the years, Dragon has provided shelter, volunteer services and financial donations in support of its unhoused neighbors, served as a community gathering place for peaceful demonstrations, led community candlelight vigils and meditations in support and remembrance of victims of racism and abuse of force, and forged bonds with local nonprofits providing direct services to diverse communities in Oklahoma City. Dragon has used its platform in service of many underrepresented populations, including the Black community, the 2SLGBTQIA+ community, the disabled, veterans, human trafficking victims and women and children. Dragon calls upon its kula, or community, to welcome all without bias or judgment and encourages its students to seek the good in all things, especially within themselves and their neighbors because we are all in this together.

Inspired by the renewed movement for change and progress following the murder of George Floyd, the studio emerged from the pandemic in 2020 as Dragon Yoga, no longer hidden, as a symbol of its commitment to equal representation and justice for all. Over the next year, Dragon launched its largest undertaking to date by transitioning to a 100% donation-based yoga studio. Dragon’s transition came as an effort to eliminate financial barriers to forging a deeper unity with each other at a time when its community was being pulled apart. Dragon’s community and instructors regularly donate their time and expertise to holding donation-based meditations and yoga classes as an act of Seva, or selfless service, to one’s community.

In addition, Dragon renewed its commitment to activism by continuing to support organizations serving underrepresented populations in Oklahoma City, including Save Black Boys, Selfless Hands, Poetry and Chill and Black Lives Matter Oklahoma City. Through its efforts and charity-based yoga classes, Dragon has raised more than \$25,000 to provide direct financial support to local nonprofit organizations.

Dragon Yoga continues to devote its resources to creating tangible change in Oklahoma City by serving as a partner with local nonprofits serving underrepresented groups through donation-based yoga classes and meditations from which 100% of the proceeds are donated to charity, sponsoring charity challenges to raise awareness and donations among its members and providing support and volunteering to serve Oklahoma City’s most vulnerable citizens.



Mazaheri Law Firm

Mazaheri Law Firm is known for providing diverse legal services to clients throughout Oklahoma City, the U.S. and around the world since 2009. Each of its attorneys shares common values, a passion for helping people and is familiar with the complexities of their respective practice areas and their broad applications across varying contexts. Always dedicated to its clients and their interests, the firm is highly regarded in the community for its leadership and effective, client-focused legal representation.

The firm is composed of a dynamic team of lawyers and staff. Multiethnic and bilingual backgrounds enable personnel to bring a unique perspective to our representation that few firms can provide. The firm is honored to provide its diverse clientele with representation that they can connect to.

A unique aspect of the firm is its core values, cherished and honored by each attorney:

“Value Harmony, Connect. In a profession often known for impersonal interaction, Mazaheri Law Firm attorneys and staff are genuinely warm, accessible and compassionate. Our clients often come to us at their most vulnerable. Their families may be at stake, their livelihoods may be at risk. We don’t shy away from their feelings or our own. Clients see us as a pillar of strength in difficult moments.

Level Up. We are eager to work, and it shows. We are self-starters. If we can do something, learn something or clarify something, we do it. Our best is our baseline. We work long hours with distressed clients, and we enjoy working in a friendly, productive, re-energizing environment.

Do Right. We do what is right and ethical, always, even when it would be easier not to. That means putting a client’s best interest ahead of what they may want to hear. We value being straightforward about their legal needs and our legal opinion. We balance compassion and tough love when we need to.

Lead with Conviction. Mazaheri Law Firm attorneys and staff approach each case powerfully grounded in quiet strength and calm confidence, qualities that are palpably reassuring to their clients. Our lawyers are credible, dependable, professional experts in their fields of practice. We break down cases, distinguish options and advise our clients based on our experience and the law.

Aim High, Stand Tall. We bring our absolute best to every challenge or opportunity. Our experience and intellect are formidable. We boldly approach each moment as an opportunity to learn and think outside of the box. Finding creative legal ways to attack a problem and identify possible solutions gives us energy and makes us happy to help our clients with confidence. Our attorneys take intelligent risks for the benefit of our clients.”

While the firm’s areas of practice are diverse, its lawyers are leaders in their fields who work hard to deliver high-quality representation. Many of its lawyers are published, teach continuing education to colleagues, webinars to educate business owners and carry a reputation for collaborative work with colleagues and passionate advocacy. The firm offers legal representation in divorce and family law, employment law, business law, real estate law and immigration law, guiding clients through each step, taking a client-focused, proactive and often creative approach to managing its clients’ crises.

The OBA Diversity Committee thanks the sponsors of the 2022 Diversity Dinner for their support in honoring this outstanding group of Diversity Award recipients.

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Smokeball	

New Lawyers Take Oath

BOARD OF BAR EXAMINERS

Chairperson Robert E. Black announces that 235 applicants who took the Oklahoma Bar Examination on July 26-27 were admitted to the Oklahoma Bar Association on Sept. 29 or by proxy at a later date. Oklahoma Supreme Court Chief Justice Richard Darby administered the Oath of Attorney to the candidates at a swearing-in ceremony at the OCU Henry J. Freede Wellness Center and Abe Lemons Arena in Oklahoma City. A total of 376 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Micah Knight, Durant; Tommy R. Dyer Jr., Jay; Juan Garcia, Clinton; Joel Wohlgemuth, Tulsa; Thomas M. Wright, Muskogee; Bryan W. Morris, Ada; and J. Roger Rinehart, El Reno.

THE NEW ADMITTEES ARE:

Kyle Leon Ainge
Benjamin Jacob Reifschneider
Anderson

Caitlin Talley Anderson
Connor Michael Andreen
Kojo Asamoah-Caesar
Caroline Joy Baird
Ashley Jane Baldwin
Samantha Erika Barber
Alexis Simone Barnes
Bailey Shaye Barnes
Mikaela Ashton Barns
Abigail Emma Bauer
Niku Ellen Bayatfar
Matthew James Becker
William Blake Bennett
Charles Parker Blevins
John-Paul Christopher Bloese
Cassandra Kaitlin Bobbitt
Addison Elane Book
Madison Ann Boone
Cynthia June Boshell
Bailee McCall Boyd
Abigail Nicole Brawner
Blaine Warren Brewer
Emily Rose Brown
Lauren Marie Brown
Hannah Elizabeth Bullock
Camille Nicole Burge
Shannon Victoria Busick
Lydia Anne Butay
Emillie Louise Cain

Jake Burnett Callaham
Michael David Campbell
Austin Wade Canfield
Tina Nicole Cannon
Jacob Paul Castagnola
Matthew Charles Cecconi
Taryn Elizabeth-Leigh Chubb
Sara Reed Clark
Stephanie Jane Clifton
Tessa Jean Clinton
Britni Dawn Cobb
Hannah Nicole Coker
Mary Claire Collins
Sarah Beth Conley
Madeline Marie Cook
Ryleigh Jo-Lynne Cooper
Alex Michael Courtney
James Lawrence Crawford
Wil McKenzie Crawford
Collin Butler Crisp
Michael John Crowley
Katherine Marie Crowley Jimenez
Drew Edward Davis
Samuel Kenyon Davis
Jacob Nicholas Denne
Sherrod Michael Donnelly
David Mason Aaron Dossman
Lillian Jade Doyle
Douglas Wayne Driscoll



Candidates raise their right hands as they take the Oath of Attorney.



The OBA welcomed 235 new admittees during a Sept. 29 swearing-in ceremony at Oklahoma City University.

Conner Dalton Dunn
 Matthew Ryan Eads
 Andra Jane Erbar
 Maria Guadalupe Escobar
 Cathleen Grace Falcon
 Quinn Garrett Fields
 Miguel Angel Figueroa
 Jenna Elizabeth Finkle
 Kevin Patrick Finnegan
 William Patrick Flanagan
 Alec Neal Fraser
 Elizabeth Mae Freeman
 Victoria Jade Freeman
 Devin Carolyn Frost
 Allison Ann Irene Furlong
 Clayton Bryant Gaddis
 Ashlyn Renea Garis
 Roy Robert Gean IV
 Deward Grant Gerdorn
 James Chance Gibbs
 Britton Keith Gibson
 Melinda Gomez
 Jessica Lee Goodwin
 Jessica Danielle Govindu
 Dalton Hayes Guthery
 Kale Stephen Hajek
 Shane Lawrence Hammond

Jessica Ryan Haney
 William Christopher Harrison
 Timothy Dylan Hartsook
 Luke Austin Helms
 Alex Christopher Henthorn
 Blythe Karyngton Hicks
 Stephen Clements Hoch
 Leonard Paul Hood
 Kelsey Marie Hull
 James Isaac Hutchison
 Joshua Daniel Ihler
 Karsten Kerns Irwin
 Jennifer Linn Isaacs
 Jessica Marie James Curtis
 Thomas Raymond Jennings
 Breann Nicole Johnson
 Charles Luke Johnson
 Kylee Rachelle Johnson
 Rhyder Murree Jolliff
 Samantha Denece Morgan Jones
 Lauren Nichole Judd Fairchild
 Kristin Nicole Kalani
 Madison Noel Keitges
 Paige Petrotta Kemper
 Ashlynn Rachelle Kipp
 Martin Christian Kipp
 Korie Ann Kirtley

James Keaton Klepper
 Kristin Ruth Knutson
 Elyssa Marie Zortman Kohler
 Shade Candide Kremer
 Joseph Paul Krodel
 Erin Elizabeth Laine
 Abby Lynn Lamprecht
 Shannon Elizabeth Lane
 Charles Luke Laster
 Morgan Michelle Lawson
 Danielle Anjalee Layden
 James Richard Lee
 Zachary Stephen Lein
 Parker Michael Leland
 Brady Ryan Lippoldt
 Ty William Lopez
 Allison Kathryn Lubbers
 Karina Ray Lueck
 Mariah Marie March
 Laura Andrea Martinez Vallejo
 Staci Lane Masquelier-Sweedon
 Mackenzie Elise Masterson
 Amber Danielle McConnell
 Robert Paul McIntire II
 Bailey Lane McKay
 Megan Monet McKenna
 Sean Patrick McKenna



Above: New admittees wave to their friends and families.

Right: Travis Mendoza displays his wall certificate.



Alexander Worthington McKesson
Mason Blair McMillan
Tiara Lanique McMinn
Lucas Miller Meacham
Travis David Mendoza
Regan Lee Miles
Rebecca Anne Moore
Denver Bryan Morrissey Nicks
Bibidh Niroula
Brenda Gomez O'Dell
Christian Charles Osterhout
Katherine Ann Parmer
Elizabeth Anne Patterson
Nocona Louise Pewewardy
Paige Joscelyne Phillips
Margaret Marie Pianalto
Jordan Matthew Piel
Loren Kate Poss
Amy Kathryn Price
Andrew Cristopher Price
Hilary Hewitt Price
Christopher Punto
Jacob William Purdum

Kassandra Quintela
Jon Paul Ray
Garrett James Reed
Jonathan Warner Reiswig
Robert Lee Rembert
Ana Louise Reynolds
Madison Taylor Richard
Joshua Brian Ridgway
Taylor Lee Rimer
Liberty Maclaine Ritchie
Emory Scott Robertson
Kiefer Morgan Rose
Dustin Price Rowe II
Bailey Katherine Ryals
Alexis Nadia Sadeghy
Sarah Elizabeth Sadler
Ryan Gregory Sailors
Malaney Lee Sanders
Jacob Aaron Seidel
Tyler Adam Self
Regina Monica Servin
Othman Nabil Shahin
Adam Christian Simmons

Sarah Margaret Simpson
Sierra Alta Sipes
Laurel Elizabeth Sitton
Logan Ray Slane
John Patrick Slay
Elizabeth Anne Smith
Erin Elisabeth Smith
Sheldon Hunter Smith
Morgan Shea Smithton
Miranda Ann Carol Snodgrass
Kaylee Diane Snyder
Nathan William Solomon
Sydney Morgan Spurlock
Kierstin Nicole Stapleton
Hannah Michelle Stark
Sanho Steele-Louchart
Tyler Andrew Stephens
Ryan Cole Strobel
Jason Alexander Suitor
Jay-Michael Swab
Matthew Aaron Switzer
Jordan Ashley Surayna Tarter
Sarah Elizabeth Todd
Savanna Rae Tryon
Kaitlyn Ann Turner
Chloe Jeannette Tyler
Jonna Lynn Vanderslice Malone
Sealy Rae Vardell
Travis James Vernier
Ujala Aslam Virani
John Henry Walblay
Dillon Alexander Walker
Samuel Marcus Wargin
Meagan Alyce Warne
Jessica Renee Washam
Aubrey Ann Watson
Zayne Robert Whitchurch
Hannah Elizabeth Whitten
Chandler Grace Wilson
Logan Storm Wilson
Megan Leighanne Wimberly
Nathaniel Ray Woo
William Browning Woolston Jr.
Peter Kobrin Wright
Cole Landon Yarborough
Rowdy Louis Yates
Jacob Koal Baird Yturri
Yuanyuan Zhang



LOOKING FOR SOMETHING?

CHECK YOUR BLUE BOOK!

*It's all
in here!*



The Oklahoma Legal Directory is the official OBA directory of member addresses and phone numbers, plus it includes a guide to government offices and a complete digest of courts, professional associations including OBA committees and sections. To order a print copy, call 800-447-5375 ext. 2 or visit www.legaldirectories.com.

Get Involved and Give Back

OBA MEMBERS JOIN committees to get more involved in the association, network with colleagues and work together for the betterment of our profession and our communities. Now is your opportunity to join other volunteer lawyers in making our association the best of its kind – by signing up to serve on an OBA committee in 2023.

More than 20 active committees offer you the chance to serve in a way that is meaningful for you. Committee service takes a small investment of time but pays major dividends in terms of the

friendships you will make and the satisfaction in the work you will do. Serving on an OBA committee is your chance to develop your leadership skills while tackling projects for which you may already have a passion – whether that’s improving access to justice for all Oklahomans, fostering public understanding of the law or helping your fellow lawyers who may be facing challenges with addiction or substance abuse. You can also benefit from working with new information and technology that will help you better serve your clients.

There are many committees to consider, and I invite you to review the full list below. Choose your top three committee choices and fill out the online form at <https://bit.ly/3SjMzcE>.

We will make appointments for 2023 soon! I am looking forward to hearing from you. The OBA will be better for your service!

Thank you!
Brian Hermanson
President-Elect



To sign up or for more information, visit www.okbar.org/committees/committee-sign-up.

Access to Justice

Works to increase public access to legal resources

Awards

Solicits nominations for and identifies selection of OBA Award recipients

Bar Association Technology

Monitors bar center technology to ensure it meets each department’s needs

Bar Center Facilities

Provides direction to the executive director regarding the bar center, grounds and facilities

Bench and Bar

Among other objectives, aims to foster good relations between the judiciary and all bar members

Cannabis Law

Works to increase bar members’ legal knowledge about cannabis and hemp laws

Civil Procedure and Evidence Code

Studies and makes recommendations on matters relating to civil procedure or the law of evidence

Disaster Response and Relief

Responds to and prepares bar members to assist with disaster victims’ legal needs

Diversity

Identifies and fosters advances in diversity in the practice of law

Group Insurance

Reviews group and other insurance proposals for sponsorship

Law Day

Plans and coordinates all aspects of Oklahoma’s Law Day celebration

Law Schools

Acts as liaison among law schools and the Supreme Court

Lawyers Helping Lawyers Assistance Program

Facilitates programs to assist lawyers in need of mental health services

Legal Internship

Liaisons with law schools and monitors and evaluates the legal internship program

Legislative Monitoring

Monitors legislative actions and reports on bills of interest to bar members

Membership Engagement

Facilitates communication and engagement initiatives to serve bar members

Member Services

Identifies and reviews member benefits

Military Assistance

Facilitates programs to assist service members with legal needs

Professionalism

Among other objectives, promotes and fosters professionalism and civility of lawyers

Rules of Professional Conduct

Proposes amendments to the ORPC

Solo and Small Firm Conference Planning

Plans and coordinates all aspects of the annual conference

Strategic Planning

Develops, revises, refines and updates the OBA’s Long Range Plan and related studies

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

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- Scott B. Goode, Oklahoma Bar Association Member

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FROM THE PRESIDENT

continued from page 4

of the events surrounding the murder. As recounted in the book, Chub Anderson fled the Cross Bell Ranch after being shot himself and ran into a police officer who then drove Anderson to the Bartlesville hospital. On the way, Anderson told the officer that Mullendore had been shot by unknown intruders: "Chub said there were two men, one tall with a high forehead, gray haired and the other man was chunky and sort of curly-haired, dark ..." Later, on page 327, Kwitny reports that Tulsa police received a tip from Cleo Epps, noted Tulsa bootlegger, that two men had come to Tulsa in the summer of 1970 looking to hire a professional killer. Osage authorities never got to question Epps as she disappeared in November 1970.

Among the primary suspects in the Nelson bombing were Albert McDonald and Tom Lester Pugh. Cleo Epps was said to have given McDonald access to dynamite she had buried on her farm.

Incredibly, at the time, Oklahoma had no laws governing the sale of dynamite or explosives. Dubbed "Queen of the Bootleggers," it was said that Cleo Epps controlled the moonshine traffic in several eastern Oklahoma counties during the 1940s and 1950s. According to the *Tulsa Tribune* article "Cleo Epps; Warm, Gentle Woman ...," Epps was very upset about the bombing, saying, "I never dreamed they'd do something like that ... what if that little (Nelson) girl had gotten in the car with her daddy?" District Attorney S.M. "Buddy" Fallis Jr. persuaded Epps to appear anonymously before a grand jury investigating the bombing.

The "Queen of the Bootleggers" was last seen on the evening of Nov. 12, 1970, when she left a friend's house with McDonald. Eight days later, her pickup truck was found in the parking lot of Union Square Shopping Center. It wasn't until Feb. 24, 1971, that her body was discovered in a remote area near the Creek County line.

The discovery occurred while the grand jury was continuing its investigation into the Nelson bombing. Three days earlier, the In Court Lounge, right across the street from the courthouse, was bombed. The proprietor theorized it was because grand jury witnesses had been "hanging around" there.

No trial ever occurred over the bombing, and the exact motivation was never established. In 1973, McDonald was charged with the murder of Cleo Epps. Due to the extensive publicity and tie-in with the bombing of Judge Nelson, the case was moved to Bryan County. McDonald was convicted and sentenced to life imprisonment but was murdered in prison on April 13, 1978.

The next time you enter the courthouse and wait in line to pass through security, remember the "outlaw" days of days gone by. Remember that civics, civility and collaboration can lead us to a better association and society. As my year as president comes to an end, I am grateful to everyone who has provided support and guidance in each and every encounter. The incoming president, Brian Hermanson, and president-elect, Miles Pringle, will guide this organization to new heights. In closing, I ask you to reflect on those members who have brought you to this point in your legal career. I ask you to reflect on your own commitment to welcoming new, diverse lawyers into the fold of our organization. Each of us should dedicate our careers in law as a higher calling to achieve justice for all under the rule of law.

The next time you enter the courthouse and wait in line to pass through security, remember the "outlaw" days of days gone by. Remember that civics, civility and collaboration can lead us to a better association and society.

Creating the New Normal

By John Morris Williams

THIS YEAR, WE ARE fortunate to hold the Annual Meeting without having to attend to COVID-19 restrictions. However, after COVID-19, the world will never be the same. That is not necessarily a bad thing. Just different. Many pre-pandemic prophets predicted online learning and virtual meetings would be the norm in the not-too-distant future. No date was set, but we were told it was coming. COVID-19 fast-forwarded us five to 10 years. While there were a few things to learn, the OBA mostly had this down and was well prepared to make the change instantaneously in the spring of 2020.

As we move to the “new normal,” having a virtual component to the Annual Meeting is just assumed. In 2020, more than 2,000 members attended some portion of the all-virtual Annual Meeting. It was good we were able to provide quality programming with the opportunity for everyone to attend. The new normal will require consideration of technology in everything we do. I believe the ability to accommodate members who could not otherwise attend is essential to good member services. Twenty-five percent of OBA members live out of state. That means we have more members living out of state than we do in Tulsa County. Having the ability and desire to provide services to our members, regardless of location, is essential.



So what does that mean for the average OBA member? It means most OBA services will be sought out first online. There will be fewer in-person meetings. The utilization of almost entirely online services with the OBA means fewer staff contacts and personal relationships. On the other hand, a virtual bar association is 24/7/365, and members can meet all their obligations to continue licensure at any time from anywhere. Staff will still be providing services and producing products. How they are obtained and utilized will be, in the not-too-distant future, very customizable.

Another good thing in the new normal is that mobility allows participation from anywhere. Mobile devices such as phones, tablets and iPads – when working through cell towers as opposed to the internet – can often deliver a better user experience. In addition to allowing participation from anywhere, having these devices handy also provides a good backup if there is a distribution of your internet connection. On more than one occasion, I have signed out of a virtual meeting and re-entered using my cell phone, getting a much better connection and overall improvement in sound quality. Either way, make sure you

have a secure connection for confidential or sensitive information.

While having a good camera is desired, the surveys show that so-so video is tolerable if one has good audio quality. Most of the popular videoconferencing systems have virtual backdrops you can use if you are away from your office or suddenly wish your office to look different. Another reason to use a virtual background is to hide confidential documents scattered about your workspace. Additionally, while remote work

dress codes were relaxed, as business returns to the new normal, what was normal for home is not normal for the office – especially in professional settings. Dressing professionally is the order of the day when in professional settings, even if the setting is remote. If you are appearing virtually in court, dress as if you were personally in court. If you are appearing in court by video, solid colors work best, accessories like earrings that could produce noise should be avoided, and bold patterns

or skin-toned apparel is advised against.

Lawyers generally sell their time for a living. The new normal has the potential for time savings and better time management. Be involved in your association, and help us build the best new normal possible.



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



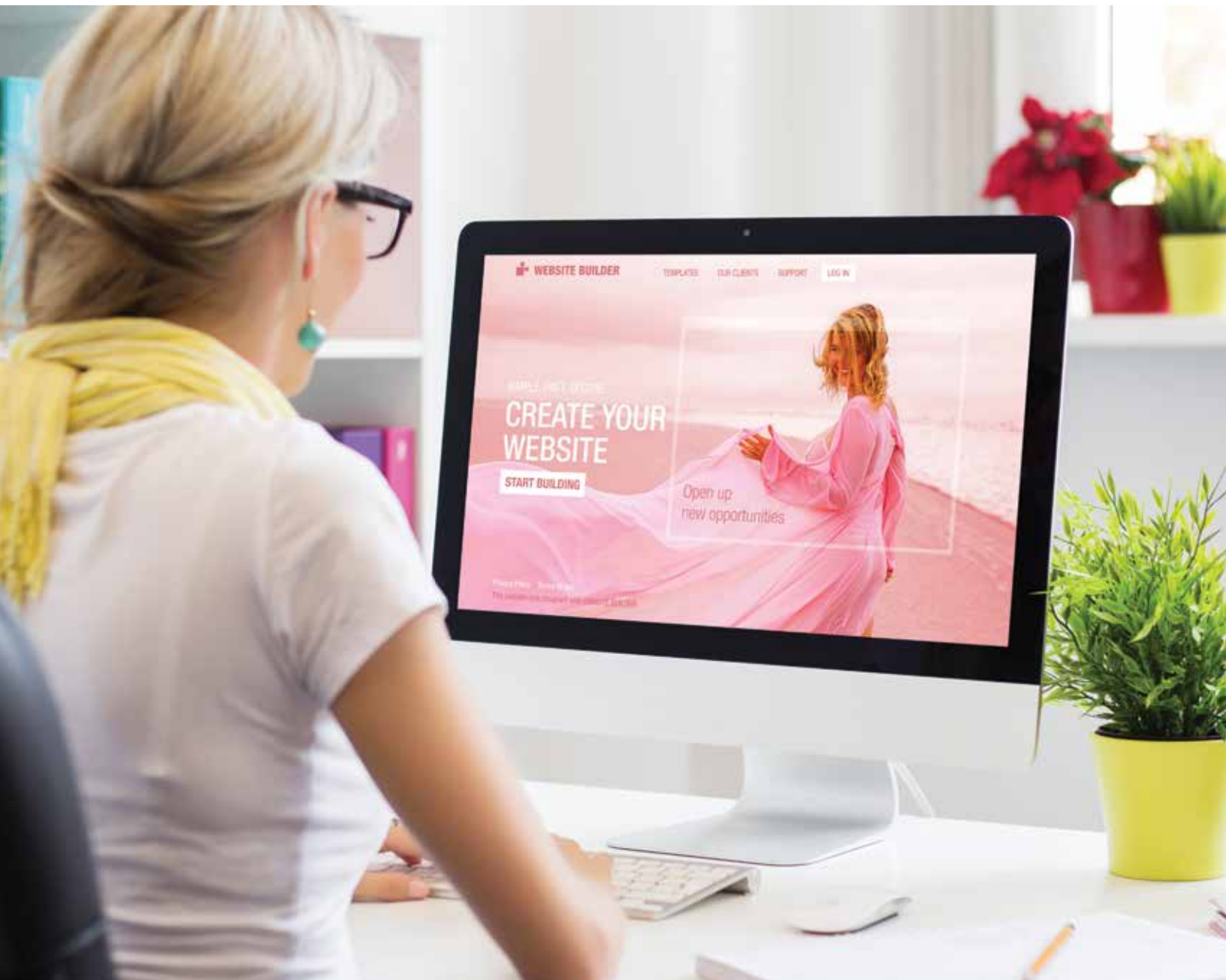
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Attend section and committee meetings remotely via BlueJeans.

Use a mobile device, phone or computer. For more information, visit www.okbar.org/bluejeans.

Using Technology Tools to Build Financial Security

By Julie Bays



BUSINESSES EXIST TO MAKE a profit. Lawyers often go into practice with the goal of helping their clients with their legal needs. Profits often aren't the first thing a lawyer thinks about daily, but it should be a primary goal every day.

Practicing law can be stressful, and lawyers have enormous responsibilities. As a business owner, a small firm lawyer wears many hats acting as CEO, CIO, director of marketing, quality control and labor. Some lawyers do not have practical training in business planning, accounting, bookkeeping or finance. If a lawyer wants to be successful and the goal is to make a profit, they need to have a basic understanding of their financial condition. Technology can enhance a law firm's ability to develop, understand and maintain financial security.

Planning is the key to a successful practice. Law firms should start with a broad outline and fill in the details as they figure out what processes they will use going forward. A broad outline could start with attracting potential clients, retaining the client, managing the client file and closing the file.

ATTRACTING CLIENTS

Today it is imperative that a solo or small law firm have an attractive website that is put together professionally and looks good on a phone

or tablet. Consumers depend on their phones to search for businesses, and lawyers are lagging in this regard. There are products that can help build a professional-looking website. Companies such as Squarespace and GoDaddy Website Builder are easy to use and will host a website for less than \$20 a month. For more support and at a higher cost, companies like LawLytics and Omnizant specifically design websites for lawyers and offer hosting and analytics.

Besides a website, law firms need to claim their Google My Business profile. This is a free service Google offers, and it is the way for a firm to show up in a Google search. It also gives the firm the ability to change the hours of service and make other announcements. For instance, a lawyer who decides to work regular evening hours may attract more clientele.

Social media is another way to attract clients. Whether a firm uses Facebook, Twitter or another platform, the goal should be to create enough interest that it steers a client to the lawyer's website. Using short how-to videos is an effective way to get started. Giving out free legal tips helps a law firm engage potential clients.

Creating and editing videos has never been easier. Over the last couple of years, companies

have made improvements to their products, making them simpler for everyone to use. By now, most lawyers are familiar with Zoom and how to record on that platform. Late last year, Microsoft 365 updated its PowerPoint features when recording. It now offers a broader array of features such as editing each slide separately or removing the speaker's cameo and easily exporting the videos. Loom is another product that offers an easy way to record and publish a video. If a firm wants to get creative, video editors such as Descript and Camtasia are more robust in these capabilities.

RETAINING THE CLIENT

For solo and small law firms, individual clients usually have something traumatic happening in their life. These potential clients need to communicate with someone immediately. In a recent study, the Legal Services Corporation's 2022 The Justice Gap report found that a shocking 80% of individuals across income lines did not seek legal help for legal issues they faced. Cost, or perceived cost, is a frequent barrier. Just 59% of moderate-income individuals were confident in their ability to find a lawyer they could afford. Additionally, people reported not being confident that

Traditionally, law firms used receptionists to communicate with potential clients and schedule consultations. Today, there are multiple ways to communicate using technology.

a lawyer could help them in their situation.

Prompt communication with a potential client makes it easier to retain that client. Traditionally, law firms used receptionists to communicate with potential clients and schedule consultations. Today, there are multiple ways to communicate using technology. One way is to use a virtual receptionist such as Ruby or SmithAI. These services offer live people to communicate with the potential client, but they also offer live chat and chatbots that can give instant answers to basic questions on a website.

Another way to communicate is through automated intake forms and calendaring. Most of the practice management software for law firms now offers automated intake forms. Some of these products keep innovating with recent updates and are adding customer (client) relationship management (CRM) software. CRM software offers automated email campaigns and marketing, lead follow-up reminders and statistical reports. In a study last year, only 25% of law firms use CRM software. However, it should be easier now for many who do use practice management software. MyCase, PracticePanther and Clio all have CRM that works

within their software. Lawmatics and Lawcus are stand-alone products that integrate with many practice management solutions.

MANAGING THE CLIENT FILE

Using a practice management software solution is the only way to efficiently manage the client file. When used to their potential, these products save time and money. For one thing, lawyers getting paid for their work is important. In a recent survey, 65% of consumers prefer to make payments electronically. Most of the practice management software companies offer credit card payment processing either using their own brand or integrating with one of the OBA's member benefits, LawPay.

Law practice solutions also help lawyers with easy timekeeping and billing. For example, Clio and Smokeball are two solutions that integrate with Microsoft Outlook and Word, so a timer is readily available when working on a client file. They can track communications, reduce redundancy and run reports for business health check-ups. They make it easier to check for conflicts. Most of them now offer client text messaging and client portals. Practice management solutions integrate with Google and Microsoft Outlook calendars.

Lawyers should try out these products before they commit to one of them. They all offer great features, but the user experience is important. If lawyers and staff are not going to really learn and use the product, it is a waste of everyone's time and money. Clio, MyCase, PracticePanther, Cosmolex and Rocket Matter are practice management software solutions that offer short free trials and provide OBA members discounts. Lawyers need to log in to their MyOKBar account and click on Practice Management Software Benefits on the right side of the page. Some companies are also offering free data migration from another product.

CONCLUSION

Law firms can increase efficiency and their bottom line by taking the time to invest in legal technology. The staff with the OBA Management Assistance Program constantly reviews and tests new and updated products. We are here to assist with your technology needs.

Ms. Bays is a practice management advisor in the OBA Management Assistance Program, aiding attorneys in using technology and other tools to efficiently manage their offices.



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Meeting Summary

The Oklahoma Bar Association Board of Governors met Sept. 16, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended the retirement luncheon for outgoing Director of Administration Craig Combs, an Annual Meeting planning meeting, a planning meeting of the Executive Search Committee and drafted his monthly column for the *Oklahoma Bar Journal*.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he reviewed applicants for the role of OBA executive director, reviewed the proposed OBA 2023 budget, met with Executive Director Williams and Administration Director Brumit to go over the budget and attended the Budget Committee meeting. He also virtually attended the Law Day Committee meeting, the Membership Engagement Committee meeting and the Oklahoma Bar Foundation Board of Trustees meeting. He attended the Board of Governors dinner meeting in Oklahoma City. He presented a CLE during the Oklahoma District Attorneys Association first assistant training and attended that association's board meeting, legislative awards banquet and Technology Committee meeting and also attended the District Attorneys Council board meeting.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he attended the retirement luncheon for outgoing Director of Administration Craig Combs as well as meetings of the Budget Committee and Membership Engagement Committee. He also worked on issues related to the Executive Search Committee. He attended the Oklahoma County Bar Association *Briefcase* Committee meeting, wrote an article for the *Briefcase* and attended the OCBA "Raising the Bar" event.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended meetings with President-Elect Hermanson, the Budget Committee and OBA staff related to the 2023 budget. He also attended meetings of the Membership Engagement Committee, Audit Committee, Board of Bar Examiners and YLD Board of Directors. He coordinated and attended the monthly staff meeting and training and attended the retirement luncheon for outgoing Director of Administration Craig Combs.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended the retirement luncheon for outgoing Director of Administration Craig Combs.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Budget Committee meeting and the retirement luncheon for outgoing Director of Administration Craig Combs. She also attended the Oklahoma County Bar Association dinner and meeting to welcome that association's new president, Cody Cooper. **Governor Bracken** reported by email he met with the Department of Veterans Affairs homelessness coordinator to discuss the Heroes Program and how the OBA can assist disabled veterans. He then attended the annual Sooner Stand Down for homeless veterans and assisted veterans with their legal questions during the event. He also spoke with the Legal Aid clinic on how to help veterans with legal issues. He attended the Oklahoma County Bar Association Board of Directors meeting and the "Raising the Bar" event. **Governor Dow** reported she attended the Family Law Section meeting, Cleveland County Bar Association meeting and Oklahoma County Bar Association Family Law Section meeting. **Governor Garrett** reported she chaired the Audit Committee meeting, where the 2021 independent auditor's report was received and approved. She also chaired the Cannabis Law Committee meeting and attended the ABA Cannabis Law and Policy Committee meeting as a member. As a member of that committee, she has been asked to present at the ABA Midyear Meeting Cannabis CLE in February 2023.

Governor Rochelle reported he attended the Comanche County Bar Association monthly meeting with CLE and the OBA Audit Committee meeting. **Governor Vanderburg** reported he attended the August Oklahoma Association of Municipal Attorneys meeting, fall conference and annual membership meeting. He also attended the Oklahoma Municipal League annual convention. **Governor White** reported he attended meetings of the Legal Internship Committee and Audit Committee.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended meetings of the Access to Justice Committee and Budget Committee. He also attended the

virtual YLD meeting, where he recapped the ABA meeting in Chicago, and the division discussed its upcoming elections. The next meeting is set for Sept. 24 at the bar center. He also attended the retirement luncheon for outgoing Director of Administration Craig Combs.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the hearing room at the bar center has been recently upgraded with new technology equipment to allow for better videoconferencing. She also said in her report that between Aug.1 to Aug. 31, the Office of the General Counsel received 18 formal grievances and 73 informal grievances.

These numbers compare with 21 formal grievances and 95 informal grievances respectively during the same time period last year. From Aug.1 to Aug. 31, there were six disciplinary cases and one petition for reinstatement awaiting decisions from the Oklahoma Supreme Court. As of Aug. 31, 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 are two grievances awaiting a private reprimand and 11 grievances to be filed as Formal Charges with the Oklahoma Supreme Court. Furthermore, upon the successful completion of the Attorney Diversion Program, participating attorneys are to receive private reprimands involving 14 grievances and letters of admonition involving 15 grievances. 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 reported the **Solo & Small Firm Conference Planning Committee** has discussed possible funding mechanisms for future conferences that would offset expected price increases related to hospitality at many of the state's hotel and conference venues. He also reported the **Access to Justice Committee** met and discussed the upcoming Access to Justice Summit that will

Governor Erwin reported the Solo & Small Firm Conference Planning Committee has discussed possible funding mechanisms for future conferences that would offset expected price increases related to hospitality at many of the state's hotel and conference venues.

take place Oct. 21, received updates on evictions and announced that a guest speaker will address the committee's next meeting regarding recently passed legislation pertaining to language access in criminal courts. Governor Ailles Bahm reported the **Bench and Bar Committee** is expecting changes in its leadership. President-Elect Hermanson reported the **Membership Engagement Committee** recently approved a suggested revision to the OBA Social Media Policy for the board's consideration and shared that 170 members have registered for the free CLE to promote the Fastcase member benefit. The committee also heard from Vice President Pringle who identified a proposed mobile app that would assist members and suggested the committee take on developing the app and determining what functionality is most important to its users. Governor Garrett reported the **Cannabis Law Committee** is getting national recognition via the ABA and said that ancillary cannabis law issues, such as banking, have been identified as critical issues at the national level. She also said the **Lawyers Helping Lawyers Assistance Program Committee** is meeting regularly and has identified a need for help in expanding the monthly discussion groups to non-metro areas. Governor White said the **Legal Internship Committee** met and discussed its Licensed Legal Intern of the Year Award to be presented at the OU alumni luncheon during the Annual Meeting. He also said the Criminal Law Section will be adding an Intern of the Year Award beginning in 2023. Vice President Pringle reported the **Legislative Monitoring Committee**, which he currently chairs, is seeking new leadership since he will be moving

to the role of OBA president-elect in 2023. Governor Smith reported the **Diversity Committee** has extended the nomination deadline for its annual Diversity Awards and encouraged the board to submit nominations.

OBA SOCIAL MEDIA POLICY

The board passed a motion to approve changes to the Social Media Policy that was revised and adopted by the Board of Governors on April 22, 2022.

APPROVAL OF 2021 AUDIT REPORT

The board voted to accept the Audit Committee's recommendation for do passage of the 2021 Audit Report by Smith Carney.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the Boiling Springs Legal Institute, Sept. 20, Woodward; Swearing-In Ceremony for new admittees, Sept. 29, Freede Wellness Center at OCU, Oklahoma City; OBA Women in Law Conference, Sept. 30, Civic Center Music Hall, Oklahoma City; Third Annual Access to Justice Summit, Oct. 21, Oklahoma City; OBA Annual Meeting, Nov. 2-4, Oklahoma City Convention Center, Oklahoma City; and the Board of Governors holiday party, Dec. 8, Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in October, 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 2 p.m. on Wednesday, Nov. 2, at the Oklahoma City Convention Center in conjunction with the Annual Meeting.

THURSDAY,
DECEMBER 8, 2022

8 a.m. - 4:40 p.m.

LIVE REPLAY

MCLE 8/4

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when presented **WITH HUMOR.**



A COMEDIC DE-BRIEFING OF THE LAW: 2022-2023

FEATURED SPEAKER:

Joel Oster, Comedian of Law, LLC

This class is a comprehensive de-briefing of the law. Starting with ethics, we review the crazy predicaments some ethically challenged attorneys have found themselves. You will have to decide based on the severity of the facts and the relevant model rule, would you take a deal for that violation. While Hollywood might not be setting the finest examples when it comes to actual morals and ethics, they do a good job of exhibiting legal ethics. We will explore the Model Rules through the eyes of Hollywood. From Hollywood, it's not a long journey to our legal rock stars — the Nine! The Supreme Court, aka, the Real League of Justice, has been busy exerting their superhero legal powers. We will review recent landmark Supreme Court cases. Finally, we will take a countdown of the Top 10 Wacky cases. You might be surprised what you will learn about legal strategy from these headline cases.

ABOUT OUR SPEAKER:

Joel is a seasoned litigator and regular speaker to attorneys and non-attorneys alike. He currently is in private practice in Kansas City, specializing in constitutional litigation, campaign finance, sports law and appellate advocacy. He previously served as senior counsel with Alliance Defending Freedom at its Kansas City Regional Service Center. While at ADF, he was counsel for the Town of Greece, New York in the landmark case *Galloway v. Greece*. Joel argued the case before the United States District Court for the Western District of New York and the Second Circuit and was part of the legal team presenting the case to the U.S. Supreme Court where they successfully defended the Town against a challenge to its practice of opening its sessions with an invocation. Oster earned his J.D. in 1997 from the University of Kansas School of Law. He is admitted to the bar in Kansas, Missouri, Florida, and numerous federal courts.

Disclaimer: All views or opinions expressed by any presenter during the course of this CLE is that of the presenter alone and not an opinion of the Oklahoma Bar Association, the employers, or affiliates of the presenters unless specifically stated. Additionally, any materials, including the legal research, are the product of the individual contributor, not the Oklahoma Bar Association. The Oklahoma Bar Association makes no warranty, express or implied, relating to the accuracy or content of these materials.

Oklahoma Bar Foundation Announces Grantee Partners

THE OKLAHOMA BAR FOUNDATION is excited to announce \$643,624 in grants to 37 nonprofit programs for funding for fiscal year 2023. These programs are expected to assist over 58,000 Oklahomans with legal services and support, including children and families, court-ordered diversion program participants, domestic violence survivors, refugees, immigrants and others in need of civil legal aid and law-related education.

Grant funding for OBF Grantee Partners is made possible from Interest on Lawyer Trust Accounts (IOLTA) and OBF fundraising, including the OBF's 75th anniversary event, Diamonds & Disco.

OBF GRANTEE PARTNER ORGANIZATIONS

Grantee	Program/Service	Area of Service	Amount	Lives Impacted
CASA of Canadian County	Advocacy for Abused Children	Canadian County	\$10,000	131
CASA of Southern Oklahoma	Advocacy for Abused Children	Carter County	\$10,000	72
CASA for Kids	Advocacy for Abused Children	Kay, Logan and Payne counties	\$7,500	212
CASA of Northeast Oklahoma	Advocacy for Abused Children	Rogers, Delaware and Washington counties	\$10,000	202
CASA of Oklahoma County	Advocacy for Abused Children	Oklahoma County	\$10,000	726
CASA of Western Oklahoma	Advocacy for Abused Children	Beckham, Custer and Washita counties	\$10,000	223
Catholic Charities of Eastern Oklahoma	Immigration Legal Services	Muskogee, Osage and Tulsa counties	\$15,000	890
Catholic Charities of Oklahoma City	Immigration Legal Services	Canadian, Cleveland and Oklahoma counties	\$25,000	624
Center for Children and Families	Court Ordered Divorce and Co-Parenting Program	Cleveland and Oklahoma counties	\$12,000	1,537
Citizens for Juvenile Justice	Literacy Initiative	Oklahoma County	\$4,399.50	75
Citizens for Juvenile Justice	Connect to Redirect Program	Oklahoma County	\$4,725	1,500
Community Crisis Center	County Court Advocates	Craig, Delaware and Ottawa counties	\$7,000	550
Domestic Violence Intervention Services	Domestic Violence Legal Program	Tulsa and Creek counties	\$12,000	3,312
Historical Society of the U.S. District Court Western District	Law-Related Educational Film	Statewide	\$2,500	400
Legal Aid Services of Oklahoma	Civil Legal Services for Low-Income Oklahomans	Statewide	\$85,000	25,000

Marie Detty Youth and Family Services	Domestic and Sexual Violence Prevention Services	Caddo, Comanche and Cotton counties	\$12,000	899
Mary Abbott Children's House	Forensic Interviews for Abused Children	Cleveland, Garvin and McClain counties	\$5,000	1,000
Mental Health Association of Oklahoma	Municipal Services Docket	Tulsa County	\$16,000	240
OBA Young Lawyers Division Mock Trial	High School Mock Trial Program	Statewide	\$50,000	750
OCU Wills Clinic	American Indian Wills Clinic	Statewide	\$30,000	100
Oklahoma Access to Justice Foundation	Advocacy and Support for Access to Justice Services	Statewide	\$8,000	500
Oklahoma Appleseed Center for Law and Justice	Mental Illness and Criminal Law Education	Statewide	\$7,500	10,000
Oklahoma Guardian Ad Litem Institute	GAL Services for Low-Income Families	Statewide	\$40,000	235
Oklahoma Lawyers for Families	Legal Services for Abused Children and Parents	Canadian, Logan and Oklahoma counties	\$50,000	1,826
ReMerge of Oklahoma County	ReMerge Diversion Program	Statewide	\$5,000	85
Teen Court	First-Time Juvenile Offender Peer Court	Comanche County	\$15,000	1,050
The Care Center	Victim Legal Services and Forensic Interviews	Statewide	\$8,000	1,000
The Spero Project	Immigration Legal Services	Canadian, Cleveland and Oklahoma counties	\$20,000	350
The Spring Shelter	Sex Trafficking and Domestic Violence	Statewide	\$8,000	2,259
Trinity Legal Clinic	Community Justice Initiative	Canadian, Cleveland and Oklahoma counties	\$40,000	300
Tulsa Lawyers for Children	Legal Services for Abused Children	Tulsa County	\$40,000	275
University of Tulsa Legal Clinic	Immigrants Rights Project	Statewide	\$20,000	400
Western Plains Youth & Family Services	Counseling Services for Juveniles in Detention	Ellis, Harper and Woodward counties	\$12,000	49
YMCA of Greater Oklahoma City	Youth and Government Program	Oklahoma County	\$5,000	789
YWCA Tulsa	Immigration Legal Services	Rogers, Tulsa and Wagoner counties	\$12,000	668
Youth and Family Resource Center	Advocacy for Abused Children	Lincoln and Pottawatomie counties	\$5,000	56
Youth Services of Tulsa	First-Time Juvenile Offender Peer Court	Tulsa County	\$10,000	400
TOTAL:			\$643,624.50	58,685

You can support OBF Grantees by joining as a Partner for Justice. Sign up using the form on the next page.

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Make access to justice a priority in your charitable giving!

Partners Advancing Justice



Partners Advancing Justice

Individual giving program – giving starts at \$10/month or \$100/year.



Community Partners for Justice

Group annual giving program – giving starts at \$1,000.



Legacy Partners for Justice

Leave a legacy by making a planned gift to the OBF. Joining as a Legacy Partner is one of the most powerful actions you can take to ensure justice is possible for all.



More Ways to Support the OBF

Cy Pres

Leftover monies from class action cases can be designated to the OBF's Court Grant Fund or General Fund.



Memorials & Tributes

Make a gift in honor of someone – OBF will send a handwritten card to the honoree or their family.



Unclaimed Trust Funds

Contact the OBF office if you have unclaimed trust funds in your IOLTA Account (405-416-7070 or foundation@okbar.org).



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Pardon My Poultry

By Dylan D. Erwin

IF LAST MONTH'S ARTICLE was any indication, I'm a big fan of themes. Now that the ghouls and goblins have retreated into attic storage for another swift 365, it's time to turn our minds to something much less frightening: from carving pumpkins to baking them. The autumn winds turn brisk, and winter begins making its presence known. With that cold, though, comes the greatest holiday of the year; the holiday in which your only obligation is to eat. Thanksgiving.

Everyone has their own traditions associated with the great American mastication marathon. For my family, the one-two punch of the Macy's Thanksgiving Day Parade, followed by the National Dog Show is essential. For some, it's all about football – both on TV and in the backyard. For others, at least one can assume based entirely upon the laws of probability, Thanksgiving is all about the White House Thanksgiving turkey pardoning. It's this third tradition I'd like to spend some time considering.

For the uninitiated, every year shortly before Thanksgiving, the U.S. president is presented with a live turkey from the National Turkey Federation. The president, per tradition, issues a ceremonial pardon, saving the turkey from death via the dinner table.

This incredibly bizarre, somewhat problematic and undeniably American tradition is one of



uncertain origins. It all began in the 1870s with a Rhode Island poultry dealer named Horace Vose.¹ Mr. Vose began sending turkeys to the White House in a much simpler time for U.S. politics. The Poultry King continued to gift his birds to the first families until his death in 1913.² Thereafter, the turkey gifting became a free-for-all, with turkeys playing the part of Jimmy Stewart and making their way to our nation's capital. The democratic dissemination of turkeys ended in 1947 when the presentation of turkeys became something more official, with birds coming from the poultry industry itself.³

The tradition we know and love (?) today began with President John F. Kennedy on Nov. 19, 1963, but it did not become an annual tradition until the administration of President George H.W. Bush.⁴ Although many would argue that the tradition of pardoning turkeys, *in general*, began all the way back in 1863 when President Abraham Lincoln granted clemency to a turkey destined for Christmas dinner.⁵

So as you sit down for Thanksgiving dinner in a few short weeks and carve into your turkey, or your Tofurky (as a recovering vegan, the word still gives me chills), look around the table at your family and remember, no matter how much you might disagree with your grandson's politics, your daughter's new septum piercing or your son's insistence on wearing his AirPods at the dinner table so he can listen to his "angry music," think on the Thanksgiving pardon and its history, replete with bipartisan comradery. If political differences can be set aside to save the life of a turkey, a two-hour dinner is a cakewalk.

So, my friends, enjoy your November. I am thankful I have the chance to write to you all once a month.

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.

ENDNOTES

1. Monkman, Betty C., "Pardoning the Thanksgiving Turkey," The White House Historical Association, <https://bit.ly/3VfiPjE>.

2. *Id.*

3. *Id.*

4. "Which president started the tradition of pardoning the Thanksgiving turkey?" <https://bit.ly/3fWcU2N>.

5. King, Gilbert, "The history of pardoning turkeys began with Tad Lincoln." *Smithsonianmag.com*, <https://bit.ly/3MkyoCq>.

FOR YOUR INFORMATION

JUDGE HOLMES NAMED CHIEF JUDGE

Judge Jerome A. Holmes became Chief Judge of the 10th Circuit Court of Appeals on Oct. 1. He was appointed to the 10th Circuit in 2006 by President George W. Bush.

Judge Holmes received his bachelor's degree from Wake Forest University and his J.D. from the Georgetown University Law Center in 1988, where he was editor-in-chief of the *Georgetown Immigration Law*

Journal. Upon graduation, he served as a law clerk for Judge Wayne E. Alley of the U.S. District Court for the Western District of Oklahoma and later for Judge William J. Holloway Jr. of the 10th Circuit Court of Appeals.

After his clerkships, Judge Holmes served as an associate in private practice for a few years with a law firm in Washington, D.C., before returning to Oklahoma in 1994 as an assistant U.S. attorney for the Western District of Oklahoma. He served in several leadership roles in the U.S. Attorney's Office, including deputy chief of the Criminal Division. While serving as an assistant U.S. attorney, he took a leave of absence and earned a master's in public administration from Harvard University's John. F. Kennedy School of Government.

In 2005, Judge Holmes returned to private practice, focusing on white-collar criminal defense, complex civil litigation and corporate law until his appointment to the bench in 2006. Since joining the bench, he has served several terms on the 10th Circuit's Judicial Council. He is currently completing his term on the Judicial Conference of the United States' Committee on Court Administration and Case Management.

The 10th Circuit, with administrative headquarters in Denver, encompasses the states of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming. Judge Holmes will continue to work from his chambers in Oklahoma City.



MEMBER DUES STATEMENTS ARE AVAILABLE ONLINE

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

Members can pay their dues by credit card online at MyOKBar or by mailing a check to the OBA Dues Lockbox, P.O. Box 960101, Oklahoma City, OK 73196. Dues are due Monday, Jan. 2, 2023.

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Friday, Nov. 11, in observance of Veterans Day. The bar center will also be closed Thursday and Friday, Nov. 24-25, for Thanksgiving and Monday and Tuesday, Dec. 26-27, for Christmas.



THE 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.

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/3lpCrec>, and be sure to find the OBA on Twitter, Facebook and Instagram.



LHL DISCUSSION GROUP HOSTS DECEMBER MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Dec. 1 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Dec. 8 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.

MCLE DEADLINE APPROACHING

Dec. 31 is the deadline to earn any remaining CLE credit for 2022 without having to pay a late fee. The deadline to report your 2022 credit is Feb. 15, 2023. As a reminder, the annual ethics requirement is now two credits per year. The 12 total annual credit requirement did not change.

Not sure how much credit you still need? You can view your MCLE transcript online at www.okmcle.org. Still need credit? Check out great CLE offerings at www.okbar.org/cle. If you have questions about your credit, email mcle@okbar.org.

• NOTICE OF PETITION FOR REINSTATEMENT •

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF LAURE A. MCCUTCHEON (FORMERLY LAURE M. RESIDES), SCBD # 7317 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 Laure A. McCutcheon (formerly Laure M. Resides) 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 **TUESDAY, NOVEMBER 29, 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

ON THE MOVE

Lorrie Bamford has been named general counsel for ECL Entertainment LLC and Kentucky Downs LLC. She will manage and oversee all legal aspects of the development activities as well as the management and oversight of all regulatory and compliance matters for the businesses.

Ms. Bamford was recently named a 2022 Honoree for the Patricia Becker Pay It Forward Award through Global Gaming Women and a finalist for *The Journal Record's* Woman of the Year for the second year in a row. She was also a featured speaker for TEDxUCO, Oklahoma Women in Lodging, The Better Business Bureau of Central Oklahoma and the Oklahoma Indian Gaming Association, speaking on resilience and confidence.

Miguel Angel Figueroa, Amanda Mayo Finch, T. Dylan Hartsook, Lucas Meacham, Sarah Simpson and Chandler G. Wilson have joined the Oklahoma City office of Crowe & Dunlevy. Mr. Figueroa assists clients with general commercial litigation matters. Ms. Mayo Finch is a member of the firm's Litigation and Trial Practice Group. Mr. Hartsook assists clients in a variety of commercial disputes in the areas of construction, product liability, real estate and litigation. Mr. Meacham focuses his practice on a broad range of business and corporate matters, including banking and financial institutions, corporate law and securities in addition to private wealth. Ms. Simpson is a registered patent agent with the U.S. Patent and Trademark Office. She assists clients with patent

prosecution and trademark rights. Ms. Wilson practices in the area of estate planning, including trust and estate administration.

Jon Paul Ray has joined the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds as an associate attorney. He received his J.D. from the TU College of Law in 2021 and practices civil litigation. While in law school, Mr. Ray was a member of the Faculty Honor Roll and served as the president of the Student Bar Association, executive director of the Board of Advocates, student ambassador of the Admissions Office and treasurer of the Black Law Students Association.

Jeffery D. Trevillion Jr. was named chair of Crowe & Dunlevy's Criminal Defense, Compliance and Investigations Practice Group. He is an experienced trial lawyer and certified public accountant and routinely represents clients facing dual civil and criminal investigations by law enforcement and regulatory agencies. He is a member of the Criminal Justice Act Panel for the Western District of Oklahoma, the Oklahoma Criminal Defense Lawyers Association and the National Association of Criminal Defense Lawyers. Active in civic and professional organizations, Mr. Trevillion serves as the past board president of the Oklahoma Bar Foundation and has served as a board member or trustee for the Oklahoma County Bar Association and Foundation, the Oklahoma City Association of Black Lawyers and the Professional Responsibility Tribunal.

Collin Walke has joined the Oklahoma City office of Hall Estill as special counsel with responsibility for developing and leading the firm's cybersecurity and data privacy practice. Mr. Walke primarily practices in the cybersecurity and data privacy, litigation, healthcare and general corporate areas. Prior to joining the firm, he served in the Oklahoma House of Representatives from 2016 until 2022 as the state representative for House District 87. While in the House, he authored comprehensive "opt-in" data privacy legislation to ensure consumer data privacy. He received his J.D. *magna cum laude* from the OCU School of Law.

Robert J. Barron transferred within the Department of Homeland Security after 35 months at the Port Isabel Detention Center in Los Fresnos, Texas, to the Salt Lake City office. He will represent DHS in the Salt Lake City Immigration Court.

Thomas D. Robertson has joined Memorial Park Cemetery, a trust estate in Tulsa, as a Trustee. Mr. Robertson has practiced law in Tulsa for more than 40 years at several private firms. He most recently worked as a shareholder at Barrow & Grimm PC, representing management in labor and employment law matters. He may be contacted at Tom@memorialparktulsa.com.

Philip S. Haney has relocated his office to 7331 S. Olympia Ave. #325, Tulsa, 74132 and may be contacted at 918-227-3307.

Becky Bryan Allen has joined the Oklahoma City office of Crowe & Dunlevy as an associate. Ms. Allen represents healthcare institutions and practitioners in a broad range of transactional and regulatory matters. She also has experience defending hospitals, surgery centers, long-term care and skilled nursing facilities, hospices, physicians and other healthcare professionals in medical liability actions. She received her J.D. from the OU College of Law and will receive an LL.M. in healthcare law from the OU College of Law in December. Ms. Allen is a member of several professional associations, including the American Bar Association, Oklahoma County Bar Association, Oklahoma Health Lawyers Association, and American Health Law Association. In 2020, she was awarded the Maurice Merrill Golden Quill Award for an article she co-authored in the *Oklahoma Bar Journal*.

R. Glenn Teague has begun a new solo practice under Teague Law PC, with an office at 2524 N. Broadway #536, Edmond, 73034. He was previously a partner in the firm of Teague & Wetsel PLLC. Mr. Teague has practiced in Edmond and Oklahoma City for 43 years in the areas of estate and tax planning, probate, guardianships and elder care. He may be contacted at 405-252-9695.

Bailey Barnes, Madeline M. Cook, Maria Escobar and Rhyder M. Jolliff have joined the Tulsa and Oklahoma City offices of GableGotwals as associates. Ms. Barnes practices in the areas

of general corporate transactions, commercial agreements, corporate finance and mergers and acquisitions. Ms. Cook practices a broad range of general litigation matters, specifically in copyright and trademark infringement, medical malpractice defense, Native American law and energy. Her experience includes drafting pleadings, researching complex legal issues and advising clients on litigation strategy. Ms. Escobar is a litigator with experience drafting, preparing and reviewing motions and pleadings. Her experience also includes conducting legal research on various matters, including oil and gas, civil procedure, zoning laws, discovery request limitations and conflict of laws. Mr. Jolliff's practice spans corporate transactions and risk management to general litigation.

Austin T. Ray, Camille N. Burge, Jake A. Seidel and Jonna Vanderslice have joined the Oklahoma City office of Phillips Murrah as associate attorneys. Mr. Ray is a litigation attorney representing individuals and both privately held and public companies in a wide range of civil litigation matters. Ms. Burge is a litigation attorney who represents individuals and both privately held and public companies in a wide range of civil litigation and family law matters. Mr. Seidel is a litigation attorney who represents individuals and both privately held and public companies in a wide range of civil litigation matters. Ms. Vanderslice is a corporate attorney who represents clients in a wide range of commercial and business matters.

J. Christopher Davis has joined the Tulsa office of Crowe & Dunlevy as a shareholder and director. **Jon Cartledge** has joined the firm as a director. With more than 27 years of experience, Mr. Davis represents businesses and individuals throughout Oklahoma in state and federal courts, serving as lead counsel in catastrophic loss and bet-the-company litigation regarding corporate tort and intellectual property-related matters. A former federal law clerk, he has served as an Adjunct Settlement Conference judge, a member of the Committee on Local Rules and Court Operations and a former member of the Admissions and Grievances Committee for the U.S. Court for the Northern District of Oklahoma. Mr. Cartledge's practice focuses on legal research and brief writing, as well as preparing oral arguments at the trial and appellate court levels. He has more than two decades of trial experience, representing clients in state and federal courts on matters regarding civil and commercial litigation, including multimillion-dollar tort litigation, insurance defense and intellectual property. He also has experience serving as lead counsel in catastrophic injury and wrongful death cases involving the oil and gas industry.

Kensley R. Wright has joined the Tulsa office of Doerner, Saunders, Daniel & Anderson LLP as an attorney of counsel and part of the firm's Family Law Practice Group. Ms. Wright has almost 10 years of experience in the areas of family law and civil litigation.

ON THE MOVE

Alexis S. Barnes, Blaine W. Brewer, Hannah N. Coker, Katherine Crowley Jimenez, Garrett J. Reed and Kiefer M. Rose have joined the Oklahoma City office of McAfee & Taft. Ms. Barnes represents employers and management in all phases of labor and employment law, including litigation in state and federal courts, before regulatory and administrative agencies and in arbitration matters. Mr. Brewer is a transactional lawyer whose practice encompasses a broad range of corporate and business matters, including real estate transactions, mergers and acquisitions, divestitures, business entity formation and transaction financing. Ms. Coker is a transactional lawyer who represents local, national and international clients in connection with matters involving the buying, selling, leasing, financing and registration of aircraft. Ms. Jimenez is a trial lawyer whose state and federal civil litigation practice is primarily focused on matters affecting the energy industry. Mr. Reed is a trial lawyer who practices in the areas of business litigation before state and federal courts, arbitrations, and administrative proceedings, with an emphasis on matters affecting farmers, ranchers, equine owners, landowners and agribusinesses. Mr. Rose is an ERISA attorney who represents public and private companies, tax-exempt organizations and governmental entities in a wide range of employee benefits and executive compensation matters, with specific emphasis on group retirement and health plan design, implementation, administration and compliance.

Ball Morse Lowe has merged with the estate planning firm of Mugg Winston to better meet the growing demand for estate planning and probate services across Oklahoma. Ball Morse Lowe has served businesses and individuals across Oklahoma, Texas and Colorado for more than a decade. The expanded practice will have offices in Oklahoma City and Norman, in addition to the current Mugg Winston office in Edmond. **Brian Hill** will be joined by Mugg Winston attorneys **Christin Mugg** and **Bria Winston** in leading the firm's estate planning and probate practice. Mr. Mugg has more than 24 years of experience as an estate planning, tax and charitable planning attorney. Ms. Winston brings 12 years of estate planning and business succession expertise to the group.

AT THE PODIUM

Paul R. Foster of Norman was a featured speaker at the Community Bankers Association of Oklahoma Annual Convention in Oklahoma City. Mr. Foster coordinated and moderated a presentation to the bank regulatory panel consisting of regulators from the Oklahoma Banking Department, the Comptroller of the Currency, the FDIC and the Federal Reserve. The presentation covered recent legislation and regulations, hot exam topics, treatment of pandemic-related deferrals, interest rate risk, climate change and other trending regulatory issues.

Judge Gregory H. Bigler presented the Watkins Lecture at East Central University's Chickasaw Conference and Business Center. Judge Bigler is an appellate court judge with the Mashantucket (Western) Pequot Tribal Nation in southern Connecticut. He is an Indian law private practitioner, solely representing Native American tribes. His linguistic interests range from his native Euchee language and efforts to raise awareness of native language preservation to studies of Mandarin Chinese. He was instrumental in founding the Oklahoma Native Language Association, of which he is a past chair. He also organized and co-chaired the Oklahoma Native Language Use Conference. He serves as a tribal court judge for the Prairie Band Potawatomi and sits on the Supreme Court for the Kansas Kickapoo Tribe. He is also a tribal prosecutor for the Citizen Potawatomi Nation, where he previously served as a district court judge.

Jimmy K. Goodman has been elected president of the American Bar Foundation for its 2022-2024 term. He is currently a senior trial attorney practicing in the areas of high-stakes business litigation, product claims and disputes involving tribal compacts, economic development, gaming enterprises and federal Indian law. He previously served as vice president of the ABF Board of Directors and is a former president of the Oklahoma County Bar Association and the Oklahoma Bar Foundation. Mr. Goodman, a former president of Crowe & Dunlevy, co-founded the firm's Diversity Committee. He also is actively involved with the ABA's commitment to diversity, equity and inclusion, having been on the ABA's Council on Racial and Ethnic Justice, Commission on Domestic and Sexual Violence, Commission on Racial and Ethnic Diversity, Commission on Sexual Orientation and Gender Identity and Commission on Hispanic Rights and Responsibilities. An active community volunteer, Mr. Goodman helped draft the mission statement for the Oklahoma City National Memorial and Museum. He is a board member for Legal Aid Services of Oklahoma and past president and longtime counsel

to Planned Parenthood of Central Oklahoma. He is a founding board member of the Citizens League of Central Oklahoma, Myriad Gardens Foundation and Central Oklahoma Childbirth Education Association.

Richard Coiner Jr. has been named the recipient of this year's Northeastern Oklahoma A&M College Outstanding Retired Faculty Award. Mr. Coiner grew up in Tulsa and graduated from Booker T. Washington High School, where he was a member of the Voluntary Integration Program. Mr. Coiner received his J.D. from the TU College of Law and practiced with the law firm of Wallace and Owens from 1984 until 1991. He served on the Miami Integris Hospital Foundation board for 29 years, worked as a Sunday school teacher and senior warden for All Saints Episcopal Church and was on the state board for the Episcopal Church of Oklahoma. He is also a member of the Ottawa County Historical Society and the Society for American Baseball Research.

Kendra Robben has been named to the Board of Directors for the Oklahoma City branch of Legacy Bank. She is an estate planning and

corporate law attorney who established her firm, Robben Law PLLC, in November 2009. Ms. Robben received her J.D. from the OCU School of Law in 2007, where she graduated first in her class and was named the OBA Outstanding OCU Law Student. She also has served as an adjunct professor at the OCU School of Law. She is an active member of the OBA, the Rotary Club of Oklahoma City and is involved in several other civic groups in the Oklahoma City metro area.

David Halley was appointed Canadian County special judge and will take the bench in early 2023. He succeeds Special Judge Khristan Strubhar, who was elected district judge. Mr. Halley has been in private practice in El Reno for more than 30 years, providing family law, divorce, estate planning, criminal law and civil litigation services. Since 2010, he has been the city of El Reno's associate municipal judge. In 2021, he was named Family Law Section Guardian Ad Litem of the Year. He also has been heavily involved in his community, serving as city councilman for six years and announcing the El Reno Indians football games for two decades.

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 January issue must be received by Dec. 1.

IN MEMORIAM

Dorothy F. Alexander of Oklahoma City died Sept. 28. She was born March 16, 1934. During her life, Ms. Alexander traveled extensively domestically and internationally while holding a variety of jobs, including as a transcriptionist for the U.S. Air Force, assisting with aircraft crash investigations and the National Weather Service at the National Severe Storm Laboratory. She received her J.D. from the OCU School of Law in 1975 and practiced law for more than 40 years in rural Oklahoma and Texas, serving as a magistrate for small municipalities for decades. She received a Lifetime Achievement Award from the American Civil Liberties Union and the Oklahoma literary community. Ms. Alexander's poetry was published in numerous anthologies and literary journals, and she was a driving force behind efforts to establish the poetry component of the annual Woody Guthrie Festival in Okemah. Memorial contributions may be made to Esperanza Women's Shelter, Black Lives Matter Global Network Foundation, Indigenous Environmental Network Foundation or the social justice organization of your choice.

Ashley Leonard Altshuler of Oklahoma City died Sept. 28. He was born Dec. 6, 1969, in Hanover, New Hampshire. Mr. Altshuler received his J.D. from the OCU School of Law in 1998 and joined the Oklahoma County District Attorney's Office, where he served as an assistant district attorney from 1997 to 2004 and 2007 to 2011. He worked in private practice with the Coyle Law Firm from 2004 to 2007. In 2011, he was named an assistant U.S. attorney for the U.S. Attorney's Office

for the Western District of Oklahoma, serving as a federal prosecutor in the Organized Crime Drug Enforcement Task Force and the Project Safe Neighborhoods coordinator. In 2012, he was recognized by the FBI for his support to the Inland Northwest Joint Terrorism Task Force, and in 2014, he received the U.S. Attorney General's Award for Outstanding Contributions by a New Employee. That same year, he also received the U.S. Attorney's Award of Excellence. Mr. Altshuler served on the Board of Directors for the Oklahoma Children's Hospital Foundation and Lyric Theatre Understudies and as president of the Oklahoma City Philharmonic Associate Board of Directors. He also served on the Edward Byrne Memorial Justice Assistance Grant Board, Crime Stoppers of Oklahoma City Board of Directors and the Oklahoma Youth and Gang Violence Coordinating Council. Memorial contributions may be made to the Oklahoma City Community Foundation to establish an award in honor of Mr. Altshuler at the OCU School of Law.

Michael Arnett of Oklahoma City died Sept. 28. He was born Nov. 18, 1953, in Guthrie. He graduated from OSU in 1976 and worked as a journalist for KWTW-News 9 until the late 1980s. He received his J.D. from the OCU School of Law in 1986 and opened his own law firm in 1994, where he worked until his death. Mr. Arnett was active in the Lawyers Helping Lawyers Assistance Program and Alcoholics Anonymous, where he recently celebrated 30 years of sobriety. He also was involved in Sierra Club and Promise Keepers and was an avid member of his previous churches' elder boards.

Charles Michael Barkley of Tulsa died Oct. 1. He was born June 16, 1948, in Tulsa. Mr. Barkley received his J.D. from the TU College of Law in 1973 and began practicing in the areas of civil litigation and medical negligence. For more than 49 years, he was involved in many multi-district litigation cases involving banking, securities, spinal fixation devices, asbestos and drug and product liability litigation. He represented several Fortune 500 companies in 36 states, including World-Wide Volkswagen Corp. during a case that made historic changes in the rule of law for venue and jurisdiction throughout the United States by virtue of the historical opinion rendered by the Supreme Court in 1980. Mr. Barkley was the chairman of the Children's Hospital Foundation at Saint Francis. He also served on the board or volunteered his time to assist in fundraising for the American Diabetes Association, Mental Health Association Oklahoma, American Cancer Society, Big Brothers Big Sisters of Oklahoma, Tulsa Opera, Tulsa Philharmonic, Philbrook Museum of Art and Legal Aid Services of Oklahoma. Memorial contributions may be made to Catholic Charities of Eastern Oklahoma or the Children's Hospital at Saint Francis.

Jesse W. Beck Jr. of Edmond died Sept. 9. He was born March 30, 1945, in Dalhart, Texas. His family moved to Comanche, where he graduated from high school in 1963. Mr. Beck attended the Oklahoma Military Academy in Claremore on a football scholarship and then transferred to OU, where he majored in political

science. He received his J.D. from the OU College of Law in 1971 and joined McKnight & Gasaway in Enid, where he practiced law for more than 30 years. Mr. Beck was active in the First United Methodist Church, president of the Rotary Club, Phillips University and the Enid Chamber of Commerce.

Curtis L. Horrall of Enid died Aug. 9. He was born Aug. 4, 1930. **After studying history at OSU for two years, Mr. Horrall joined the U.S. Army in 1950, serving in the 325th Hospital Training Unit. He was stationed as a medic at the Presidio in San Francisco during the Korean War.** After completing his military service, he received his J.D. from the OCU School of Law. He returned to Enid and founded the Trust Department at Central National Bank, where he worked until 1977. Mr. Horrall served on the CNB Board of Directors for many years. In 1977, he assumed ownership of the Bank of Drummond and, together with his wife, provided rural banking and insurance services until his retirement in 1995. An early supporter of the YMCA, Enid Symphony and the Gaslight Theater, he was also involved in many civic organizations, including Lion's Club International. He was a lifelong member of Central Christian Church, where he worked on the finance committee. Mr. Horrall was a 60-year member of the Oklahoma Bankers Association. Memorial contributions may be made to the Oklahoma Medical Research Fund, Central Christian Church or Foster Feet.

Jeff R. Laird Jr. of Oklahoma City died Sept. 19. He was born March 20, 1946, in Fort Wayne, Indiana. **Mr. Laird graduated from Sulphur High School in 1964 and joined the U.S. Army.** After completing his military service, Mr. Laird received his bachelor's degree from OU and his J.D. from the OCU School of Law in 1976. He had a passion for music, classic cars and athletics. For many years, Mr. Laird and his wife were avid supporters of OU football and basketball. He was a member of the Sooner Club and founder of the Laird Hammons Laird foundation.

Donald Lee Rodolph of Clinton died Sept. 30. He was born Jan. 14, 1943, in Thomas. Mr. Rodolph graduated from Temple High School in 1961. He continued his education at Southwestern Oklahoma State University, where he received bachelor's degrees in business and accounting. He received his J.D. from the OU College of Law in 1969 and established a law firm in Clinton in 1969 with offices in Leedey and Taloga. He also worked at Clinton Sherman Air Force Base teaching evening law classes until it closed. Mr. Rodolph served as the mayor of Clinton for 16 years in addition to serving on the City Council and one term as city judge. He also served as president of the Oklahoma Municipal League and received the 1994 Oklahoma Mayor of the Year Award. Memorial contributions may be made to the First United Methodist Church.

Mia C. Rops of Oklahoma City died Sept. 22. She was born Oct. 20, 1967, in Oklahoma City. Ms. Rops graduated from Putnam City High School in 1985 and OU in 1989. She received her J.D. from the University of Texas School of Law in 1993 and most recently practiced workers' compensation law for Travelers Insurance. Memorial contributions may be made to the American Diabetes Association.

Barbara E. Ryan of Norman died Sept. 7. She was born Sept. 13, 1949, in Oklahoma City. Ms. Ryan graduated from Midwest City High School in 1967 and earned a bachelor's degree in secondary education from the University of Central Oklahoma. She received her J.D. from the OU College of Law in 1978. Her legal career spanned decades, principally as a state district attorney in Cleveland County and then as a federal prosecutor in the Western District of Oklahoma. She loved to travel with her husband and purchased homes in Puerto Vallarta and San Miguel de Allende.

Keith Richard Treadway of Oklahoma City died July 13. He was born Feb. 7, 1929, in South Bend, Indiana. **Mr. Treadway attained the rank of first lieutenant in the U.S. Army during the Korean War.** After leaving the Army, he attended Indiana University and earned a master's degree in geology. He received his J.D. from the OCU School of Law and practiced law in southern Oklahoma from 1969 until 2009 when he retired at the age of 80. At 65, he obtained a master's degree in English and creative

Allen Linn Williamson of Runaway Bay, Texas, died May 14. He was born Oct. 30, 1974, in Hobbs, New Mexico. Mr. Williamson received his J.D. from the Texas Wesleyan School of Law in 1999, where he served on the *Texas Wesleyan Law Review*. He was a founding partner of the law firm of Boyd Powers & Williamson and practiced for 22 years in Texas, New Mexico and Oklahoma. Before founding the law firm, Mr. Williamson served as the first assistant district attorney for the 271st Judicial District Court. He was a member of the American Board of Trial Advocates and served as president-elect of the Fort Worth Chapter. He previously served on the Pattern Jury Charge Committee and the Professionalism Committee of the State Bar of Texas and on the Wise Health Foundation and other groups that benefited the community. Memorial contributions may be made to Grace Fellowship in Paradise, Texas, or the charity of your choice.





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2022 ISSUES

DECEMBER

Ethics & Professional Responsibility

Editor: Scott Jones

sjones@piercecouch.com

Deadline: Aug. 1, 2022

2023 ISSUES

JANUARY

Transactional Law

Editor: Cassandra Coats

cassandracoats@leecoats.com

Deadline: Aug. 1, 2022

FEBRUARY

Appellate Law

Editor: Jana Knott

jana@basslaw.net

Deadline: Aug. 1, 2022

MARCH

Criminal Law

Editor: Roy Tucker

RTucker@muskogeeonline.org

Deadline: Oct. 1, 2022

APRIL

Law & Psychology

Editor: Aaron Bundy

aaron@bundylawoffice.com

Deadline: Oct. 1, 2022

MAY

Attorneys & Aging

Editor: Melissa DeLacerda

melissde@aol.com

Deadline: Jan. 1, 2023

AUGUST

Oklahoma Legal History

Editor: Melissa DeLacerda

melissde@aol.com

Deadline: Jan. 1, 2023

SEPTEMBER

Corporate Law

Editor: Jason Hartwig

jhartwig@tisdalohara.com

Deadline: May 1, 2023

OCTOBER

Access to Justice

Editor: Evan Taylor

tayl1256@gmail.com

Deadline: May 1, 2023

NOVEMBER

Agricultural Law

Editor: David Youngblood

david@youngbloodatoka.com

Deadline: Aug. 1, 2023

DECEMBER

Family Law

Editor: Bryan Morris

bryanmorris@bbsmlaw.com

Deadline: Aug. 1, 2023

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

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OFFICE SPACE – OKC. Up to three offices plus secretarial area, Kelley and Britton. Parking, receptionist, phone, copier, internet with Wi-Fi, conference room, security system, referrals possible. 12 to 15 mins. to downtown. Contact Steve Dickey (405) 848-1775.

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. Gerjes, 429 NE 50th, Second Floor, Oklahoma City, OK 73105.

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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.

PUBLIC NOTICE REGARDING U.S. MAGISTRATE JUDGE VACANCY. The United States District Court for the Eastern District of Oklahoma located in Muskogee, Oklahoma, is now accepting applications to fill a full-time United States Magistrate Judge position. To be qualified for appointment an applicant must: be, and have been for at least five years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized); be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness; be less than seventy years old; and not be related to a judge of the United States District Court for the Eastern District of Oklahoma. More details regarding this position as well as application forms may be obtained from the Court's website – www.oked.uscourts.gov/employment-opportunities. Applications must be received on or before Nov. 28, 2022. Completed applications can be emailed to stephanie_horton@oked.uscourts.gov in a single PDF file or sent via U.S. Mail, postage prepaid, to: Stephanie Horton, Chief Deputy Clerk, United States District Court, Eastern District of Oklahoma, P.O. Box 607, Muskogee, OK 74401.

POSITIONS AVAILABLE

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See job description and apply online: <https://bit.ly/3RQ1SZW>.

MCDANIEL ACORD, PLLC IS RECRUITING A LITIGATION ASSOCIATE ATTORNEY for the firm's Edmond office to assist our clients in civil litigation within a strong team setting that focuses on client service and maximizing outcomes. Our practice includes challenging procedural and technical issues, and the successful candidate will possess strong analytical and advocacy skills. We use the latest technology to maximize efficiency. Our Firm provides excellent benefits and rewards performance. We are looking for the right attorney to join our team who will take pride in the service we deliver and fit within our family-oriented, friendly, and low-key firm environment. Candidates should have 2 to 5 years litigation experience that reflects skill in legal research, drafting memoranda, briefs and discovery, taking depositions, managing document production, and oral argument. Candidates should submit a recent writing sample and CV to smcdaniel@ok-counsel.com.

CARR & CARR SEEKS LITIGATION ATTORNEY for Tulsa office. Competitive compensation plus benefits. Submit resume to Aimee Allison, COO @ aallison@carrcarr.com.

POSITIONS AVAILABLE

FENTON, FENTON, SMITH, RENEAU & MOON, an AV rated Oklahoma City Civil Litigation Firm seeks an associate attorney with 0-5 years experience. Excellent research and writing skills essential. Deposition experience a plus. The attorney will work with partners on insurance defense and products liability cases. Health insurance and other benefits included. Resume, transcript and writing sample are required. Please send submissions to Box E, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

OKLAHOMA CITY-BASED, MULTI-JURISDICTIONAL LAW FIRM actively seeking motivated and detail-oriented attorneys to join our fast-paced and growing family law practice group. As a firm, we are intentional in maintaining a positive and motivating work culture. Benefits include a competitive fee structure, full health benefits, 401K, full back-end client support and the opportunity for practice growth. We are currently looking for family law attorneys with introductory experience to those well-versed in family law to serve our growing family law caseload. Please send resume and references to office@ballmorselow.com.

MID-SIZED TULSA LAW FIRM SEEKS AN ASSOCIATE OR OF COUNSEL ATTORNEY with 5+ years of litigation experience. The practice will include business, trust, estate, real estate, and corporate litigation matters. Excellent compensation commensurate with level of experience in a flexible work environment. Send replies to advertising@okbar.org with the subject line "Position AF."

POSITIONS AVAILABLE

OKLAHOMA HUMAN SERVICES, CHILD SUPPORT SERVICES HAS 5 OPENINGS for a Child Support Attorney IV. The position involves the preparation and filing of pleadings and trial of cases in child support-related hearings in the district and administrative courts. Duties will also include consultation and negotiation with other attorneys and customers, and interpretation of laws, regulations, opinions of the court, and policy. Ability to work on a diverse team and directly with people from diverse backgrounds specifically racial, ethnic, socioeconomic, and disabilities. Interested parties can apply at <https://bit.ly/3CS9G9m>.

THE OFFICE OF THE DISTRICT ATTORNEY, DISTRICT #26, is seeking a part time/full time assistant district attorney in the Dewey County District Attorney's Office. Applicants must have the ability to prosecute bench and jury trials. In addition, applicants must possess strong writing and research skills, and the ability to effectively communicate and work with law enforcement and other agencies. This is a salaried position with full state benefits. Please forward a resume with references to the Woodward County District Attorney's Office, 1600 Main Street, Suite 5, Woodward, OK 73801.



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The Rewards of Volunteering

By Ed Wunch

IT ALL BEGAN WITH AN EMAIL.

In 2018, one of my mentors asked me to speak on a panel about expungements for the upcoming Law Day program. The same mentor stood beside me the first time I walked into chambers to present a routine matter, promptly to be told by the judge just how wrong I was (since then and continuing into his retirement, the judge and I have become good friends). I was honored to be asked to speak on the topic, and it was just an afternoon.

The afternoon we filmed the panel, I had the pleasure of meeting my co-panelists. Justin Wolf served in counsel's office at OSBI and handled every expungement in the state. Bob Wyatt not only had prolific expungement experience but also had plenty of war stories from his years of criminal defense practice. We stayed

for about an hour after filming, discussing our practices and lives while learning from one another.

This was my introduction to volunteering with the OBA. I gave up just an afternoon of my time and gained knowledge and introductions to colleagues I may not have met otherwise. I wanted more.

Roy Tucker, co-chair of the Law Day Committee at that time, invited me to join the committee. For me, the Law Day Committee is a good fit. I enjoy putting together the public education portion of our program as well as meeting other lawyers who volunteer their time for Ask a Lawyer. Working with my colleagues on the Law Day Committee has been an absolute privilege.

Since I was selected to chair the committee in 2020, I've enjoyed working with our Board of Governors, bar president and the tremendous staff we have at the OBA. I especially want to thank John Morris Williams for his guidance over the years, as well as the great teams in the Communications, IT and CLE departments who have all helped with Law Day.

Other OBA committees are doing equally amazing work. As we approach the end of the year, I encourage you to consider

signing up for a committee. If you are unfamiliar with the work of a committee, reach out to the current chair.¹

I speak for many of my fellow chairs when I say that we value any time you can give back to the OBA. Perhaps that is just time in meetings where you can share ideas and offer feedback on how to improve the work of the committee. You may see a committee project you are passionate about, and you can lead that project. There is no shortage of opportunities.

I can say with certainty, if you find a project or committee you are passionate about, you will receive far more than you give. You will build connections with colleagues that extend beyond the committee's work, and you will enjoy the reward of seeing your hard work pay off. Join me in volunteering with the OBA.

Learn more about OBA's committees and contact OBA committee chairs by visiting www.okbar.org/committees. You can join a committee by filling out the short form at <https://bit.ly/3SjMzcE>.

Ed Wunch is a staff attorney with Legal Aid Services of Oklahoma Inc. and serves as the OBA's 2022 Law Day Committee chair. He is a 2013 graduate of the University of California, Irvine School of Law.

ENDNOTE

1. Committee chairperson information can be found at www.okbar.org/committees.



From left: Dick Pryor facilitates a panel discussion with OBA members Justin Wolf, Ed Wunch (Law Day chair) and Bob Wyatt for the Law Day program. This year's Law Day Committee is the recipient of the OBA Golden Gavel Award.

WEDNESDAY,
NOVEMBER 30, 2022

Lunch: 12:00

Program: 12:30 - 2 p.m.

Oklahoma Bar Center



MCLE 1/1



PRIVACY AND TOOLS FOR NON-TECH SAVVY LAWYER

FEATURED SPEAKERS:

Collin R. Walke, J.D., CIPP/US, CIPM, Hall Estill, Special Counsel

Jeff Taylor, The Duit Group of Companies

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ABOUT OUR SPEAKERS:

Collin Walke leads Hall Estill's Cybersecurity and Data Privacy Practice. Collin is CIPP-US and CIPM certified, and is also a certified AI Systems auditor under the GDPR. Collin received his B.A. in Philosophy from Oklahoma State University, his J.D., magna cum laude, from Oklahoma City University School of Law, and is also a graduate of Harvard's Business Analytics Program.

Jeff is the first (and only) In-House General Counsel to the Duit (pronounced Do It) Group of Companies. The Duit companies build road and bridge highway projects in Oklahoma, Texas, Arkansas, and Kansas. Jeff focuses his daily activities on contract negotiations, construction delays, litigation, risk management, and employee issues.

Jeff worked as a solo practitioner handling litigation, consumer advocacy, and representing small businesses before joining Duit.

Jeff also created "The Droid Lawyer," a legal tech blog focused on Android and mobile devices for lawyers.

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