

ALSO INSIDE: Annual Meeting Highlights • Access to Justice
2023 Committee Sign-Up • Taxation Law Section Note: 2022 Oklahoma Tax Legislation

THE OKLAHOMA BAR
Journal

Volume 93 — No. 10 — December 2022

**Ethics &
Professional
Responsibility**



LOOKING FOR A FIRM
THAT'S A STEP ABOVE THE REST?

We're hiring bright, energetic, forward-thinking, friendly, and service-oriented lawyers to work at one of the region's most happening firms. If you're looking to take a step up in your career, we want to hear from you. **Get in touch at StepUpCW.com.**

CONN_{ER}
WINT_{ERS}

LAWPAY[®]

AN AFFINIPAY SOLUTION



Member
Benefit
Provider

“I love LawPay! I’m not sure why I waited so long to get it set up.”

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.



22% increase in cash flow with online payments



Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA



62% of bills sent online are paid in 24 hours

PAYMENT
RECEIVED

YOUR FIRM LOGO HERE

Trust Payment
IOLTA Deposit

New Case Reference

**** * 9995

TOTAL: \$1,500.00

VISA



POWERED BY
LAWPAY

eCheck

DISCOVER

PAY ATTORNEY

Get started at
lawpay.com/oba
866-730-4140

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Synovus Bank, Columbus, GA, and Fifth Third Bank, N.A., Cincinnati, OH.



OKLAHOMA ATTORNEYS MUTUAL INSURANCE COMPANY

For more than 40 years, OAMIC has been part of your legal community protecting Oklahoma lawyers. Let us protect you.



OAMIC.COM

THE OKLAHOMA BAR Journal

contents

December 2022 • Vol. 93 • No. 10

THEME: ETHICS & PROFESSIONAL RESPONSIBILITY

Editor: C. Scott Jones

FEATURES

- 6 | LAWYER RESPONSIBILITIES UNDER THE NEW CORPORATE TRANSPARENCY ACT
By GARY W. DERRICK AND JACOB L. FANNING
- 16 | DO I HAVE A DUTY TO INVESTIGATE UNDUE INFLUENCE? AND OTHER THINGS ESTATE PLANNING ATTORNEYS SHOULD KNOW
By DAVID M. POSTIC
- 24 | CYBER SPIES ATTEMPT TO SWAY LITIGATION BATTLES AND BREAK INTO ATTORNEY EMAILS
By SHARON D. NELSON, JOHN W. SIMEK AND MICHAEL C. MASCHKE
- 28 | ORPC 1.8 CURRENT CLIENTS: SPECIFIC CONFLICT RULE
By RICHARD STEVENS

DEPARTMENTS

- 4 | FROM THE PRESIDENT
- 48 | FROM THE EXECUTIVE DIRECTOR
- 50 | LAW PRACTICE TIPS
- 54 | BOARD OF GOVERNORS ACTIONS
- 58 | OKLAHOMA BAR FOUNDATION NEWS
- 63 | YOUNG LAWYERS DIVISION
- 64 | FOR YOUR INFORMATION
- 66 | BENCH & BAR BRIEFS
- 70 | IN MEMORIAM
- 75 | EDITORIAL CALENDAR
- 80 | THE BACK PAGE

PLUS

- 32 | ANNUAL MEETING HIGHLIGHTS
- 38 | ACCESS TO JUSTICE
- 40 | 2023 COMMITTEE SIGN-UP
- 42 | TAXATION LAW SECTION NOTE:
2022 OKLAHOMA TAX LEGISLATION



A Christmas Carol

By Jim Hicks

THE HOLIDAY SEASON IS UPON US; and on behalf of the Oklahoma Bar Association, I want to personally offer my best wishes to all members of our organization and express a sincere thank you to all who stepped up in the past year to further the mission of our association. I am especially grateful to all the volunteers, leaders and staff members who helped make 2022 such a wonderful year by helping those in need throughout our legal community. We are all blessed by a profession that gives us many privileges. Our profession allows us to seek fulfillment and success as each of us chooses. Our profession allows a focus on family, friends and loved ones. Our profession allows us to work as individuals and yet work together for the common good. But that privilege obliges us to give much back to the communities and profession we serve. Whenever lawyers see an opportunity to make a difference, we must seize it because of our training and unique ability to effect change in society.

A Christmas Carol by Charles Dickens is a short novel that follows the mean-spirited and avaricious protagonist,

Ebenezer Scrooge, as he undergoes a profound journey of self-discovery and redemption over the course of one Christmas Eve night. After he climbs into bed, Scrooge is visited by three ghosts of Christmas. Each ghost, in turn, teaches him an invaluable lesson. He is forced to watch his own troubled past as he suffers mistreatment and heartbreak. Later that night, Scrooge is taken to the home of his employee, Bob Cratchit, as he celebrates a meager Christmas with his family as a result of Scrooge's greedy wages. Here, Scrooge sees that Cratchit has a son, Tiny Tim, who is disabled and may not live to make it to the next Christmas dinner. Scrooge watches as Cratchit makes a toast in honor of him, despite how unkind

he has been toward his employee. Cratchit's unconditional graciousness toward Scrooge, as well as Tiny Tim's humility and happiness despite all his hardship, is one of the catalysts for Scrooge's change of heart.

The lessons so clearly illustrated in *A Christmas Carol* can significantly impact you in a positive way this holiday season. This classic piece of literature teaches two main morals that should be understood and valued by everyone. The first moral of the story is that no matter how harsh or cold-hearted someone might seem on the outside, everyone has burdens they carry with them that affect them deeply. Because we never know what someone may have gone through in the past or is going through currently, it is always important to treat them with love and grace. The second moral is that showing kindness and love to someone, no matter how much you dislike them or how heartless they may seem, has the beautiful ability to change someone's life. As attorneys, we have the incredible ability to use our words and actions to influence the lives of those around us, and it is up to us to use this ability for good. My wish for each of you this holiday season is that each of us take this time to consider those less fortunate and do what we can for them.

While the years simply seem to come and go, we must admit this time of year is a "special season." Plans are made to travel, take some time off, share time with family and remember those who have gone before us. We indulge in special treats and special meals, and we look to the future with that certain excitement and rejuvenation. So as I reflect on 2022 and look forward to 2023, please accept my sincere best wishes and warm thoughts for a happy and healthy holiday season and a productive and positive New Year. And in the words of Tiny Tim, "God bless us, every one!"



President Hicks practices in Tulsa.
jhicks@barrowgrimm.com
(918) 584-1600

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2022 Oklahoma Bar Association. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff. Although advertising copy is reviewed, no endorsement of any product or service offered by any advertisement is intended or implied by publication. Advertisers are solely responsible for the content of their ads, and the OBA reserves the right to edit or reject any advertising copy for any reason. Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors. Information about submissions can be found at www.okbar.org.

BAR CENTER STAFF

John Morris Williams, *Executive Director*; Gina L. Hendryx, *General Counsel*; Chris Brumit, *Director of Administration*; Jim Calloway, *Director of Management Assistance Program*; Janet K. Johnson, *Director of Educational Programs*; Beverly Petry Lewis, *Administrator MCLE Commission*; Lori Rasmussen, *Director of Communications*; Richard Stevens, *Ethics Counsel*; Robbin Watson, *Director of Information Technology*; Loraine Dillinder Farabow, Peter Haddock, Tracy Pierce Nester, Katherine Ogden, Steve Sullins, *Assistant General Counsels*

Barbara Acosta, Les Arnold, Julie A. Bays, Gary Berger, Jennifer Brumage, Craig Combs, Cheryl Corey, Alisha Davidson, Nickie Day, Ben Douglas, Melody Florence, Johnny Marie Floyd, Matt Gayle, Emily Buchanan Hart, Suzi Hendrix, Jamie Jagosh, Debra Jenkins, Rhonda Langley, Durrel Lattimore, Brian Martin, Renee Montgomery, Lauren Rimmer, Tracy Sanders, Mark Schneidewent, Kurt Stoner, Krystal Willis, Laura Willis & Roberta Yarbrough

Oklahoma Bar Association 405-416-7000
Toll Free 800-522-8065
FAX 405-416-7001
Continuing Legal Education 405-416-7029
Ethics Counsel 405-416-7055
General Counsel 405-416-7007
Lawyers Helping Lawyers 800-364-7886
Mgmt. Assistance Program 405-416-7008
Mandatory CLE 405-416-7009
Board of Bar Examiners 405-416-7075
Oklahoma Bar Foundation 405-416-7070

www.okbar.org

THE OKLAHOMA BAR Journal

Volume 93 — No. 10 — December 2022

JOURNAL STAFF

JOHN MORRIS WILLIAMS
Editor-in-Chief
johnw@okbar.org

LORI RASMUSSEN
Managing Editor
lorir@okbar.org

EMILY BUCHANAN HART
Assistant Editor
emilyh@okbar.org

LAUREN RIMMER
Advertising Manager
advertising@okbar.org

BOARD OF EDITORS

MELISSA DELACERDA, Stillwater, Chair

AARON BUNDY, Tulsa

CASSANDRA L. COATS, Vinita

W. JASON HARTWIG, Clinton

C. SCOTT JONES, Oklahoma City

JANA L. KNOTT, El Reno

BRYAN W. MORRIS, Ada

EVAN ANDREW TAYLOR, Norman

ROY TUCKER, Muskogee

DAVID E. YOUNGBLOOD, Atoka



OFFICERS & BOARD OF GOVERNORS

JAMES R. HICKS, President, Tulsa; MILES T. PRINGLE, Vice President, Oklahoma City; BRIAN T. HERMANSON, President-Elect, Ponca City; MICHAEL C. MORDY, Immediate Past President, Ardmore; ANGELA AILLES BAHM, Oklahoma City; S. SHEA BRACKEN, Edmond; DUSTIN E. CONNER, Enid; MICHAEL J. DAVIS, Durant; ALLYSON E. DOW, Norman; JOSHUA A. EDWARDS, Ada; AMBER PECKIO GARRETT, Tulsa; BENJAMIN R. HILFIGER, Muskogee; ROBIN L. ROCHELLE, Lawton; KARA I. SMITH, Oklahoma City; MICHAEL R. VANDERBURG, Ponca City; RICHARD D. WHITE JR., Tulsa; DYLAN D. ERWIN, Chairperson, OBA Young Lawyers Division, Oklahoma City

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.



Lawyer Responsibilities Under the New Corporate Transparency Act

By Gary W. Derrick and Jacob L. Fanning

THE UNITED STATES HAS LONG SOUGHT BETTER TRANSPARENCY IN THE ownership of legal entities.¹ Greater ownership transparency was needed to prevent the use of “shell” corporations and limited liability companies from facilitating terrorist funding, money laundering, selling narcotics, sex trafficking and other criminal conduct. The “shell” corporations and LLCs were also used for tax avoidance and kleptocratic corruption. Knowing who owned the legal entities could be critical in foiling their illicit activities. It was ironic that the United States should seek transparency when its own states were the source for many of the illicit “shell” corporations and LLCs. Bad actors could easily form U.S.-based entities because no system existed to record the beneficial ownership of state corporations and LLCs.²

That is changing. On Jan. 1, 2021, Congress passed the National Defense Authorization Act (NDAA). Included within the NDAA was the Corporate Transparency Act (CTA).³ Through the CTA, Congress directed the United States Treasury Department’s Financial Crimes Enforcement Network (FinCEN) to establish and maintain a national registry of beneficial owners, managers and company applicants of entities that are deemed to be reporting companies.⁴ The CTA was intended to make it more onerous for domestic and foreign individuals to operate shell companies for illicit purposes.⁵ The CTA required that implementing regulations be promulgated by the end of 2021. On Dec. 7, 2021, FinCEN issued a notice of proposed

rulemaking (NPRM) requesting comment on the proposed regulations, with the comment period ending Feb. 7, 2022.⁶

By requiring the reporting of beneficial ownership and management of nearly every legal entity formed or operating in the U.S., the CTA will have an enormous impact on companies and the lawyers who advise them. Lawyers will likely play a critical role in their clients’ reporting, and lawyers assisting in the formation of a corporation or LLC may find their personal information reported to the CTA database. This article discusses key aspects of the CTA and assesses its impact on lawyers who form legal entities.

DEFINING A REPORTING COMPANY AND EXEMPTIONS

Reporting Companies

Subject to a few exemptions, legal entities formed with a secretary of state filing must report.⁷ In addition, legal entities operating in the U.S., regardless of when or where they were formed, must also report.⁸ This will include all domestic corporations, LLCs and limited partnerships and foreign entities doing business in the U.S. FinCEN estimates there are approximately 30 million entities currently operating within the U.S. that will be subject to reporting, and more than three million new entities are formed annually that will be subject to reporting.⁹

The definition does include general partnerships, the formation

of which does not require a secretary of state filing. It does include limited partnerships, limited liability partnerships and limited liability limited partnerships. It is unclear whether the definition would include entities such as business trusts, which are not formed by a secretary of state filing.¹⁰ A separate series within a series LLC is not formed by a secretary of state filing. Whether such separate series falls within the definition of reporting company is unclear. The question may be resolved by later rulemaking.

Reporting Company Exemptions

Exempt from the definition of reporting company are 23 types of entities, most of which are currently subject to extensive regulation or are otherwise required to report their beneficial ownership information.¹¹ Those exemptions include, among others, Securities and Exchange Commission reporting companies, government authorities, public utilities, investment companies and advisors, banks, bank holding companies, credit unions, insurance companies and tax-exempt entities.¹² Three exemptions are of particular note: “large operating companies,” “subsidiaries of certain exempt entities” and “inactive entities.”

Large operating companies.

Large operating companies are exempt from reporting. A large operating company is defined as an entity that 1) employs more than 20 full-time employees¹³ in the United States, 2) has an operating presence at a physical office in the United States¹⁴ and 3) filed in the previous year federal income tax returns demonstrating more than \$5 million in gross receipts or sales (net of returns and allowances) on the entity’s annual income tax returns, excluding gross receipts or sales from sources outside the United

States, as determined under federal income tax principles.¹⁵ The large operating company exemption will not apply to newly formed companies. It will provide relief for many existing companies.

Subsidiaries of exempt entities.

Entities whose ownership interests are directly or indirectly owned by an exempt entity are also exempt.¹⁶ The proposed regulations limit this exemption to subsidiaries that are wholly owned by an exempt entity.¹⁷ Thus, if a company has issued restricted stock or profit interests to service providers, for example, the entity would no longer qualify for this exemption.

Inactive entities. Inactive entities are also exempt from reporting. The proposed regulations define inactive entities as those that 1) were in existence before Jan. 1, 2020; 2) are no longer engaged in active business; 3) do not hold any assets (including ownership interests in other entities); 4) are not owned by a foreign person; 5) whose ownership has not changed during the immediately preceding 12-month period; and 6) have not sent or received more than \$1,000 in the immediately preceding 12-month period.¹⁸

DEFINING ‘BENEFICIAL OWNER’ AND A ‘COMPANY APPLICANT’

Every reporting company will have at least one “beneficial owner” and “company applicant” whose personal information must be submitted to FinCEN along with that of the reporting company. The proposed regulations describe who is a beneficial owner and who is a company applicant.

Beneficial Owner (Including Managers)

Every reporting company is required to report certain information about each of its beneficial

owners.¹⁹ A beneficial owner is defined as any individual who 1) exercises substantial control over the reporting company or 2) owns or controls at least 25% of the reporting company’s ownership interests.²⁰

Substantial control. Anyone who exercises direct or indirect substantial control over a reporting company is classified as a beneficial owner. A beneficial owner exercises direct or indirect substantial control over a reporting company by undertaking any of the following actions or retaining the following rights: 1) majority ownership of the reporting company, 2) substantial control rights in conjunction with certain financing arrangements, 3) controls intermediaries that retain the ability to exercise substantial control over the reporting company, 4) serving as a senior officer or board member, 5) the authority to appoint or remove the reporting company’s senior officers or a majority or dominant minority of the reporting company’s board of directors (or similar body), 6) the ability to direct, determine, decide or exercise substantial influence over important matters affecting the reporting company²¹ or 7) exercising any other form of substantial control over the reporting company whether through financial or business relationships or any other contract, understanding or relationship.²²

Twenty-five percent ownership. Anyone who owns or controls at least 25% of the reporting company’s ownership interests is classified as a beneficial owner. The percentage of such ownership interests that an individual owns or controls is determined by aggregating all of the individual’s ownership interests in comparison to the undiluted ownership interests of the company.²³ The proposed rules do not provide ways

to calculate beneficial ownership on a pass-through basis for entities with multiple layers of investors.

Exceptions. The proposed regulations also provide five exceptions to the definition of beneficial owners. These exceptions relate to minor children, nominees or other intermediaries, employees, inheritors and creditors.²⁴

Company Applicant

Every reporting company is also required to report certain information about each of its company applicants. A company applicant is defined as any individual who files an application to form an entity or registers an entity to do business in the U.S. Under the proposed rules, an applicant also includes “any individual who is primarily responsible for directing or controlling the filing if more than one individual is involved in the filing of the [formation] document.”²⁵

Lawyers play a critical role in assisting their clients in the formation of reporting companies. Although there is some debate regarding the scope of a lawyer’s responsibility,²⁶ any lawyer who signs as an “organizer” or “incorporator” on behalf of the reporting company or otherwise controls the decision making regarding the reporting company’s formation could be classified as a company applicant resulting in their personal information being reported to the CTA database.²⁷

REQUIRED DISCLOSURES

A reporting company must disclose information about itself, its beneficial owners, its management and the company applicants to FinCEN. The reporting is to be done through an online secured portal, which has not yet been released.²⁸ If the filer anticipates multiple filings, it can obtain a FinCEN identifier number (FIN) by providing

the required information and simply submitting the FIN in lieu of the more extensive reporting.²⁹

Reporting Company

For reporting companies, the following information concerning the reporting company must be included in the beneficial ownership report filed by the reporting company to the FinCEN database:

1. The full name of the reporting company;
2. Any trade name or “doing business as” name;
3. The business street address;
4. The state or tribal jurisdiction of formation;³⁰ and
5. The IRS-issued taxpayer identification number (TIN), including the reporting company’s employer identification number (EIN).³¹

Although there is some debate regarding the scope of a lawyer’s responsibility,²⁶ any lawyer who signs as an “organizer” or “incorporator” on behalf of the reporting company or otherwise controls the decision making regarding the reporting company’s formation could be classified as a company applicant resulting in their personal information being reported to the CTA database.²⁷

Beneficial Owners, Management and Company Applicants

Each individual who is a beneficial owner of such reporting company, [management] or a company applicant must submit an initial report to FinCEN that includes the following information:

- 1) The full legal name of the individual;
- 2) The date of birth of the individual;
- 3) The complete current address consisting of:
 - a. In the case of a company applicant, the company applicant's business street address of such business; or
 - b. In the case of a beneficial owner or management, the residential street address that the individual uses for tax residency purposes;
- 4) A unique identifying number from one of the following documents:
 - a. A passport;
 - b. A state driver's license or
 - c. Other identification issued to the individual by a state, local government or Indian tribe; and
- 5) An image of the document showing the unique identifying number.³²

DUE DATES FOR REPORTING INFORMATION

Initial Reporting Requirements

Reporting companies formed or registered on or after Jan. 1, 2024, are required to submit the required beneficial ownership report within 30 calendar days of its formation date.³³ Reporting companies that have been formed or registered before Jan. 1, 2024, must submit to FinCEN the required beneficial

ownership report no later than Jan. 1, 2025.³⁴ Exempt entities are required to submit the beneficial ownership report at the time such entity no longer meets such exemption criteria.³⁵

Continuing Reporting Requirements

Reporting companies are required to update any beneficial ownership changes within 30 days after the date of such change.³⁶

ACCESS TO THE REPORTED INFORMATION

FinCEN will be responsible for storing the information collected under the CTA in a secure, private database.³⁷ This database will not be publicly available. The beneficial ownership information will be available from a request only by:

- 1) A federal law enforcement agency;
- 2) A state, local or tribal law enforcement agency (if authorized by a court order);
- 3) A federal agency on behalf of a foreign country (if the request is under an international agreement); or
- 4) A financial institution for customer due diligence purposes but only if authorized by the reporting company.³⁸

The information in the database of beneficial owners will be available to members of law enforcement without the requirement of a warrant or other Fourth Amendment protections. It is anticipated that bank loan documents will make this authorization routine.

PENALTIES FOR NONCOMPLIANCE

The CTA applies civil penalties of not more than \$500 for each day that a violation continues, fines of up to \$10,000 and imprisonment for up to two years for willful or

fraudulent violations.³⁹ The CTA contains a safe harbor provision, allowing any person who submits inaccurate beneficial ownership information to file a correct beneficial ownership report within 14 calendar days after the date the reporting company becomes aware of the inaccuracy if that person 1) was not trying to evade the reporting requirement, 2) had no knowledge of the inaccuracy and 3) corrects the inaccuracy within 90 calendar days after the report is submitted.⁴⁰

LAWYER RESPONSIBILITIES

Lawyers are ethically required to provide competent representation, which includes keeping abreast of changes in the law.⁴¹ They are also required to keep their clients reasonably informed.⁴² Adoption of the CTA is one of the most significant developments in entity law in decades. To comply with the CTA, lawyers must alter their practices when forming new entities. Lawyers should also advise their clients about the new duties the CTA imposes.

Notifying Existing Clients

Since the CTA applies to existing entities, lawyers must consider whether they will notify clients about the new reporting requirements and, if so, which clients they will notify.⁴³ For experienced transactional lawyers, the pool of clients receiving notice may be quite large. Lawyers may start by sorting the entities they have formed or advised, determining whether the entities are likely reporting companies and asking whether the entity would expect the lawyers to contact them and advise them about the CTA's new requirements.⁴⁴ Clients with ongoing relationships would likely expect contact. Entities formed years ago with little



subsequent contact may not expect notification.

Filing for a reporting company formed years ago may pose some difficulty. Presumably, the reporting company will report its current ownership and has no requirement to report historical ownership. Having an interest in the reporting company, current ownership should be motivated to cooperate in the process. That would not be true for prior ownership with no present interest. Under the final rules, existing reporting companies will file beneficial ownership information but no information for company applicants.⁴⁵

Lawyers should also examine whether their role in advising the entity made them an applicant and, thus, a reporting person under the CTA.⁴⁶ As lawyers advise clients about their CTA reporting responsibilities, they should also disclose their possible role as applicants.

The Lawyers' Role Under the CTA

The global push for greater transparency in the ownership of legal entities has long sought to impose greater responsibility on lawyers who assist in forming the entities. That push would insert lawyers as gatekeepers to prevent money laundering, tax evasion, terrorist funding and

other misconduct. In other words, lawyers' duties to the legal system and society at large would surpass their duties to their clients.

The lawyer as gatekeeper is not a new concept. The Oklahoma Rules of Professional Conduct (ORPC) have several exceptions to client duties. For example, lawyers cannot assist a client in criminal or fraudulent activity.⁴⁷ Lawyers must disclose client confidences if necessary to prevent death or serious injury or, when using lawyers' services, to mitigate actions that would harm the financial interests of another.⁴⁸ Disclosure of client confidences is also permitted "to comply with other law or court order."⁴⁹

The gatekeeper role is expanding. In the wake of the Enron scandal, Congress adopted the Sarbanes-Oxley Act of 2002, which obligates a lawyer to report to a publicly held client evidence that a material violation of the securities laws or fiduciary duties is reasonably likely. This "reporting up" starts with the chief legal officer or chief executive officer. If no appropriate response is received, the lawyer must report to the Board of Directors or the Audit Committee.⁵⁰ If the board fails to respond, the lawyer may "report out" the misconduct to the Securities and Exchange Commission without the

client's consent.⁵¹ The reporting out is not mandatory, but even the discretion to do so was unprecedented at the time of adoption.⁵²

In 2007, the ORPC were amended to accommodate the "reporting up" and "reporting out" rules of Sarbanes-Oxley. The rules provide that a lawyer who knows that a client entity is about to violate the law, resulting in substantial injury to the client, should report the matter to the client's "highest authority."⁵³ If the highest authority refuses to act, the lawyer may report the matter to a government authority if the lawyer believes substantial injury is about to occur.⁵⁴

The reporting concepts fit with a lawyer's duties of inquiry under the CTA and other anti-money laundering laws. The American Bar Association (ABA) has issued guidance in the area. In 2010, recognizing the global push for transparency, the ABA encouraged lawyers to adopt risk-based due diligence approaches when dealing with clients whose ownership or activities were murky.⁵⁵ The ABA followed with a formal ethics opinion. It objected to the role of lawyers as gatekeepers, but acknowledged that lawyers must act competently, which may require that they assess a client's objectives before proceeding.⁵⁶ In the ABA's most recent pronouncement, client due diligence became a mandatory obligation. "Where there is a high probability that a client seeks to use a lawyer's services for criminal or fraudulent activity, the lawyer has a duty to inquire further to avoid advising or assisting such activity."⁵⁷

Under the CTA, lawyers' duty of inquiry will most likely arise when discussing beneficial ownership with a client. The extent of the duty turns on the risk that the client will give false information.⁵⁸ Voluntary Guidance and Formal

The CTA will require lawyers to reassess their role in forming new client entities. Beyond advising clients about the choice of entity and drafting the constituent documents, lawyers must decide whether they will become an applicant under the CTA rules.

Ethics Opinion 491 provide hypotheticals illustrating how the risk assessment is made and when lawyers should make further inquiry. The risk-based inquiry or client due diligence will determine the extent to which the lawyer documents beneficial ownership. For a trusted, long-term client with individual owners, oral representation and the constituent documents may suffice to evidence ownership. A new client whose beneficial ownership is buried under several layers will require more. Lawyers should, at a minimum, review each owner's constituent documents, match the owner's existence with the secretary of state records and obtain an officer's certificate attesting to ownership.⁵⁹ Lawyers might consider contacting the client's bank to confirm that the bank's documentation is consistent with the lawyer's documentation.⁶⁰

To Be or Not to Be an 'Applicant'

The CTA will require lawyers to reassess their role in forming new client entities. Beyond advising clients about the choice of

entity and drafting the constituent documents, lawyers must decide whether they will become an applicant under the CTA rules. The proposed rules define an applicant as "any individual who files an application to form an entity or registers an entity to do business in the U.S." An applicant also includes "any individual who directs or controls the filing of [the formation] document by another person."⁶¹ Lawyers must decide whether they will gather the personal information for the client and file it with FinCEN and whether they will assume some role in updating the reports. These expanded roles will mean more professional risk to lawyers and higher costs for clients. These roles are new. Lawyers have no standard practices to guide them, and client expectations may vary. For these reasons, a written letter defining the scope of engagement is imperative for lawyers forming legal entities. The engagement letter should describe the client's responsibilities under the CTA and state who will file the formation certificate; who will gather and file the FinCEN information

for the reporting company, beneficial owners and applicants; and how updating the reports will be handled.⁶²

Avoiding applicant role. To avoid filing their personal information in the FinCEN database and limit their professional risk, some lawyers will advise clients about the CTA's requirements and leave compliance to the clients.⁶³ They will cease signing and filing the formation certificate with the secretary of state and shift that task to the client. To avoid any representation to FinCEN about beneficial ownership, they may advise clients about beneficial ownership and may assist in gathering the required information but will instruct clients to file the FinCEN reports. This approach reflects concerns about possible liability for reporting omissions, erroneous reported information or failure to update.⁶⁴ Lawyers may also take this approach if they sense a client may be untrustworthy.⁶⁵

Accepting applicant role. Many lawyers will decide that clients expect and need them to take an active role in the entity formation. That may mean lawyers will prepare and file the formation certificates and thus become applicants under the CTA. Lawyers may also assume the tasks of determining beneficial ownership and gathering and filing the reporting information.⁶⁶ Lawyers' expanded role may be warranted when clients are less sophisticated about legal matters or electronic filings. Clients may also want lawyers' expertise to ensure their legal obligations are met.

Filing and Updating Reported Information

Among their new roles, lawyers must decide whether they will gather the required personal information and file it with FinCEN

for their clients. Lawyers should have the information required for reporting companies. They would not customarily possess the required information for beneficial owners, such as home addresses and personal identification numbers. Gathering that information will be a new task for lawyers assuming the filing role.⁶⁷ Lawyers must also recognize that the beneficial owners may not be their clients and should advise them accordingly. If not a client, the beneficial owners will not enjoy the duties owed to clients, such as a duty of confidentiality. Lawyers may consider what steps, if any, they will take to protect the private information of the beneficial owners.⁶⁸

Finally, lawyers must decide what role they will play in updating the FinCEN reports. The CTA requires reporting companies to report changes in beneficial ownership within 30 days.⁶⁹ While lawyers are unlikely to assume responsibility for verifying or updating reported information, some lawyers may undertake to remind clients periodically of their duty to update. Whatever role lawyers assume, it should be described in an engagement letter.

CONCLUSION

In preparation for the regulations taking effect, reporting companies, beneficial owners, company applicants and their counsel will want to take a variety of steps to ensure they comply. For reporting companies and beneficial owners formed before Jan. 1 2024, taking the steps to gather information regarding each reporting company's information and beneficial ownership information will be necessary to come into compliance before the deadline. For reporting companies formed after Jan. 1 2024, the reporting companies, beneficial owners and

company applicants will want to ensure they have processes in place to gather the required beneficial ownership information and ensure the beneficial owners and company applicants submit their ownership information to the FinCEN database (or, alternatively, the reporting company may obtain their consent to disclose the information). For lawyers, apprising their clients of the CTA obligations will be paramount.

ABOUT THE AUTHORS



Gary W. Derrick is a partner at the Oklahoma City law firm of Derrick & Briggs LLP. He received a bachelor's degree in 1976 from OSU and a J.D. in 1979 from the OU College of Law.



Jacob L. Fanning is an associate at the Oklahoma City law firm of Hartzog Conger Cason LLP. He received a bachelor's degree in 2018 from OSU and a J.D. in 2021 from the OCU School of Law.

ENDNOTES

1. The U.S. was the first country to criminalize money laundering with the adoption of the Currency and Foreign Transactions Reporting Act of 1970. The act was amended by the USA PATRIOT Act of 2001 and other legislation. The legislative framework is commonly referred to as the Bank Secrecy Act (BSA). The BSA, passed in 2016, requires banks to collect information on the significant owners and senior management when a new account is opened. It is a precursor to the Corporate Transparency Act. The BSA is codified at 12 U.S.C. §1829(b), 12 U.S.C. §§1951-1959, 18 U.S.C. §§1956, 1957, and 1960, and 31 U.S.C. §§5311-5314 and §§5316-5332. The implementing regulations are at 31 C.F.R. chap. X.

2. In its Financial Secrecy Index 2020, the Tax Justice Network ranked the U.S. as the second worst "secrecy jurisdictions," only behind the Cayman Islands. Tax Justice Network (Feb. 18, 2020) (avail. at <https://fsi.taxjustice.net/en/>). Gaps in U.S. enforcement were made plain with the leaks of the so-called "Panama Papers," which headlined the scope of illicit financial activity and tax evasion and highlighted the use of U.S. domestic entities. "Financial Transparency: The Biggest Loophole of All," *The Economist* (Feb. 20, 2016).

3. NDAA for Fiscal Year 2021, <https://bit.ly/3U3yCRj>.

4. NDAA §6403(a).

5. See NPRM Executive Summary.

6. The NPRM rules cited in this paper are proposed and may change when adopted in final form.

7. NDAA §6403(a)(1)(A); 31 C.F.R. §1010.380(c)(1). The definition includes legal entities formed or operating under tribal authority.

8. *Id.*

9. See NPRM, Section VI.

10. The NPRM indicates that business trusts (aka statutory trusts) would be included, apparently on the assumption that business trusts are created by statute and a secretary of state filing. See NPRM, Section IV.D.i. That is true in Delaware, but not in many other states, including Oklahoma. An Oklahoma business trust is formed by the filing of the trust instrument (or a memorandum of trust) with the county clerk of the county in which the trust is located and a duplicate filing with the Oklahoma Tax Commission. See 68 OK Stat §68-1211 (2014).

11. NDAA §§6403(a)(1)(B); 31 C.F.R. §1010.380(c)(2).

12. *Id.* The CTA also includes an option for the secretary of the Treasury, with the written concurrence of the attorney general and the secretary of Homeland Security, to exclude by regulation additional types of entities. FinCEN stated in the NPRM that it does not anticipate additional exemptions beyond those specified by the CTA.

13. 26 C.F.R. §§54.4980H-1(a) and 54.4980H-3. These regulations generally define a full-time employee as anyone employed, on average, at least 30 service hours per week or 130 service hours per month.

14. 31 C.F.R. §1010.380(c)(2)(xxi). An entity "has an operating presence at a physical office within the United States" that the entity owns or leases and conducts its business at such physical location in the United States, that is not any individual's place of residence and that is physically distinct from any unaffiliated entity's place of business. *Id.* §1010.380(f)(6).

15. The applicable amount for entities within an affiliated group of corporations filing a consolidated return shall be the amount reported on the group's consolidated return. *Id.* §1010.380(c)(2)(xxi)(C).

16. 31 C.F.R. §1010.380(c)(2)(xxii).

17. FinCEN noted the reason was to stop partially owned entities from being exempt and being able to otherwise hide their beneficial owners.

18. 31 C.F.R. §1010.380(c)(2)(xxiii).

19. Lawyers should note that in most instances, their client is the reporting company and not its owners, officers or managers. See ORPC 1.13(a) (Duty to the Organization). The distinction is important because lawyers' duties, such as the duty of confidentiality, are owed to the company, not the individuals.

20. The scope of ownership interests is broad and includes all ownership interests of any class or type including traditional equity, such as shares in a corporation or interests in an LLC, and instruments that give rise to equity, such as profits interests, convertible debt, warrants or rights or other options or privileges to acquire equity, capital or other interests in a reporting company. *Id.* §1010.380(d)(3). The proposed regulations give a non-exhaustive list of examples to further emphasize that an individual can own or control ownership interests through a variety of means. *Id.* §1010.380(d)(3)(ii). For example, in the context of trust ownership, an individual may own or control ownership interests by way of the individual's position as a grantor or settlor, beneficiary, trustee or another individual with authority to dispose of trust assets. *Id.*

21. This includes but is not limited to 1) the nature, scope and attributes of the business of the reporting company, including the sale, lease, mortgage or other transfer of any principal assets of the reporting company; 2) the reorganization, dissolution or merger of the reporting company;

3) major expenditures or investments, issuances of any equity, incurrence of any significant debt or approval of the operating budget of the reporting company; 4) the selection or termination of business lines or ventures or geographic focus of the reporting company; 5) compensation schemes and incentive programs for senior officers; 6) the entry into or termination or the fulfillment or non-fulfillment of significant contracts; and 7) amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws and significant policies or procedures. *Id.* §1010.380(d)(1)(iii).

22. *Id.* §1010.380(d)(1), (d)(2).

23. *Id.* §1010.380(d)(3)(iii).

24. NDAA §6403(a)(3)(B); 31 C.F.R. §1010.380(d)(4).

25. 31 C.F.R. §1010.380(d)(3)(iii). This definition may include employees of business formation services, law firms or associates, agents or family members who file formation documentation on behalf of another individual.

26. See Keith R. Fisher *et al.*, “Ethics, Lawyer Liability, and the Corporate Transparency Act,” ABA Business Law Professional Responsibility Committee (2022) (stating that it is possible that lawyers could avoid being classified as a company applicant by avoiding accepting the role of company applicant altogether); see also Robert E. Ward, “The Corporate Transparency Act Will Change the Way You Practice,” *Business Law Today* (Feb. 9, 2022) (stating a company applicant is not only the lawyer or paralegal who files the formation documents but also a partner, senior lawyer or any other person directing the activity of the paralegal or associate undertaking the formation).

27. Under this definition, lawyers who otherwise direct or control the filing process do not avoid becoming applicants simply by having their client sign as an “organizer” or “incorporator.” This issue is covered in greater detail in the “Lawyer Responsibilities” section of this paper.

28. Lawyers assisting in entity formation must decide who will file the information: the reporting company or the lawyers. If the lawyers file, they should retain supporting documentation for the information reported to FinCEN. See discussion about the lawyers’ role in endnotes 41 to 69.

29. Updates to the initial submission should apply to all reports by the FIN filer, which would avoid the filing of multiple updated reports.

30. For a foreign reporting company, state or tribal jurisdiction where such company first registers.

31. 31 C.F.R. §1010.380(b)(1)(i); see also Dun & Bradstreet, “What is a D-U-N-S Number?” (available at <https://bit.ly/3fb7BMS>); LEI Worldwide, “What is a Legal Entity Identifier?” (available at <https://bit.ly/3SyKfVz>).

32. *Id.* §1010.380(b)(1)(ii).

33. NDAA §6403(b)(1)(C); 31 C.F.R. §1010.380(a)(1)(i).

34. *Id.* §6403(b)(1)(B); 31 C.F.R. §1010.380(a)(1)(iii).

35. *Id.* §6403(b)(2)(D); 31 C.F.R. §1010.380(a)(2).

36. *Id.* §6403(b)(1)(D). Such changes include 1) qualifying for an exemption subsequent to the filing, 2) changes to address for existing beneficial owners or company applicants and 3) adding new beneficial owners or company applicants. 31 C.F.R. §1010.380(b)(4).

37. NDAA §6403(c)(3).

38. *Id.* §6403(c)(2)(B).

39. *Id.* §6403(c)(3)(A).

40. *Id.* §6403(c)(3)(C); see also 31 C.F.R. §1010.380(a)(3). A corrected report filed within this 14-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which an inaccurate report is filed.

41. See Rule 1.1 (Competence) and Comment 1.1(6) of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S. Chap. 1, App. 3-A.

42. *Id.* Rule 1.4 (Communication).

43. The CTA application to existing entities is a transitional feature. Once existing entities have reported to the FinCEN database, only new entities or entities with amendments will report. Lawyers’ need to inform existing clients is likewise a one-time event. That is not to downplay the reporting by existing entities. FinCEN estimates that there are approximately 30 million entities currently operating within the U.S. that will be subject to reporting. See NPRM, Section VI. See also Section VI(B) (The Lawyers’ Role under the CTA) regarding the contents of such notice.

44. *Id.* Comment 1.4(5) “The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.”

45. Fn. 45 NDAA §(b)(2)(iv).

46. Lawyers who signed the certificate of incorporation as an incorporator or the articles of organization as an organizer are likely applicants and thus reporting persons under the CTA. 31 C.F.R. §1010.380(d)(3)(iii). Under the proposed rules, lawyers who direct or control the filing process are also applicants. *Id.* A company may have more than one applicant. For example, the lawyer who supervised the formation of the entity and the paralegal who signed as an incorporator or organizer may both be applicants. The rules do not cover lawyers who merely act as registered agents. Responsibility for reporting is initiated by the reporting company. The applicant does not have an independent duty to report if the reporting company has not reported.

47. Rule 1.2(d) of the ORPC, 5 O.S. Chap. 1, App. 3-A.

48. *Id.* Rule 1.6(b)(1), (2) and (3).

49. *Id.* Rule 1.6(b)(6).

50. 17 C.F.R. §205 *et seq.*

51. *Id.*

52. In ABA Formal Ethics Opinion 463 (2013), the ABA wrote, “Mandatory reporting of suspicion about a client is in conflict with Rules 1.6 and 1.18, and reporting without informing the client is in conflict with Rule 1.4(a)(5).”

53. Rule 1.13(b) of the ORPC, 5 O.S. Chap. 1, App. 3-A.

54. *Id.* Rule 1.13(c).

55. See “Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing,” ABA (2010) (Voluntary Guidance). The Voluntary Guidance paper was based on the “Risk Based Approach Guidance for Legal Professionals” by the Financial Action Task Force on Money Laundering (2008) (Lawyer Guidance).

56. Formal Ethics Opinion 463, “Client Due Diligence: Money Laundering and Terrorist Financing,” ABA Ethics Committee (2013).

57. Formal Ethics Opinion 491, “Obligations Under Rule 1.2(d) to Avoid Counseling or Assisting in a Crime or Fraud in Non-Litigation Settings,” ABA Ethics Committee (2020).

58. See Section VII(B) (Lawyer’s Role Under the CTA), fn. 54, which identifies three major risk categories with regard to legal engagements: 1) country/geographic risk, 2) client risk and 3) service risk. Lawyers need to determine their exposure to each of these risk categories. Country/geographic risk relates to entities formed or operating in high-risk jurisdictions, such as those subject to sanctions or embargoes or to persons or entities on the List of Specially Designated Nationals and Blocked Persons administered by the U.S.

Treasury Department’s Office of Foreign Assets Control (OFAC) or in any executive order issued by the president of the United States and administered by the OFAC (the “OFAC List”). Lawyers dealing with U.S. clients would not typically encounter country/geographic risk but may pose some type of service risk. Service risk would exist when masking beneficial ownership, facilitating large cash transactions, moving money through lawyers’ accounts or in unusual or unconventional transactions.

59. This information is in addition to the identity information for beneficial (individual) owners reported under the CTA. See Section III (Required Disclosures).

60. In 2016, FinCEN adopted corporate due diligence rules for financial institutions to collect beneficial ownership information from account holders when the account is opened. See 31 CFR 1010.230 *et seq.* The bank due diligence rules are like the CTA rules.

61. 31 C.F.R. §1010.380(d)(3)(iii). This definition may include employees of business formation services, law firms or associates, agents or family members who file formation documentation on behalf of another individual.

62. The client would presumably be responsible for updating reports, but lawyers may undertake to remind clients periodically of their duty to update. Alternatively, the engagements letter could specifically negate any obligation of a lawyer to verify or update beneficial ownership.

63. Lawyers can limit the scope of their engagement, which would include making the client responsible for the CTA reporting obligations. Rule 1.2 of the ORPC, 5 O.S. Chap. 1, App. 3-A.

64. Keith R. Fisher *et al.*, “Ethics, Lawyer Liability, and the Corporate Transparency Act,” ABA Business Law Professional Responsibility Committee (2022).

65. Lawyers may not exclude from the engagement inquiry into the legality of the transaction. ABA Formal Ethics Opinion 491. Lawyers cannot avoid duties under laws prohibiting the aiding, abetting or committing violations of U.S. anti-money laundering laws (*e.g.*, 18 U.S. Code §§1956 and 1957). A lawyer cannot assist in violating the law. Rule 1.2(d) of the ORPC, 5 O.S. Chap. 1, App. 3-A.

66. Filers can obtain a FIN by providing the required information and avoiding repeated filings of previously filed information.

67. Documenting the required information is important. The CTA rules require that the personal identification number be photographed or scanned and filed with the other reported information. In their client due diligence, lawyers may ask the client or the beneficial owner to certify the information to be reported.

68. Oklahoma does not have a general data privacy statute that would compel lawyers to safeguard the personal information of non-clients, such as beneficial owners. The Oklahoma Constitution provides a right of privacy, which at common law would protect against intrusion on solitude or seclusion, the public disclosure of private facts, publicity tending to put a person in a false light and the appropriation of one’s name or likeness. See Oklahoma Constitution, Art. 2, §30 (Unreasonable Searches or Seizures; Issuance of Warrants) and *McCormack v. Oklahoma Pub. Co.*, 1980 OK 98, 613 P.2d 737. While no case has extended the privacy right to protect third parties from a lawyer’s disclosures, prudence dictates that lawyers should implement measures to protect the confidentiality of beneficial owner information.

69. Reporting companies have only 14 days to correct errors in the reported information. See Section VI (Penalties for Non-Compliance), fn. 40.

*'Tis the
season ...*

*Better
call
Ted!*



ACCORD

MEDIATION | ARBITRATION

View our mediators' calendars and
book online at AccordADR.com
918-592-1144



Do I Have a Duty to Investigate Undue Influence? And Other Things Estate Planning Attorneys Should Know

By David M. Postic

UNDUE INFLUENCE IS ONE OF THE MOST INTRIGUING and perplexing concepts in trust and estate law. It embraces actions that are not necessarily deceptive enough to constitute fraud, yet not so overtly coercive as to constitute duress, exerted against someone who might not even be suffering from diminished capacity. Some instances of wrongdoing are clear and egregious – you know it when you see it. Most are much less so. Even leading academics have called undue influence a “nebulous concept,”¹ perhaps “the most bothersome ... in all the law.”² However, it is much too prevalent to ignore.

A GROWING PROBLEM

Approximately one in six individuals aged 60 and older have experienced some form of abuse or exploitation in the past year,³ with 20-40% of those cases involving financial exploitation.⁴ The U.S. Senate Special Committee on Aging reported that seniors lose an estimated \$2.9 billion each year as a result of exploitation and undue influence.⁵ Many sources suggest that figure is a dramatic underestimate, with some loss estimates reaching more than \$35 billion per year. That’s greater than the gross domestic product of half the countries in the world.⁶ Given the ubiquity of the problem and the stakes involved, it is no surprise that, “Undue influence is the most commonly asserted ground for

invalidating a will.”⁷ And the crisis is expected to only get worse.⁸

As key advisors to those most susceptible to this type of exploitation, estate planning attorneys are particularly well-situated to protect clients and their estates. But what, exactly, are we obligated (or even allowed) to do? The specter of undue influence presents a minefield of complex ethical issues that lawyers must navigate carefully. To further complicate matters, scientific developments in recent years have “call[ed] into question many of the premises of ... how ‘rational’ or ‘free will’ decisions are made,”⁹ changing the way estate planners need to think about undue influence. Deciphering this area of law can seem an insurmountable task, like understanding ERISA or getting

through Thanksgiving dinner without a family member saying something uncomfortable. This article aims to do three things: 1) demystify the frequently misunderstood doctrine of undue influence, 2) explain some of the key ethical obligations and pitfalls in this area of the law and 3) equip attorneys with the tools to identify (and hopefully prevent) undue influence in the estate planning context.

A PRIMER ON UNDUE INFLUENCE

The ethical rules of our profession are best understood in context.¹⁰ To comprehend the scope of a lawyer’s duties with respect to undue influence, it is essential to know what undue influence is. Many lawyers believe, incorrectly,



that a client must lack capacity or suffer from cognitive defects to be unduly influenced. While it may be easier to exert undue influence over an incapacitated person,¹¹ the two concepts are independent.¹² A competent person is still vulnerable to this kind of manipulation.¹³ In fact, “People with general capacity to do business or deal with complex situations are taken advantage of with great frequency.”¹⁴

Undue influence developed in the common law to protect against “overreaching by a wrongdoer seeking to take unfair advantage of a donor who is susceptible to such wrongdoing.”¹⁵ It has often been defined as that degree of influence “which destroys the testatrix’s free agency,”¹⁶ effectively “substitut[ing] another’s will for that of the testatrix’s”¹⁷ and causing her to make a donative

transfer she would not otherwise have made.¹⁸ Although these definitions are useful to describe the conceptual space undue influence occupies in the broader framework of the law, they don’t tell us much of practical use, and they fall well short of reflecting what science has come to understand about human decision-making.¹⁹

Because direct evidence of undue influence is rarely available, courts have long utilized a system of inferences and burden-shifting presumptions to aid them in assessing claims.²⁰ Circumstantial evidence is generally sufficient to raise an *inference* – something the judge or jury is *allowed* but not *required* to rely on as fact – of undue influence, where 1) the testatrix was susceptible to the influence of others, 2) the influencer had the opportunity or ability to exert

influence over the testatrix, 3) the influencer had a disposition to exert influence of a nature that would cause the testatrix to make a provision contrary to her own desires and 4) the resulting disposition appears to have been the product of the undue influence.²¹ These four elements, often referred to in clinical contexts as “SODR factors” (Susceptibility Opportunity Disposition Result), are not necessarily determinative but provide the trier of fact with objective indicia to guide their analysis.²²

On the other hand, a rebuttable *presumption* of undue influence will arise where 1) a “confidential relationship” existed between the testatrix and another, stronger party and 2) the stronger party “actively assisted” in the procurement of the will.²³ Once this presumption is raised, the burden

shifts to the will's proponent to establish mitigating circumstances showing the free agency of the testatrix was not overcome. The Oklahoma Supreme Court has cited two primary factors sufficient to rebut a presumption of undue influence: 1) receipt by the testatrix of independent and competent legal advice regarding the disposition of her estate before executing the will and 2) the termination of the confidential relationship prior to the will's procurement.²⁴ While courts have not foreclosed the possibility of other evidence that could rebut a presumption once raised, there appears to be no Oklahoma cases holding the presumption was overcome absent one of the above two factors.

It is also irrelevant whether the influencer benefits personally from the wrongfully procured will. A person's lack of beneficiary status does not render them legally incapable of, or excuse them from, exercising undue influence.²⁵ "The gravamen of undue influence is legal harm from the wrongful exertion of power over the will's maker rather than the receipt of personal benefit from the offending act of influence."²⁶ It is not the result of the influence but the influence itself that vitiates the will.

THE ETHICAL IMPLICATIONS OF UNDU INFLUENCE

Estate planning attorneys figure prominently in undue influence claims.²⁷ In some instances, the attorney is the bad actor, having taken advantage of a confidential relationship to procure a gift for themselves or another.²⁸ This article does not explore the ethics of the attorney as wrongdoer. Rather, our focus will strictly be on the ethical obligations and pitfalls that may arise

when wrongdoing is practiced by someone else.

Any discussion of a practitioner's responsibilities in this area must recognize the two very different perspectives from which trust and estate lawyers encounter undue influence. First is the front end of the estate planning process: consultation, preparation



and execution. Because the practitioner's goal at this stage should be to avoid or prevent undue influence to ensure a valid estate plan, I will refer to duties associated with this perspective as "protective" in nature. Second is the back end: after the client dies, when a will is challenged in court. I will refer to these duties as "evidentiary," given the drafting attorney's key role as a potential witness in the probate proceedings.

Front-End 'Protective' Implications

For good reason, most of the literature discussing undue influence focuses on the protective role of the estate planning attorney. How to identify undue influence, and how to guard against it. While the front end of the planning process implicates numerous ethical

issues, this article focuses only on three: competence, confidentiality and conflicts of interest.

Duty of competence. The Oklahoma Rules of Professional Conduct (hereinafter, the "rules") begin by setting forth the most basic duty of any practitioner: competence. A competent attorney is one who has or is able to acquire

through reasonable study, "the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."²⁹ Think of competence as a set of tools. The skill and know-how you currently possess are the tools already in your toolbox. When you are asked to provide representation that requires a tool (knowledge or skill) you don't have, it is fine to accept the matter if you can buy that tool at, say, The Home Depot (easily acquire it) or borrow it from a friend (associate with a competent attorney). It is much more problematic to take on a project that requires you to rent a crane, use explosives or represent someone in a capital murder trial when you have only ever handled quiet title cases.

Among other things, a competent estate planning attorney must know how to prepare and execute a valid will.³⁰ Simple enough, right? After all, the core Wills Act formalities are spelled out in 84 O.S. §55, and form books and the internet offer a multitude of templates that can be adapted for each client's purposes. The uniformity and accessibility of wills leads many lawyers to draft them, even if they have little or no experience with estate planning. There is just one problem: Formalities alone are not sufficient to validate a testamentary act. A will also must be executed freely and voluntarily.³¹ Accordingly, the law states that any will procured by undue influence is invalid.³²

So, should the competence of a drafting attorney be called into question any time a will is thrown out on the ground of undue influence? Certainly not. Many instances of exploitation are uncovered only through meticulous investigations conducted by medical and social work professionals with specialized knowledge, training and experience. These are skill sets the vast majority of attorneys do not (and should not be expected to) have. However, the official comments to Rule 1.1 explain that competent representation "includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods ... meeting the standards of competent practitioners."³³ An attorney who does not have at least a general idea of the warning signs or "red flags" of undue influence or does not closely scrutinize those signs when they appear arguably fails to discharge their duty of competence.³⁴

Duty of confidentiality.

Suppose you are engaged by a client, and during the consultation process, you begin to suspect they are being unduly influenced. Being

a competent attorney, you decide to "inquir[e] into and analy[ze]" the situation before proceeding any further. You have contact information for a family member of your client, so you call them up to voice your concerns and ask them for more information. Just like that, you have violated your duty of confidentiality. This "fundamental principle in the client-lawyer relationship"³⁵ is a pitfall for the well-meaning attorney seeking to protect a client from potential undue influence.

Pursuant to Rule 1.6(a), an attorney is prohibited from "reveall[ing] information relating to the representation of a client unless the client gives informed consent."³⁶ Rule 1.6(b) offers certain exceptions to this rule, such as disclosure "to prevent reasonably certain death or substantial bodily harm" or "to prevent the client from committing ... a crime" or "to prevent, mitigate or rectify substantial injury to the financial interests or property of another [i.e., of someone other than the client]."³⁷ Noticeably absent, however, is the ability of an attorney to disclose information to prevent, mitigate or rectify substantial injury to the financial interests or property of a client when, for example, the attorney suspects the client is being exploited. So, what can you do?

Rule 1.14 may offer aid in some cases, allowing a lawyer to disclose information for the purposes of "taking protective action" where the lawyer "reasonably believes that the client has diminished capacity."³⁸ However, the comments make clear that "capacity" in this sense refers only to the client's cognitive functioning and, thus, does not encompass other factors that make them more susceptible to undue influence or exploitation.³⁹ This exception to the duty of confidentiality is a narrow one

that "does not give the lawyer *carte blanche* to impose on the client the lawyer's personal view of what is in the client's best interest."⁴⁰

The only method under the rules by which an attorney may disclose confidential information for the purpose of investigating suspected undue influence is with the client's informed consent.⁴¹ "Informed consent" requires explaining to the client, in specific terms, the proposed course of action as well as the risks or adverse consequences that may result from such action.⁴² A blanket confidentiality waiver signed at the start of representation will not do the trick. Be forthright with your client, even if it requires an uncomfortable conversation. Failing to discuss the issue directly entails "the risk that the client ... is inadequately informed and the consent is invalid."⁴³

There is not one single "best" way to broach the topic of undue influence with a client when seeking their informed consent. In my experience, I find the least uncomfortable option is approaching it from the perspective of making sure the client's wishes are followed. Point out the facts that have raised your suspicions – though you do not necessarily need to reveal that *you* are suspicious – and explain that someone could use those facts to later argue the estate plan was procured by undue influence. Tell your client, truthfully, that by undertaking a thorough investigation now, you can serve as a better witness in a potential will contest. Your client is an adult. The fact that they might be the victim of undue influence does not mean they deserve any less respect and dignity.⁴⁴

One final consideration: Even if a client consents to the disclosure of confidential information, an attorney should still think carefully before doing so. Consulting

with someone about a matter of undue influence could trigger a mandatory reporting obligation under the Protective Services for Vulnerable Adults Act.⁴⁵ (Lawyers are exempt from these obligations.) The involvement of law enforcement can be (and typically is) undesirable, even traumatic for a client. It can lead to family strife, court action, changes in living arrangements and other consequences that upend the client's life.⁴⁶ For the sake of the client, consider whether less disruptive measures are available before sharing your concerns and disclosing confidential information to a third party, even if you are authorized to do so.

Conflicts of interest. Rule 1.7(a) forbids a lawyer from undertaking a representation that is "directly adverse" to another client or if there is a "significant risk" that the representation would be "materially limited by the lawyer's responsibilities to another client."⁴⁷ This obligation is rooted in the duty of loyalty, which is an "essential element[] in the lawyer's relationship to a client."⁴⁸ Conflicts of interest are often imagined in terms of representing parties who are on opposing sides of a controversy or who are generally antagonistic toward one another. Yet, nonadversarial practice is fraught with conflicts as well, and estate planning is no exception.⁴⁹

One of the most common such conflicts arises when a client asks their attorney to prepare a will, trust, power of attorney, etc., for someone else. It is fine for a client who is happy with their attorney's services to refer family members and friends. That is how many estate planners keep the lights on. But ethical problems begin to bubble up when the referring client wants to be involved in the planning process for the person

they referred. This involvement can take many different forms, including providing information about the new client, paying the attorney for their services to the new client, being present for a consultation or other meetings with the new client, conveying the new client's wishes to the attorney or talking with the attorney about desired changes to drafts of the new client's documents.

A fundamental tenet of representation is that an attorney must "exercise independent professional judgment and render candid advice" to the client.⁵⁰ Each of the actions described above or other third-party involvement in the estate planning process can affect an attorney's ability to fulfill that duty so vital to the lawyer-client relationship. Consequently, attorneys should remain mindful of two rules (in addition to confidentiality) that apply to the involvement of non-clients in the representation: Rule 1.8(f) and Rule 5.4(c).

Rule 1.8(f) applies when someone other than the client seeks to pay for the attorney's services. Under this rule, an attorney can only accept compensation from a third party if doing so does not interfere with the attorney's independent professional judgment, and the client gives their informed consent.⁵¹ Even if a client agrees to someone else paying their legal fees, the arrangement can look suspicious and could increase the likelihood that the will or trust is challenged.⁵²

It is common for a family member or friend of the client to get involved in ways other than paying for legal services. Where a third party is not supplying payment, Rule 5.4 requires simply that an attorney not permit the party to "direct or regulate" their professional judgment in representing the client.⁵³ Unlike Rule 1.8(f), a client's informed consent is not required

under Rule 5.4(c) (though informed consent will still be necessary to waive confidentiality if the third party is to receive any details relating to the representation).

In addition to conflict-of-interest concerns, the participation of someone other than the client in the estate planning process should trigger a heightened concern of undue influence. Involvement in such intimate, important decisions "afford[s] [the third party] a unique opportunity to influence the disposition" of the testator's estate.⁵⁴ The mere presence of another person can also affect what a client is willing to tell their attorney or mask signs of nefarious action. If a client wants a friend or family member to sit in on a meeting, you should, at minimum, visit with the client privately for a while before inviting the other person to join you. Doing so can help establish that the client received "independent and competent advice" and rebut a later claim of undue influence.⁵⁵

There is no litmus test for determining the appropriate level of third-party involvement in the estate planning process.⁵⁶ However, such participation can make a will contest based on undue influence more likely to succeed.⁵⁷ It is therefore good practice to explain these risks to your client before allowing a third party to get involved, particularly if you have a preexisting relationship with that person (e.g., they are also a client of yours). In fact, attorneys arguably have an obligation to share this information with the client under Rule 1.4(b) as it could impact their decision whether to engage the lawyer at all.⁵⁸

Back-End 'Evidentiary' Implications

Ethical pitfalls still arise even after a client's death. As noted above, the estate planner can play a vital evidentiary role in the

As noted trusts and estates professor William M. McGovern Jr. opined, lawyers should not have to “decide, at their peril, whether a client is ... under undue influence. Nonetheless, a lawyer who has reason to suspect this should not ignore the problem.”⁷⁰

probate process. Attorneys regularly attest to the wills they draft, making them necessary witnesses in will contests,⁵⁹ and can offer key testimony in proving the terms of a lost will.⁶⁰ But perhaps nowhere is the estate planner’s role more crucial than when an estate plan is challenged on the grounds of undue influence.

Because influencers frequently work to isolate their victims from family and friends, evidence of the statements and desires of the testatrix during the will-making process often come from only two sources: the lawyer and the influencer. The reliability of the influencer is suspect. It is in their best interest to testify in a way that minimizes the role of their influence. That leaves the drafter’s testimony. An attorney who “took careful steps to ensure that the drafted document reflected only [the testatrix’s] desires” can save a will.⁶¹ On the other hand, an attorney who failed to advise the testatrix “privately ... impartially and confidentially” can be the final nail in the coffin, leading to a finding of undue influence.

The importance of the drafting attorney’s testimony in undue influence cases can lead to a serious ethical problem. Under Rule 3.7, attorneys are prohibited from serving as an advocate at a trial in which they are likely to be a necessary witness.⁶² It is common for a decedent’s family, when looking for advice concerning probate, to engage the attorney who prepared their loved one’s estate plan. That is fine for ordinary administrations. In contested proceedings, however, combining the two roles, advocate and witness, can “prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.”⁶³

Rule 3.7 contains a few exceptions to this general bar. A lawyer may accept representation if their testimony “relates to an uncontested issue” or “relates to the nature and value of legal services rendered in the case.”⁶⁴ Serving as both counsel and witness in these situations does not risk the same prejudice since there is “less dependence on the adversary process to test the credibility of the testimony.”⁶⁵ The third and

final caveat is that a lawyer whose testimony will be needed may act as advocate if “disqualification ... would work substantial hardship on the client.”⁶⁶ This last exception is unlikely to apply to most probates. A diligent attorney should be able to determine early on whether someone might contest the proceedings. Even if the challenge is a surprise, a will contest usually occurs at the beginning of the probate process when another attorney can easily step in. Under such circumstances, the client does not suffer “substantial hardship” by having to find replacement counsel.⁶⁷

As long as the case falls within one of the permissible exceptions, an attorney may serve as counsel in a probate matter despite the need for their testimony. But the issues being contested can easily change as a case evolves, potentially undermining the facts used to justify your representation. If there is any chance the will might be challenged, the safer course of action would be to refer the case to another attorney. As the OBA Legal Ethics Committee (predecessor to the Legal Ethics

Advisory Panel) cautioned, “Any lawyer relying on [an] exception [to Rule 3.7] ... bears a heavy burden of justification for his decision to serve as both witness and advocate, and in most circumstances doubts should be resolved in favor of the lawyer testifying and against his continuing as an advocate.”⁶⁸ Failing to do so could prove detrimental to your client’s case.⁶⁹

FINAL THOUGHTS AND BEST PRACTICES

No court has posited that estate planning attorneys bear a duty to identify and investigate potential undue influence in all cases. Considering the nuance of the doctrine, that is probably for the best. But does that mean attorneys will be excused for failing to spot – or worse, for ignoring – warning signs of undue influence? As noted trusts and estates professor William M. McGovern Jr. opined, lawyers should not have to “decide, at their peril, whether a client is ... under undue influence. Nonetheless, a lawyer who has reason to suspect this should not ignore the problem.”⁷⁰

Always visit with a client privately to determine their wishes and be forthcoming with any concerns you have. Remain vigilant for common indicia of undue influence, such as the SODR factors. If your suspicions are raised, get a second opinion from another attorney who can look at the case with a fresh set of eyes (though obtain the client’s informed consent before doing so). Encourage the client to get a psychological evaluation – not necessarily because you suspect they are incompetent but to establish their capacity as an evidentiary matter. Taking simple actions such as these can best ensure you are properly discharging your professional responsibilities.

One final note. The ethical considerations that make it important for us, as practicing attorneys, to be aware of and guard against undue influence also serve a broader social purpose: authenticating and preserving the integrity of the client’s legacy. The freedom of disposition turns on the notion that a person’s exercise of the testamentary right is the fruit of their own volition; a will has value only to the extent it actually reflects the wishes of the will-maker. And as the principal conduit through which this expression of human agency flows, the legal profession is best situated to make sure that continues to be true.

ABOUT THE AUTHOR



David M. Postic is a shareholder at Postic & Bates PC in Oklahoma City, where he practices primarily in the areas of estate planning, probate and trust administration. He also serves as an adjunct professor teaching Wills and Trusts at the OU College of Law. He can be contacted at posticd@posticbates.com.

ENDNOTES

1. Ronald J. Scalise Jr., “Undue Influence and the Law of Wills: A Comparative Analysis,” 19 *Duke J. Comp. & Int’l L.* 41, 56 (2008).
2. Jesse Dukeminier and Robert H. Sitkoff, *Wills, Trusts, and Estates* 289 (11th ed. 2022).
3. Yongjie Yon, Christopher R. Mikton, Zachary D. Gassoumis and Kathleen H. Wilber, “Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-Analysis,” 5 *Lancet Global Health* e147, e150–52 (2017). See also National Center on Elder Abuse, “Research, Statistics, and Data,” available at <https://bit.ly/3zqrjLv> (last visited Aug. 3, 2022).
4. Compare Edward O. Laumann, Sara A. Leitsch and Linda J. Waite, “Elder Mistreatment in the United States: Prevalence Estimates From a Nationally Representative Study,” 63B *J. Gerontology* S248, S251–53 (July 2008) (estimating 3.5% financial abuse), with Yon et al., *supra* note 3, at e152 (estimating financial abuse at 6.8%).
5. U.S. Senate Special Committee on Aging, *Fighting Fraud: Senate Aging Committee Identifies Top 10 Scams Targeting Our Nation’s Seniors* 30 (2020).
6. The World Bank, “World Bank National Accounts Data, and OECD National Accounts

Data Files,” available at <http://bit.ly/3gjC7ER> (last visited Nov. 10, 2022).

7. Eunice L. Ross and Thomas J. Reed, *Will Contests* §7:21 (2d ed. 1999). See also Jeffrey A. Schoenblum, “Will Contests – An Empirical Study,” 22 *Real Prop. Prob. and Tr. J.* 607, 647-48 (1987) (finding that 74% of will contests involved allegations of undue influence or lack of testamentary capacity versus 14% of will contests that questioned the adherence to formalities).

8. Scalise, *supra* note 1, at 58 (citing Lawrence A. Frolik, “The Biological Roots of the Undue Influence Doctrine: What’s Love Got to Do With It?” 57 *U. Pitt. L. Rev.* 841, 852 (1996)) “It is almost inevitable that the number of undue influence claims will increase with the aging of the population. Part of the explanation for this phenomenon is that older people suffer greater instances of physical and mental decline than younger ones, which thus makes them more susceptible to undue influence.”

9. Dominic J. Campisi, Evan D. Winet and Jake Calvert, “Undue Influence: The Gap Between Current Law and Scientific Approaches to Decision-Making and Persuasion,” 43 *ACTEC L. J.* 359, 361 (2018).

10. See Model Rules of Prof’l Conduct Scope [15] (2019) “The Rules [of Professional Conduct] presuppose a larger legal context shaping the lawyer’s role.”

11. Frolik, *supra* note 8, at 845, “The lower the mental capacity of the testator, the easier it is to convince a jury or court of the existence of undue influence.”

12. Mary Joy Quinn et al., “Developing an Undue Influence Screening Tool for Adult Protective Services,” 29 *J. Elder Abuse & Neglect* 157, 158–59 (2017).

13. See, e.g., *In re Estate of Olson*, 126 P. 171, 174 (Cal. Ct. App. 1912) “Soundness of mind and body does not imply immunity from undue influence”; 27 *Am. & Eng. Ency. Law*, “Undue Influence,” at 497 (2d ed. 1895) “Undue influence is quite distinct from testamentary capacity.” Cf. ABA Commission on Law and Aging, *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement* 24 (2015) “A person with decision-making capacity can be unduly influenced, but it is easier to commit ... on someone who has diminished capacity.”

14. Campisi et al., *supra* note 9, at 363 (citing George A. Akerlof and Robert J. Shiller, *Phishing for Phools: The Economics of Manipulation and Deception* 1 (2015)).

15. *Restatement (Third) of Property: Wills and Other Donative Transfers* §8.3 cmt. e, at 145 (Am. Law Inst. 2003) [hereinafter *Restatement (Third) Property*]. The utility of undue influence in the American law of donative transfers is clearest when viewed in comparison with foreign civil law systems, such as France and Germany, which contain no direct analog. See generally Scalise, *supra* note 1.

16. *In re Estate of Sneed*, 1998 OK 8, ¶17, 953 P.2d 1111 (citing *Hubbell v. Houston*, 1967 OK 138, 441 P.2d 1010).

17. *Id.* at ¶17.

18. *In re Estate of Samochee*, 1975 OK 143, ¶47, 542 P.2d 498 (defining undue influence as when a “testator has been induced to execute instrument which in form is his will, but which in reality expresses [a] testamentary disposition he would not have made voluntarily”). See also *Restatement (Third) Property* §8.3(b), at 143.

19. See generally Campisi et al., *supra* note 9.

20. See e.g., *In re Cook’s Estate*, 1918 OK 569, ¶12, 175 P. 507 (noting will contestant “not confined to the facts which he may be able to

adduce, but is entitled to all the natural inferences which may be derived from established facts”).

21. See 1 R. Robert Huff, *Oklahoma Probate Law and Practice* §6.2, at 89 (3d ed. 1995);

Restatement (Third) Property §8.3 cmt. e, at 145.

22. See Quinn *et al.*, *supra* note 12, at 161–62.

23. *In re Estate of Holcomb*, 2002 OK 90, ¶18, 63 P.3d 9 (citing *In re Estate of Maheras*, 1995 OK 40, ¶9, 897 P.2d 268).

24. *Id.* at ¶31. Advice is deemed “independent” when the testatrix consults “fully and privately about [her] will with a person so dissociated from the stronger party that the advice may be treated as having been given impartially and confidentially.” *Maheras*, 1995 OK 40, ¶9.

25. *Maheras*, 1995 OK 40, ¶11.

26. *Id.* at ¶12.

27. William M. McGovern Jr., “Undue Influence and Professional Responsibility,” 28 *Real Prop. Prob. and Tr. J.* 643, 644 (1994).

28. See, e.g., *In re Disciplinary Action Against Boulger*, 637 N.W.2d 710 (N.D. 2001) (drafting attorney reprimanded for preparing will naming himself as contingent devisee); *Attorney Grievance Comm’n v. Saridakis*, 936 A.2d 886 (Md. 2007) (attorney violated Rule 1.8(c) by drafting will giving himself substantial bequest, even though attorney had a co-worker serve as “independent counsel”).

29. Rule 1.1, Oklahoma Rules of Professional Conduct, 5 O.S. Ch. 1, App. 3-A [hereinafter “ORPC”]. See also *Restatement (Third) of the Law Governing Lawyers* §50, 52 (Am. Law Inst. 2000) (noting a lawyer owes a client a duty to “pursu[e] the client’s lawful objectives in matters covered by the representation” with the “competence and diligence normally exercised by lawyers in similar circumstances”).

30. See *Hesser v. Central Nat’l Bank & Trust Co. of Enid*, 1998 OK 15, ¶16, 956 P.2d 864 (quoting *Fretwell v. Protection Alarm Co.*, 1988 OK 84, ¶6, 764 P.2d 149) (noting that obligation to help client execute a valid will is part of the attorney’s “common law duty to perform with care [and] skill”).

31. *In re Free’s Estate*, 1937 OK 708, ¶12, 75 P.2d 476 (quoting *McCarty v. Weatherly*, 1922 OK 12, ¶25, 204 P. 632) “The proponents of a will [must] prove, not only the due execution of the will as provided by law, but that the instrument was in fact the free and voluntary act and will of the testatrix.”

32. See 84 O.S. §43.

33. Rule 1.1 cmt. 5, ORPC.

34. See, e.g., *Rathblott v. Levin*, 697 F. Supp. 817 (D.N.J. 1988) (upholding complaint by devisee who alleged that drafter of will “was negligent in failing to firmly establish [the testator’s] testamentary capacity and free will,” thereby causing the devisee to incur substantial expenses in defending the will contest). *But see Logotheti v. Gordon*, 607 N.E.2d 1015 (Mass. 1993) (dismissing claim against lawyer for drafting will despite signs testator was incapacitated and using relative of alleged influencer as interpreter in communicating with testator).

35. Rule 1.6 cmt. 2, ORPC.

36. Rule 1.6, ORPC.

37. Rule 1.6(b)(1)–(3), ORPC (emphasis added). All of the exceptions in Rule 1.6(b) are permissive, meaning an attorney is not required to disclose information in those situations.

38. See Rule 1.14(b), (c), ORPC.

39. See Rule 1.14 cmt 6, ORPC, “In determining the extent of the client’s diminished capacity, the lawyer should consider and balance such factors as: the client’s ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a

decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client.” See also *In re Eugster*, 209 P.3d 435 (Wash. 2009) (stating a lawyer may take limited protective action if they reasonably believe client is under undue influence only if client is also suffering diminished capacity).

40. Ronald D. Rotunda and John S. Dzienkowski, *Legal Ethics: The Lawyer’s Deskbook on Professional Responsibility* §1.14-1 (2013–14 ed.). Cf. ABA Comm’n on Ethics and Prof’l Responsibility, Formal Op. 404 (1996) (noting lawyer’s mere belief client is exercising poor judgment does not warrant “protective action” under Rule 1.14).

41. Rule 1.6(a), ORPC.

42. Rule 1.0(e), ORPC.

43. Rule 1.0 cmt. 6, ORPC.

44. Cf. Rule 1.14(a), ORPC (mandating that when dealing with a client who has diminished capacity, the lawyer “shall, as far as reasonably possible, maintain a normal client-lawyer relationship”).

45. See 43A O.S. §10-104.

46. See N.H. Bar Ass’n Ethics Committee Advisory Op. 2014-15/5, “The Lawyer’s Authority to Disclose Confidential Client Information to Protect a Client from Elder Abuse or Other Threats of Substantial Bodily Harm.”

47. Rule 1.7, ORPC.

48. Rule 1.7 cmt. 1, ORPC.

49. See generally ABA Comm’n on Ethics and Prof’l Responsibility, Formal Op. 434 (2005).

50. Rule 2.1, ORPC.

51. The rules generally proscribe accepting payment from third parties because “third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing.” Rule 1.8 cmt. 11, ORPC. See also *id.* cmt. 12 (noting, “A conflict of interest exists [under Rule 1.7(a)] if there is significant risk that the lawyer’s representation of the client will be materially limited by ... the lawyer’s responsibilities to the third-party payer”).

52. See McGovern, *supra* note 27, at 665.

53. Rule 5.4(c), ORPC.

54. See *Christensen v. Britton*, 784 P.2d 908, 912 (Mont. 1989). See also *In re Estate of Jessman*, 554 N.E.2d 718 (Ill. App. Ct. 1990) (finding presumption of undue influence when devisee contacted attorney, drove testator to attorney’s office and was named guardian of testator).

55. See, e.g., *Holcomb*, 2002 OK 90, ¶38 (citing as evidence rebutting presumption testimony that the testatrix alone “provided the dispositive terms of the will ... outside of [the] presence” of the alleged influencer).

56. Martin J. Ganderson and Jessica L. Mellington, *Ethics: The Power of Attorney* 8–15 (2006), available at <https://bit.ly/3Nm72MM>.

57. *Holcomb*, 2002 OK 90, ¶18 (citing *Maheras*, 1995 OK 40, ¶9).

58. ABA Comm’n on Ethics and Prof’l Responsibility, Formal Op. 428, at 5 n.13 (2002) (citing Rule 1.4(b), which states, “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation”).

59. 58 O.S. §43 (stating, “If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined”).

60. See 58 O.S. §82 (requiring the provisions of a lost will to be “clearly and distinctly proved by at least two credible witnesses”).

61. *In re Estate of Overton*, 417 N.W.2d 653, 658 (Minn. Ct. App. 1988). See also *Bratton v.*

Owens, 1990 OK CIV APP 16, 794 P.2d 423 (rejecting undue influence claim based on attorney’s testimony); *Langford v. McCormick*, 552 So. 2d 964 (Fla. Dist. Ct. App. 1989) (relying on attorney’s testimony to refute undue influence); *In re Estate of Kline*, 613 N.E.2d 1329 (Ill. App. Ct. 1993) (relying on testimony of drafting attorney to find no undue influence); *In re Estate of Gonzales*, 775 P.2d 1300 (N.M. Ct. App. 1988) (rejecting presumption of undue influence because attorney drafted documents based on his conversations with decedent), *cert. quashed*, 769 P.2d 731 (N.M. 1989).

62. Rule 3.7(a), ORPC, states:

- a. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
 1. the testimony relates to an uncontested issue;
 2. the testimony relates to the nature and value of legal services rendered in the case; or
 3. disqualification of the lawyer would work substantial hardship on the client.

63. Rule 3.7 cmt. 1, ORPC. See also *id.* cmt. 2 (noting the risk of prejudice is heightened when a jury is involved).

64. Rule 3.7(a)(1), (2), ORPC.

65. Rule 3.7 cmt. 3, ORPC.

66. Rule 3.7(a)(3), ORPC.

67. See Texas Committee on Prof’l Ethics, Op. 439, 50 *Tex. B.J.* 617 (1987) (noting that because attorney who prepared will could have foreseen need for his testimony when accepting representation for will contest, facts do not give rise to an exception on grounds of undue hardship) (applying Rule 3.7 analog, DR 5-101).

68. OBA Legal Ethics Committee, Advisory Op. 280 (1974).

69. See, e.g., *In re Estate of Seegers*, 1986 OK CIV APP 21, 733 P.2d 418 (holding trial court should have disqualified attorney who prepared contested will from representing party in probate) (applying Rule 3.7 predecessor, DR 5-101). See also *In re Estate of Waters*, 647 A.2d 1091 (Del. 1994) (holding trial court committed “plain error” by allowing an attorney to appear in a will contest both as trial advocate for estate and as necessary witness testifying on contested issues of undue influence and testamentary capacity); *Eccles v. Nelson*, 919 So. 2d 658 (Fla. App. 2006) (disqualifying attorney who prepared will under Rule 3.7 because his testimony “concern[ed] crucial issues” of capacity, undue influence, and genuineness of signature).

70. McGovern, *supra* note 27, at 681.

Cyber Spies Attempt to Sway Litigation Battles and Break Into Attorney Emails

By Sharon D. Nelson, John W. Simek and Michael C. Maschke

REUTERS REPORTED IN LATE JUNE THAT THOUSANDS OF EMAIL RECORDS it had uncovered showed cyber spies hacking into parties and law firms involved in lawsuits around the world.¹ Apparently, hired spies have become a weapon of litigants looking for an advantage. Google's Threat Analysis Group (TAG) describes this segment of attackers as "hack-for-hire" firms who take advantage of known security flaws to compromise accounts and exfiltrate data as a service.² As found in the Reuters investigation, law firms who handle high-profile or high-dollar litigation matters are particularly at risk for such attacks.

WHO IN THE HECK IS SUMIT GUPTA?

Sumit Gupta is a cybersecurity expert who worked with a group of associates in India to build an underground hacking operation that became a center for private investigators who were looking to bring an advantage to clients in lawsuits.³ In 2020, Mr. Gupta told Reuters that while he did work for private investigators, "I have not done all these attacks."⁴ However, during its investigation, Reuters identified 35 legal cases since 2013 in which hackers from India attempted to obtain documents from one side or another of a courtroom contest by sending them password-stealing emails. The messages often looked like innocuous communications from clients, colleagues, friends or family. For example, some emails appeared to be from Facebook and

contained a link to view a "private message" from a friend.⁵ Others appeared to be from news sites and contained what appeared to be links to legitimate news stories. The purpose of the emails was to allow the hackers access to the targets' inboxes, which they would then search for private or attorney-client privileged information. At least 75 U.S. and European companies, 36 advocacy or media groups and numerous Western business executives were targets of these hacking attempts.⁶

HOW RELIABLE IS THE REUTERS REPORT?

The Reuters report was based on interviews with victims, researchers, investigators, former U.S. government officials, lawyers and hackers, plus a review of court records from seven countries. It drew on a unique database of

more than 80,000 emails sent by the hackers to 13,000 targets over a seven-year period.⁷ The database is effectively the hackers' hit list and shows who the cyber spies sent thousands of phishing emails to between 2013 and 2020. As surprising as it was to learn these cyber mercenaries exist, it is perhaps even more surprising to learn that this activity has been going on since at least 2013. It is alarming how this flew under the radar for so long.

The data supporting the report came from two providers of email services the spies used to carry out their espionage campaigns. Why would they cooperate? It seems the providers gave Reuters access to the material after it asked about the hackers' use of their services; they offered the sensitive data on the condition of anonymity. Reuters then vetted



the authenticity of the data with cybersecurity experts, including Scylla Intel, British defense contractor BAE, U.S. cybersecurity firm Mandiant and technology companies LinkedIn, Microsoft and Google, who all analyzed the emails. Each of these firms confirmed the database showed hacking-for-hire activity from India by comparing it with previously gathered data on the hackers' techniques. The teams at Mandiant, Google and LinkedIn found the spying activity was linked to three companies, all of whom were linked to Mr. Gupta.⁸ "We assess with high confidence that this data set represents a good picture of the ongoing operations of Indian hack-for-hire firms," said Shane Huntley, head of Google's cyber threat analysis team.⁹

WERE LAW FIRMS VERIFIED AS TARGETS OF THESE ATTACKS?

Reuters sent requests for comment to each email address that was attacked and communicated with more than 250 individuals. Most who responded said attempted hacks took place either before anticipated lawsuits or when litigation was ongoing.¹⁰ The hackers tried to access the

inboxes of about 1,000 attorneys at 108 different law firms. Among the law firms targeted were global practices, including U.S.-based Baker McKenzie, Cooley, and Cleary Gottlieb Steen & Hamilton. Major European firms, including London's Clyde & Co. and Geneva-based arbitration specialist LALIVE, were also hit.¹¹ These firms declined to comment or did not return messages, which is not surprising. Their failure to respond to the Reuters investigation is not to say that no action was taken, as we suspect that defenses against such attacks were expeditiously fortified.

WHAT WERE THE SPIES AFTER?

The Reuters investigation found the legal cases targeted varied in profile and importance, from personal disputes to those involving multinational companies with a lot of money at stake. From London to Lagos, at least 11 separate groups had their emails leaked publicly or introduced as evidence mid-trial. In several cases, court records showed stolen documents affected the verdict.¹² Not surprising, but quite alarming. "It is an open secret that there are some private investigators who use Indian hacker groups to target opposition in litigation battles," said Anthony Upward, managing director of Cognition Intelligence, a UK-based countersurveillance firm.¹³

WHO HIRED THESE HACK-FOR-HIRE FIRMS?

In 2013, Ryan Blair, a Silicon Valley direct sales entrepreneur, asked his bodyguard to find "compromising material" on Ocean Avenue, a rival company against whom his diet shake company had filed a series of lawsuits. The bodyguard retained a private investigator who then hired Mr. Gupta's firm to hack Ocean

Avenue executives' emails. Ocean Avenue ultimately learned of the attacks and filed a federal lawsuit alleging extortion, intimidation and hacking against Blair's company, which resulted in an undisclosed settlement. The bodyguard and the investigator who hired Mr. Gupta were charged by the FBI with hacking and pleaded guilty to their role in the attacks. Mr. Gupta was also charged by the FBI but to date has not been apprehended.¹⁴

According to the Reuters story, the FBI has been investigating others who may have hired Mr. Gupta or his company to hack American targets since 2018 but has not brought any further charges.¹⁵ Although the data obtained by Reuters uncovered the targets and methods of these hacks, the data doesn't answer key questions, such as who hired the hackers, whether the hacks were successful or even if any stolen information was used.

WHAT RISKS DO LAWYERS FACE FROM THESE HACK-FOR-HIRE ATTACKS?

There are obvious risks for criminal and civil liability for lawyers if they were to hire a hack-for-hire firm or use information obtained from these firms or if sensitive, private information regarding clients or parties is compromised.¹⁶ However, these hacking schemes particularly put attorneys at risk for disciplinary action and malpractice claims for violating duties imposed by the rules of professional conduct. Of course, attorneys who hire these firms or who obtain or rely on information they knew or should have known was obtained by such hacks would clearly violate the rules of professional conduct.¹⁷ But the chief concern for most lawyers should be the risk for discipline or malpractice if

sensitive or privileged information is compromised.

Attorneys have ethical duties to take reasonable measures to safeguard client information.¹⁸ These duties are sometimes a challenge to attorneys because "most are not technologists and often lack training and experience in security."¹⁹ Several ethics rules specifically address the lawyer's duties to safeguard client information, including competence (Rule 1.1), communication (Rule 1.4), confidentiality of information (Rule 1.6) and supervision (Rules 5.1, 5.2 and 5.3). The rules of professional conduct specifically impose a duty for lawyers to be aware of and safeguard against risks associated with technology.²⁰

As noted in the ABA's 2021 Legal Technology Survey Report, the rules of professional conduct require attorneys regarding the use of technology to:

- 1) Employ competent and reasonable measures to safeguard the confidentiality of information relating to clients,
- 2) Communicate with clients about attorneys' use of technology and obtain informed consent from clients when appropriate and
- 3) Supervise subordinate attorneys, law firm staff and service providers to make sure they comply with these duties.²¹

Therefore, it is important for lawyers and law firms to become educated about potential hacking activity and what steps can be taken to prevent it.

HOW CAN LAWYERS AND LAW FIRMS GUARD AGAINST HACK-FOR-HIRE SCHEMES?

The first line of defense for attorneys is to educate themselves, other attorneys and staff in their firms, and even their clients, about the tactics of hack-for-hire firms and the types of emails used in their schemes. A good place to start would be to check out Reuters's "Hacker Hit List," which shows how the mercenary hackers hunted lawyers' inboxes in the emails obtained during its investigation.²² Techniques for breaking into attorneys' emails varied. The hit list shows the hackers imitated services such as LinkedIn or YouPorn and the subject lines the hackers used to entice their targets. The hackers tried to rouse attorneys' interest with news about colleagues or subject lines with weird or scandalous news. Sometimes the hackers impersonated social media services or even porn sites.²³ It is probably a good idea for lawyers to look at the hit list so they can instruct employees on what the emails looked like – law firm cybersecurity training should always be top of mind for law firms. Users must also be educated on how they must be careful to avoid clicking on any links in an email from an unknown source or that have not been authenticated as genuine.²⁴

Other important defenses include the use of email spam filters, multi-factor authentication and enabling advanced protections on email accounts.²⁵ And let us not forget what makes cybersecurity experts tear their hair out: applying security patches and updates quickly upon their release. Users should always update their devices, operating systems and software promptly. Finally, for larger firms or attorneys handling high-profile or

high-dollar cases, it is recommended they have an outside cybersecurity firm perform a security assessment.

ABOUT THE AUTHORS



Sharon D. Nelson is a practicing attorney and the president of Sensei Enterprises Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. Ms. Nelson is a co-author of 18 books published by the ABA. She may be contacted at snelson@senseient.com.



John W. Simek is the vice president of Sensei Enterprises Inc. He is a certified information systems security professional (CISSP), a certified ethical hacker (CEH) and a nationally known expert in the area of digital forensics. He and Ms. Nelson provide legal technology, cybersecurity and digital forensics services from their Fairfax, Virginia, firm. Mr. Simek may be contacted at jsimek@senseient.com.



Michael C. Maschke is the CEO/director of Cybersecurity and Digital Forensics of Sensei Enterprises Inc. He is an EnCase-certified examiner, a certified computer examiner (CCE #744), a certified ethical hacker and an AccessData-certified examiner. He is also a certified information systems security professional. Mr. Maschke may be contacted at mmaschke@senseient.com.

ENDNOTES

1. Rachel Satter and Christopher Bing, "A Reuters Special Report: How mercenary hackers sway litigation battles" (June 30, 2022), <https://reut.rs/3UjTGD2>.
2. Shane Huntley, "Updates from Threat Analysis Group (TAG): Countering hack-for-hire groups" (June 30, 2022), <https://bit.ly/3DXNCL0>.
3. Satter, *supra* note 1.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. Two of the most relevant statutes are the Computer Fraud and Abuse Act (18 U.S.C. §1030) and the Stored Communication Act (18 U.S.C. §121), which make it unlawful to intentionally access emails or information stored remotely on servers without permission from the account holder. There are too many statutes and regulations to provide a comprehensive list, but the Texas Lawyers' Insurance Exchange website has a good summary of state and federal laws and regulations related to law firm data security breaches (or links where to find them). See Jet Hanna, "The Risk of Data Breaches in Law Firms" (accessed Oct. 21, 2022), <https://bit.ly/3FGU9uV>.
17. Rule 8.4 of the ABA Model Rules of Professional Conduct (which has been adopted in Oklahoma) provides:
Maintaining The Integrity Of The Profession
Rule 8.4 Misconduct
It is professional misconduct for a lawyer to:
 1. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 2. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 3. engage in conduct involving dishonesty, fraud, deceit or misrepresentation...
18. David G. Ries, ABA Tech Report 2021 (Dec. 22, 2021), <https://bit.ly/3WlfH6e>.
19. *Id.*
20. Comment 6 to Rule 1.1 of the Oklahoma Rules of Professional Conduct provides that the duty of competency includes the duty to "maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject, including the benefits and risks associated with relevant technology."
21. Ries, *supra* note 16.
22. Satter, *supra* note 1.
23. *Id.*
24. Cedric Pernet, "The business of hackers-for-hire threat actors" (July 1, 2022), <https://tek.io/3Wlgiou>.
25. Ries, *supra* note 16.

ORPC 1.8 Current Clients: Specific Conflict Rule

By Richard Stevens



A S I HAVE WRITTEN OFTEN, most inquiries I receive are about conflicts of interest. Commonly, the conflicts are concurrent conflicts or former client conflicts. Often, the issue is one of imputation. Rarely, the question involves current or former government lawyers or former judges and other third-party neutrals. Even less often, the potential conflict is one that is specified in ORPC 1.8. Most lawyers seek to avoid these specific conflict situations even if there is a possibility the conflict situation may be cured. This conservative course is most often best.

WHY SPECIFIC RULES?

Some situations are so fraught with the possibility of overreaching and self-dealing that the rules prohibit representation unless the lawyer meets the requirements of ORPC 1.8 (a). For example, a lawyer entering into a business transaction with a client must 1) fully disclose and transmit in an understandable writing the transaction, which must be fair and reasonable to the client, 2) the client must be advised of the desirability of seeking independent legal counsel and be afforded an opportunity to do so and 3) the client must give written informed consent to the essential terms of the transaction, the lawyer's role in the transaction, including whether the lawyer is representing the client, and the transaction.

INCURABLE CONFLICTS

Other situations are prohibited entirely because the risk of overreaching and self-dealing is too

great. A lawyer may not solicit any substantial gift from a client, including testamentary gifts, and a lawyer may not prepare an instrument on behalf of a client who gives a substantial gift to the lawyer or a person related to the lawyer unless the lawyer is related to the client.¹ This rule defines "related persons" as a spouse, child, grandchild, parent, grandparent or another relative. Also, a lawyer may not negotiate an agreement giving the lawyer literary or media rights based in substantial part on information relating to the representation until after the representation is concluded.² Lawyers may not provide financial assistance to a client in connection with pending or contemplated litigation except advancing court costs and expenses of litigation that are contingent on the outcome of the matter or paying court costs and expenses of litigation on behalf of an indigent client.³

A SPECIFIC RULE FOR MALPRACTICE LIABILITY

Lawyers may not accept compensation for representing a client from someone other than the client unless the client gives informed consent, there is no interference with the lawyer's independence and professional judgment and confidential information is protected.⁴ Lawyers also may not settle the claims or cases of two or more clients unless each client gives informed consent in writing.⁵ Lawyers also may not prospectively limit liability for malpractice.⁶ Nor may a lawyer settle a claim with an unrepresented client or former client unless that person is advised of the desirability of seeking independent legal counsel and given a reasonable opportunity to do so.⁷

Lawyers should be fully aware of the specific rules in ORPC 1.8 in order to avoid the consequences of violating the rules or failing to cure a curable conflict.

OTHER SPECIFIC RULES

Lawyers are prohibited from acquiring a proprietary interest in the subject matter of the litigation except for a lien to secure fees and expenses or a reasonable contingent fee in a civil case.⁸ Lawyers are also prohibited from sexual relationships with clients unless that consensual sexual relationship existed when the lawyer-client relationship began, and the relationship does not violate ORPC 1.7 (a) (2).⁹ The prohibitions of paragraphs (a) through (i) are imputed to all members of a firm.¹⁰

THE TAKEAWAY

Lawyers should be fully aware of the specific rules in ORPC 1.8 in order to avoid the consequences of violating the rules or failing to cure a curable conflict.

ABOUT THE AUTHOR



Richard Stevens has served as OBA ethics counsel since September 2019. Previously, he was a solo practitioner

following his retirement from the District 21 District Attorney's Office after 33 years as a prosecutor. Mr. Stevens is a member of the OBA Criminal Law Section and the Rules of Professional Conduct Committee. He served as the 2018 OBA vice president, on the Board of Governors from 2013 to 2015 and as a member of the Professional Responsibility Commission.

ENDNOTES

1. ORPC 1.8(c).
2. ORPC 1.8(d).
3. ORPC 1.8(e).
4. ORPC 1.8(f).
5. ORPC 1.8(a).
6. ORPC 1.8(h)(1).
7. ORPC 1.8(h)(2).
8. ORPC 1.8(i).
9. ORPC 1.8(j).
10. ORPC 1.8(k).

OKLAHOMA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1, APP. 3-A

CLIENT-LAWYER RELATIONSHIP

RULE 1.8. CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, for the lawyer or a person related to the lawyer. Nor shall the lawyer prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.6.
- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:
- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
- (1) acquire a lien authorized by law or contract to secure the lawyer's fee or expenses; and
 - (2) contract with a client for a reasonable contingent fee in a civil case.
- (j) A lawyer shall not have sexual relations with a client unless: (1) a consensual sexual relationship existed between them when the client-lawyer relationship commenced and (2) the relationship does not result in a violation of Rule 1.7(a)(2).
- (k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Additional information on ORPC 1.8 can be found at <http://bit.ly/3EGbwLB>.

PHOTO HIGHLIGHTS





5.



7.



6.

1. Amber Peckio Garrett received a President's Award for organizing and building the OBA Cannabis Law Committee from the ground up and for chairing the OBA Audit Committee.
2. President Jim Hicks presents April Moaning with the Outstanding Young Lawyer Award.
3. Sheila Naifeh is presented with a President's Award during the Annual Luncheon for her support of the OBA Lawyers Helping Lawyers Assistance Program.
4. The Kiowa Black Leggings Warrior Society presents the colors during a ceremony at the General Assembly Friday morning.
5. President Hicks and his wife, Nancy, attend the James Bond-themed President's Reception Wednesday night.
6. Past OBA presidents Bill Grimm, Sid Dunagan and David Petty enjoy catching up during the President's Reception.
7. Congressional Medal of Honor recipient Dwight W. Birdwell speaks during the Delegates Breakfast after being presented with the OBA Medal of Valor. This is only the second time the OBA Medal of Valor has been awarded.



8.



9.



10.

8. From left President Hicks; Justice Trent Shores, Kaw Nation; Justice Mark Holmes Colbert, Chickasaw Nation; and Justice Shawna S. Baker, Cherokee Nation, participate in the tribal supreme court justice panel.

9. Arvo Mikkanen speaks on “Criminal Jurisdiction Developments in Indian Country: Castro-Huerta & VAWA 2022” during a Criminal Track CLE.

10. Judge Bernard M. Jones, U.S. District Court for the Western District of Oklahoma, delivers the keynote address during the Diversity Awards Dinner.



11.



12.



13.



14.

11. *Oklahoma City Mayor David Holt delivers a welcome message during the General Assembly. Also pictured, from left OBA Executive Director John Morris Williams and President Hicks.*

12. *LeAnne McGill receives a President's Award for her work as chairperson of the OBA Awards Committee.*

13. *OCU School of Law Dean Jim Roth speaks during the school's annual alumni luncheon.*

14. *Miles Pringle, 2023 president-elect, received the President's Award for his unwavering support as vice president, his continuing efforts in membership engagement and his excellence with the Legislative Monitoring Committee.*

Not pictured, Kevinn Matthews, who also received a President's Award for organizing the August Board of Governors meeting and tour of the Greenwood Rising Museum in Tulsa, and for his continued efforts in promoting diversity, equity and inclusion in the bar association.



HOUSE OF DELEGATES ACTIONS

Friday, Nov. 4, 2022

President-Elect Brian T. Hermanson, Presiding

ELECTION TO BOARD OF GOVERNORS (UNCONTESTED POSITIONS)

President-Elect: Miles T. Pringle, Oklahoma City
 Vice President: D. Kenyon Williams Jr., Tulsa
 SC Judicial District Nine: Jana Lee Knott, El Reno
 Member At-Large: Timothy Lee Rogers, Tulsa

ELECTION TO BOARD OF GOVERNORS (ELECTED BY ACCLAMATION)

SC Judicial District Eight: Nicholas E. Thurman, Ada

TITLE EXAMINATION STANDARDS

Revisions and additions to the Oklahoma Title Examinations Standards, published in *Courts & More* Vol. 2 No. 47 (Nov. 23, 2022) and posted online at www.okbar.org/annualmeeting, were approved and are effective immediately.

ANNUAL MEETING LUNCHEON KEYNOTE ADDRESS

Principal Chief Hoskin Advocates for Collaboration in Annual Luncheon Keynote Address

“WADO, MR. PRESIDENT,” CHEROKEE NATION Principal Chief Chuck Hoskin Jr. said as he took the podium at the Annual Luncheon during the 118th OBA Annual Meeting. Chief Hoskin was the keynote speaker during the meeting held Nov. 2-4 at the Oklahoma City Convention Center.

During his speech, Hoskin gave a brief history of how the Cherokee Nation established a centralized government, discussed what comes next after the *McGirt* decision and how Oklahoma can rely on its 39 built-in partners to work together in pushing Oklahoma forward.

“There is a saying,” Hoskin said. “Cherokee people have existed through time immemorial.” As he touched on the history of the Cherokee Nation, Hoskin stressed hope, survival and unity. He described the Cherokee as people of great determination.

“In the early 19th century, due to the changing landscape and pressure on our resources, we changed the way we governed ourselves,” he continued. “We

established a centralized government, established a government based on rule of law. We leaned into diplomacy and intellect.”

However, Hoskin explained, the key to survival is to build bridges with neighbors – working with state and local leaders for a strong and prosperous future.

And now, with the changing legal landscape, specifically after the *McGirt* decision, Hoskin described what the Cherokee Nation has already been doing in terms of how to govern.

“There may be some uncertainty,” he continued. “What does the future hold in terms of taxation? Jurisdiction?”

Hoskin believes wholeheartedly that Oklahoma’s future is in collaboration. He began to elaborate on ways the Cherokee Nation currently collaborates with local municipalities on issues regarding jurisdiction.

“We are not falling short,” he continued. “The Cherokee Nation is putting millions into the justice system. We have cross-deputization agreements in every jurisdiction across the Cherokee Nation. We often have agreements with municipalities. Traffic tickets, for example, the Cherokee Nation shares the revenue – the whole group keeps money in the small town.”

Hoskin ended his address to the more than 200 who were in attendance, championing partnership.

“Think about our history – how much we’ve done in this state,” he said. “From Oklahoma’s favorite son, Will Rogers, to Maria Tallchief, to economic development, thousands of jobs, billions in economic impact, education. There are 39 tribes in Oklahoma – 39 partners. We have always prospered most when we worked together.”

Hoskin, who is an OBA member, has served as Principal Chief of the Cherokee Nation, the largest tribe in the United States with more than 430,000 members, since 2019.



THANK YOU TO OUR PREMIERE SPONSORS



LAWPAY[®]
AN AFFINIPAY SOLUTION



SPECIAL THANKS TO OUR ANNUAL MEETING EXHIBITORS

3000 Insurance Group
Fastcase
Imprimatur Press
LexisNexis
Newave Solutions

Smokeball
Spark Search
Tabs3 Software
University of Tulsa College of Law
USI Affinity

Access to Justice: A Year in Review

By Brian Candelaria

AS WE NEAR THE END OF the year, it is an opportunity to briefly look at the recent past activities of the Access to Justice Committee and its sister organizations, the Access to Justice Commission and the Access to Justice Foundation. It is also a chance to note some of what lies ahead in the future.

ACCESS TO JUSTICE SUMMIT

On Oct. 21, the third statewide Oklahoma Access to Justice Summit was held virtually. It was hosted by the Oklahoma Access to Justice Foundation in partnership with the Oklahoma Access to Justice Commission and the Oklahoma Bar Association. Its theme was “A Celebration of Innovation.”

During the free, full-day event, more than 45 speakers spoke on a wide range of access to justice topics and inspired more than 200 attendees to explore new ways to ensure meaningful access to the civil justice system for all.

The summit featured eight breakout panels and several keynote speakers on a wide range of topics. Topics included how lawyers and judges can ensure procedural fairness for pro se litigants, how attorneys in practices of all sizes can incorporate pro bono into their lives, the current state (and future potential) of online dispute

resolution, innovations and opportunities in rural legal access, the importance of interdisciplinary and holistic legal practices for vulnerable populations, how standardized forms and templates can increase court access for unrepresented litigants, lessons for Oklahoma from three recent studies on the justice gap, how attorneys can build profitable legal practices that are also affordable to those who need services, how to use online dispute resolution platforms equitably, how lawyers can work hand-in-hand with social workers and peer coaches to help parents at risk of losing their children and the critical role lawyers play in our state Legislature. These panels and speakers highlighted the expertise and experience of attorneys and judges across Oklahoma, as well as guest speakers from Minnesota, Colorado, Texas, Illinois and Washington, D.C.

The event also provided an opportunity to celebrate the winners of the 2022 Summer Pro Bono Challenge over the lunch hour, with several Tulsa-area winners:

- Solo: Pansy Moore-Shrier
- Small Firm: Eller & Detrich
- Mid-Sized Firm: Doerner, Saunders, Daniel & Anderson
- Large Firm: Conner & Winters

Also recognized were the first winners of the new Outstanding Student Pro Bono Award, an annual recognition of a law student who has gone above and beyond in their commitment to public service and their community:

- Shawnee Arrington, 3L, TU College of Law
- Addison Butler, 3L, OU College of Law
- Hailee Frazier, 3L, OCU School of Law

All three student winners will be celebrated on their respective campuses later in the year as well.

The Oklahoma Access to Justice Foundation offered the summit to highlight both the critical unmet need for legal services for low- and moderate-income families across Oklahoma but also the many solutions that are available to us and how they’re being implemented both here and across the country. The summit also provided an opportunity, through the use of its first opening speaker and the last speaker of the day, to discuss the importance of diversifying the field of law by suggesting innovative alternatives to traditional bar exams and why diversity is so important to access to justice. The summit also noted that we still have a long way to go to ensure

all Oklahomans can meaningfully participate in a fair and accessible civil justice system. The work celebrated at the summit and engaged in daily by nonprofits, law schools, law firms and judicial and community partners helps bring that vision closer to reality.

The Access to Justice Summit was generously supported by several sponsors, including Visionary of Justice-level sponsors, the Chickasaw Nation and Riggs Abney; Champions of Justice, the Oklahoma Bar Foundation and the OBA Estate Planning, Probate and Trust Section; and Friends of Justice, Crowe & Dunlevy, Legal Aid Services of Oklahoma, Whitten Burrage, the OBA Appellate Practice Section and Eric Eissenstat.

Dates are still being finalized for next year's summit, but we hope you will be able to join us for another year of learning and sharing. If you missed this year's program, all the recorded panels are currently available through the OBA CLE library at no cost.

THE VOLUNTEER 'STARS' FOR OKLAHOMA FREE LEGAL ANSWERS

During the November meeting of the Access to Justice Committee, we announced the top volunteers who contributed to our continuing Oklahoma Free Legal Answers




project for October. These three attorneys demonstrated and continue to demonstrate their commitment to helping those who seek help in addressing their legal questions and concerns. The October volunteer stars are:

- Travis C. Smith
- Paula D. Wood
- Michael J. Miller

Their dedication to our profession is very much appreciated and serves as an example of how we can all help and play a part in providing access to justice in our communities.

As we enter the new year, those of us in the Access to Justice Committee ask that we all resolve to volunteer our time for these and other pro bono legal services events and projects.

Brian Candelaria serves as chair of the OBA Access to Justice Committee.



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

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

Acts as liaison 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



ONE ASSOCIATION MANY OPPORTUNITIES

JOIN AN OBA COMMITTEE TODAY!

Get more involved in the OBA, network with colleagues and work together for the betterment of our profession and our communities. More than 20 active committees offer you the chance to serve in a way that is meaningful for you.

Now is your opportunity to join other volunteer lawyers in making our association the best of its kind!



2022 Oklahoma Tax Legislation

By Sheppard F. Miers Jr.

THE FOLLOWING IS A summary of some of the changes in Oklahoma state tax law enacted in the 2022 sessions of the Oklahoma Legislature.

INCOME TAX

Full Expensing of Cost of Qualified Properties

The Oklahoma Income Tax Act was amended to provide that, after Dec. 31, 2021, the cost of expenditures for business assets that are qualified property or qualified improvement property covered under Section 168 of the Internal Revenue Code shall be eligible for 100% bonus depreciation and deducted in the year during which the property is placed in service.¹

Strategic Industrial Development Enhancement Tax Credit

An Oklahoma income tax credit was enacted to provide for tax years after Dec. 31, 2022; and ending not later than Dec. 31, 2027, there shall be allowed a credit against Oklahoma income tax in an amount not to exceed 10% of an eligible entity's qualified economic development expenditures, subject to limitations, determination and allocation by the Oklahoma Department of Commerce. An eligible entity is an entity incorporated and located in Oklahoma with a qualifying project in a qualified location. A qualifying project location is one located

in an industrial park, economic development zone or port located within a county in Oklahoma with a population of fewer than 100,000 persons or located adjacent to specified terminal, switching and railroad facilities.²

Qualified Clean-Burning Motor Vehicle Fuel Property Investment Credit

The Oklahoma income tax credit allowed for investment in certain qualified clean-burning motor vehicles and related assets was amended to provide a tax credit for hydrogen fuel cells and related assets and to modify the years to which the credit applies, the limit on the total amount of the credit authorized and administration of the limit by the Oklahoma Tax Commission.³

Oklahoma Affordable Housing Credit

The income tax credit that relates to the Oklahoma Affordable Housing Act was amended as to a certain credit limit that does exceed the federal low-income housing tax credits for a qualified project.⁴

Oklahoma Equal Opportunity Education Scholarship Act Credit

The income tax credit under the Oklahoma Equal Opportunity Education Scholarship Act was amended to modify the date by which certain organizations must submit information and frequency of submission, provide

for submission of information to chairs and vice chairs of education committees of the Legislature and modify the financial statement and related information reporting time for public school foundations and districts.⁵

Adoption Expense Credit

An income tax credit was enacted to provide a 10% credit for certain adoption expenses, specifying the amount of tax credit, imposing limitations on expense amounts based on income tax filing status and modifying provisions related to the deduction for adoption expenses.⁶

Withholding Tax Rates

The withholding tax provisions applicable to certain royalty payments and related to withholding by certain pass-through entities were modified to provide for withholding at the highest marginal individual income tax rate under the Oklahoma Income Tax Act.⁷

Military Retirement Benefits

The adjustment for retirement benefits received from the armed forces of the United States was amended to provide for tax year 2022 and subsequent tax years. Such retirement benefits received by an individual shall be exempt from taxable income.⁸



SALES AND USE TAX

Veterans Support Organizations Exemption

The Oklahoma sales tax exemption allowed for nonprofit entities was amended to exempt sales of tangible personal property or services to an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, which provides support to veterans and military personnel to assist with the transition to civilian life and meets specified requirements for reporting to the Oklahoma Tax Commission.⁹

Sales Tax Exemption for Women's Veterans Organization

The Oklahoma Sales Tax Code was amended to provide for a sales tax exemption of sales of tangible personal property or

services to or by a women's veterans organization, and its subchapters in Oklahoma, that is exempt from taxation pursuant to the provisions of Section 501(c)(19) of the Internal Revenue Code and is known as the Oklahoma Women Veterans Organization.¹⁰

Disaster Relief Organization Exemption

The Oklahoma Sales Tax Code was amended to provide for a sales tax exemption of sales of tangible personal property or services to a nonprofit entity organized pursuant to Oklahoma law before Jan. 1, 2019, that is exempt from taxation pursuant to the provisions of Section 501(c) of the Internal Revenue Code, the principal functions of which are to provide assistance to natural persons following a disaster.¹¹

Sales and Use Tax Claims for Refund

The Oklahoma Sales Tax Code was amended to provide that a person may only file a claim for refund of sales/use tax directly paid on purchases of items of drugs, medicine, medical devices and equipment exempted under 68 O. S. §1357.6 if the person presented the seller a direct pay permit issued by the Oklahoma Tax Commission at the time of purchase of the items for which the refund is claimed.¹²

Sales Tax Exemption for Military Member Surviving Spouse

The sales tax exemption for the surviving spouse of a member of the military was amended to provide an exemption for a spouse of a military member who died while in the line of duty if the spouse has not remarried.¹³

Marketplace Facilitator Requirements

The Oklahoma Sales Tax Code was amended to modify the provisions related to collection and reporting requirements imposed on a marketplace facilitator.¹⁴

Sales and Use Tax Collection

The statute intended to increase collections of sales and use tax was amended to provide the Tax Commission shall conduct hearings pursuant to 68 O. S. §212 related to permits issued under 68 O. S. §1364 in at least one location in the state, and the Tax Commission may also conduct hearings using either teleconferencing or videoconferencing capabilities.¹⁵

Repeal of Sales Tax Exemption

The sales tax exemption for qualified purchases under the Oklahoma Research and Development Incentives Act was repealed. Related provisions for refunds of sales tax were amended.¹⁶

AD VALOREM TAX

Appeal of Orders of County Board of Equalization

The Ad Valorem Tax Code was amended with respect to the right of the taxpayer to appeal from any order of the county board of equalization sustaining a valuation of real or personal property at fair cash value as determined by the county assessor. An appeal of an order sustaining valuation in excess of \$3,000,000 shall be filed to the Court of Tax Review. An appeal from any other order of the county board of equalization shall be filed in the district court of the same county.¹⁷

Protest Filing Requirement

The Ad Valorem Tax Code was amended to provide that a taxpayer filing a protest of valuation must, at the time of filing a protest, also file the listing or rendition of property that is filed by the taxpayer pursuant to 68 O. S. §2835 with respect to the property. If the taxpayer fails to file the required form, a presumption shall exist in favor of the correctness of the county assessor's valuation in any appeal of the county assessor's valuation.¹⁸

Report of Tax Protests to School Districts and Recipient Tax Jurisdictions

The Ad Valorem Tax Code was amended to provide that on or before June 1 of each year, the county assessor shall prepare and mail to each school district and the recipient tax jurisdiction a report listing protests filed by taxpayers that concern a fair cash value of personal property that exceeds \$3,000,000. The report shall include the value under protest for each protest and the estimated amount under protest that would otherwise be apportioned to the taxing jurisdiction.¹⁹

Protest Timeline Must be Provided to Taxpayers

The Ad Valorem Tax Code was amended to provide that at the time of filing a protest, the taxpayer shall be provided a schedule of the protest timeline, which shall include all deadlines and the consequences of failing to meet each deadline.²⁰

The Ad Valorem Tax Code was amended to provide that at the time of filing a protest, the taxpayer shall be provided a schedule of the protest timeline, which shall include all deadlines and the consequences of failing to meet each deadline.²⁰

County Assessor Appointed Appraiser Requirements

The Ad Valorem Tax Code was amended to provide that for residential property, the county assessor may appoint, or may request the Oklahoma Tax Commission to assign, an appraiser to assist the county assessor in valuation of the property. For nonresidential property, after consultation with the Oklahoma Tax Commission, the county assessor may appoint an appraiser to assist the county assessor in valuation of the property. Appraisers whose services were obtained to assist the county assessor with valuation shall not participate in any valuation negotiations, protests to the county assessor or protests to the county board of equalization. Contracts for such appraiser services shall be subject to the Oklahoma Open Records Act. Except for communications of information protected by 68 O. S. §2835, all communications between a county assessor and an appraiser, including communications through a third party, shall be subject to the Oklahoma Open Records Act.²¹

Five-Year Manufacturing Facility Exemption Amendment

The Ad Valorem Tax Code was amended with respect to the five-year exemption from *ad valorem* tax for qualifying manufacturing facilities by modifying provisions related to payroll requirements and years of application thereof.²²

Notice of Increase of Property Valuation Exception

The statute providing for the county assessor to notify the taxpayer in writing of an increase in valuation was amended to provide that if the county assessor determines mailing to property owners exempt from payment of *ad valorem* tax under Sections 8E and

8F of Article X of the Oklahoma Constitution would create an undue burden, the county assessor may suspend notifications to those property owners.²³

Listing and Assessment of Unmanufactured Farm Products

The Ad Valorem Tax Code provisions requiring listing of property were amended to remove the requirement that all unmanufactured farm products shall be assessed and valued as of the preceding May 31 at the value on that date instead of Jan. 1.²⁴

Livestock Exemption Modification

The Ad Valorem Tax Code provision allowing exemption for livestock employed in support of the family was modified as to the provisions with respect to animals owned by a resident of a state other than Oklahoma and a corporation incorporated in a state other than Oklahoma for determining the extent to which livestock is considered employed in support of the family.²⁵

County Excise Board Members Compensation

The Oklahoma statute providing for county excise boards was amended to increase the maximum compensation of members of county excise boards.²⁶

GROSS PRODUCTION TAX

Gross Production Tax Secondary Recovery Exemptions

The Oklahoma gross production tax was amended by provisions creating exemption for certain secondary recovery projects approved or having an initial project start date on or after July 1, 2022, which shall be exempt for a period not to exceed five years, and an exemption for the production of oil, gas or oil and gas from

wells drilled but not completed as of July 1, 2021, which are completed with the use of recycled water on or after July 1, 2022, and thereby earn an exemption from the date of first sales for a period of 24 months. The exemptions shall be allowed and administered through a refund procedure administered by the Oklahoma Tax Commission subject to limitations and proration of total authorized refunds.²⁷

Economically-At-Risk Oil or Gas Lease Exemption

The gross production tax was amended to modify the definition of an “economically-at-risk oil or gas lease,” modify the amount of exemption for an eligible economically-at-risk oil and gas lease, provide for a limit on refunds of gross production tax based on the exemption and as to the method of refund payment.²⁸

AIRCRAFT EXCISE TAX

Report on Transfer of Legal Ownership of Aircraft

The Oklahoma statute requiring a licensed dealer to file a report with the Oklahoma Tax Commission of transfer of legal ownership of aircraft was amended to include a requirement that the report state whether the aircraft is exempt from aircraft excise tax pursuant to 68 O. S. 6003.²⁹

Apportionment of Tax Revenue

The apportionment of tax revenue derived from the aircraft excise tax was modified to have it placed to the credit of the Oklahoma Aeronautics Commission Revolving Fund.³⁰

TAX PROCEDURE AND ADMINISTRATION

Tax Commission Executive Sessions

The Oklahoma Open Meeting Act was amended to provide the Oklahoma Tax Commission will be authorized to hold executive sessions for the purposes of discussing confidential taxpayer matters as provided in 68 O. S. 2021, §205, with the taxpayer at issue using videoconference technology to discuss confidential taxpayer matters as provided for in 68 O. S. 2021, §205. The amendments provide that during executive sessions, the Tax Commission must be physically present while taxpayers may appear using videoconference technology, and the technology selected and utilized by the Tax Commission shall ensure taxpayer confidentiality, including compliance with safeguards as provided in the IRS *Publication 1075*.³¹

Personal Liability of Individuals for Medical Marijuana Gross Receipts Tax

The Uniform Tax Procedure Act was amended to provide that when the Oklahoma Tax Commission files a proposed assessment against corporations, limited liability companies or other legal entities for unpaid medical marijuana gross receipts tax, an individual may be assessed and personally liable for the tax if, during the period of time for which the assessment was made, the individual was responsible for withholding or collection and remittance of the tax or had direct control, supervision or responsibility for filing returns and making payments of the tax. Personal liability for the tax shall be determined under standards for determining personal liability for federal withholding tax.³²

State Employees Income Tax Collection

The Uniform Tax Procedure Act was amended with respect to collecting income tax due by state employees, requiring notification for state employees who are not in compliance and terminating a requirement of a mandatory garnishment of noncompliant state employees' wages after notice.³³

TAX INCENTIVES, ECONOMIC DEVELOPMENT AND EMISSION REDUCTION

Oklahoma Rural Jobs Act

An Oklahoma Rural Jobs Act was enacted authorizing investments into an eligible rural fund certified by the Department of Commerce, under which an investor earns a vested right to a credit against the investor's state tax liability for Oklahoma income tax or insurance tax. The tax credits allowed investors in a rural fund are subject to periodic annual and total limits. A rural fund seeking investment must apply to the Department of Commerce and provide an estimate of the number of jobs created and jobs retained from the applicant's qualified

investments in a rural area. The act provides requirements governing application, reporting and investment for rural funds. A rural area is defined by the act as any county in the state with a population of fewer than 75,000 or a city or town with a population not to exceed 7,000.³⁴

Large-Scale Economic Activity and Development Act of 2022

A Large-Scale Economic Activity and Development Act of 2022, or "Lead Act" was enacted. The act provides for creation until July 1, 2032, of an investment rebate program for the cost of qualified capital expenditures by establishments that create not less than a threshold number of new direct jobs. The investment rebate program shall be administered by the Oklahoma Department of Commerce and the Oklahoma Tax Commission.³⁵

Oklahoma Emission Reduction Technology Incentive Act

An Oklahoma Emission Reduction Technology Incentive Act was enacted creating the Oklahoma Emission Reduction Technology Rebate Program, under which rebates can be paid



for qualified emission reduction projects that reduce emissions from upstream and midstream oil and gas exploration production, completions, gathering, storage, processing and transmission activities. The act provides for rebates in the amount of up to 25% of documented expenditures made in the state attributable to the implementation of a qualified emission reduction project. The program is to be administered by the Department of Environmental Quality and the Oklahoma Tax Commission. The program shall cease on July 1, 2027.³⁶

ACT AMENDING AND REPEALING MULTIPLE VERSIONS OF STATUTES

Amendment and Repeal of Multiple Versions of Tax Statutes

Multiple versions of certain Oklahoma statutes on taxation, namely 68 O. S. 2021, §§1356, 2355 and 3624, were amended and repealed.³⁷

ABOUT THE AUTHOR

Sheppard F. Miers Jr. is a shareholder in the Tulsa office of GableGotwals and practices in the areas of federal, state and local taxation.

ENDNOTES

1. HB 3418, adding 68 O. S. Supp. 2022, §2358.6A; effective May 26, 2022.
2. HB 3081, adding 68 O. S. Supp. 2022, §2357.105; effective Jan. 1, 2023.
3. SB 1857, amending 68 O. S. 2021, §2357.22; effective Jan. 1, 2023.
4. SB 1685, amending 68 O. S. 2021, §2357.403, effective Nov. 1, 2022.
5. SB 1659, amending 68 O. S. 2021, §2357.206, effective Nov. 1, 2022.
6. HB 3088, adding 68 O. S. Supp. 2022, §2357.601, effective Nov. 1, 2022.
7. HB 3905, amending 68 O. S. 2021, §§2385.26 and 2385.30, effective July 1, 2022.
8. SB 401, amending 68 O. S. 2021, §2358, effective Aug. 26, 2022.
9. HB 3649, amending 68 O. S. 2021, §1356, effective July 1, 2022.
10. SB 1496, amending 68 O. S. 2021, §1356, effective Nov. 1, 2022.

11. SB 1305, amending 68 O. S. 2021, §1356, effective July 1, 2022.
12. HB 3905, amending 68 O. S. 2021, §1364.1, effective July 1, 2022.
13. SB 1670, amending 68 O. S. 2021, §1357, effective May 4, 2022.
14. SB 1339, amending 68 O. S. 2021, §§1391, 1392, 1393, effective Jan. 1, 2023.
15. HB 3905, amending 68 O. S. 2021, §1364.3, effective July 1, 2022.
16. SB 72, repealing 68 O. S. 2021, §§54001-54005, effective Nov. 1, 2022; SB 410, amending 68 O. S. 2021, §§54004 and 54005, effective May 2, 2022.
17. HB 3901, amending 68 O. S. 2021, §§3024, 2880.1, 2877 and 2945, effective Jan. 1, 2023.
18. HB 2627, amending 68 O. S. 2021, §2876, effective Nov. 1, 2022.
19. HB 2627, adding 68 O. S. Supp. 2022, §2899.2, effective Nov. 1, 2022.
20. HB 2627, adding 68 O. S. Supp. 2022, §2876.1, effective Nov. 1, 2022.
21. HB 2627, amending 68 O. S. 2021, §2826, effective Nov. 1, 2022.
22. HB 4451, amending 68 O. S. 2021, §2902, effective March 14, 2022; SB 1079, amending 68 O. S. 2021, §2902, effective Aug. 26, 2022.
23. SB 1667, amending 68 O. S. 2021, §2676, effective Nov. 1, 2022.
24. SB 192, amending 68 O. S. 2021, §2817, effective Nov. 1, 2022.
25. HB 1682, amending 68 O. S. 2021, §2807.1, effective Jan. 1, 2023.
26. SB 1348, amending 68 O. S. 2021, §3005.1, effective Nov. 1, 2022.
27. HB 3568, amending 68 O. S. 2021, §1001, effective July 1, 2022.
28. HB 3568, amending 68 O.S. 2021, Section 1001.3a, effective July 1, 2022.
29. SB 1781, amending 68 O. S. 2021, §6004, effective Nov. 1, 2022.
30. SB 258, amending 68 O. S. 2021, §6005, effective July 1, 2022.
31. SB 1298, amending 25 O. S. 2021, §§307, 307.1, effective Nov. 1, 2022.
32. HB 3905, amending 68 O. S. 2021, §253, effective Aug. 26, 2022.
33. SB 1302, amending 68 O. S. 2021, §238.2, effective Nov. 1, 2022.
34. HB 4085, adding 68 O. S. Supp. 2022, §§3930 -3937; amending 68 O. S. 2021, §205, effective Nov. 1, 2022.
35. HB 4455, adding 68 O. S. Supp. 2022, §§3645.1-3645.6, effective July 22, 2022.
36. HB 3568, adding 68 O. S. Supp. 2022, §§55006-55012, effective July 1, 2022.
37. SB 1802, amending and repealing multiple versions of 68 O. S. 2021, §§1356, 2355 and 3634, effective May 5, 2022.



Experienced Lawyers
Fighting for Oklahomans

Personal Injury | Workers' Compensation
Social Security Disability



JOHNSON & BISCONE
WWW.OKLALEGAL.COM

Hightower Building
105 North Hudson Ave., Suite 100
Oklahoma City, OK 73102 | 405.232.6490

My Last Article

By John Morris Williams

DEC. 31 WILL BE MY LAST day as executive director. I have served in this role for 19 years and eight months. During that time, I attended 236 consecutive Board of Governors meetings; served 20 OBA presidents; and the assignment list goes on with Annual Meetings, swearing-in ceremonies, budget presentations, etc. It never got old or tiring. For many years, I have had the extraordinary experience of doing something I loved with people I loved.

As of Jan. 1, 2023, I will assume the role of executive director emeritus and assist as I can in helping our association transition to a new era. Before I leave, I want to take this opportunity to express my sincere gratitude to everyone who allowed me the opportunity to serve our profession. The names are too numerous to list here; however, it all began with then-President Melissa DeLacerda and a Board of Governors including Past President Gary Clark and eventually seven other OBA presidents. They were all great friends, mentors and leaders. Many thanks to them and all the others who served in volunteer leadership positions over these years. I am truly blessed to have worked for people who sell time for a living; and so many of them gave freely of their time to help me and the OBA. I am forever indebted to



them. As much as I talk, I am sure I would have run up a bill in the millions if their timesheets were ever turned in.

This job allowed me the opportunity to work closely with the courts. Having colleagues around the country with whom I have frequent contact, I can tell you there are no bar executives who have had more goodwill and friendship extended to them by their highest courts than me. Especially, I am grateful to all the justices of the Oklahoma Supreme Court, under whose supervision I was blessed to work. If one ever wonders why I have fought so hard to defend the Judicial Nominating Commission, the answer is simple. That process

has produced wonderful friends and mentors for me. Oh, and it also leads to the appointment of great independent judges.

From the moment I heard, “Miss Jean Louise, stand up. Your father’s passing,” in *To Kill a Mockingbird*, I knew I had to be a lawyer. Raised in the poverty of rural Oklahoma, I dreamed of being the person who, in some small way, had the courage and conviction to right some wrongs and to ensure the least among us had a chance at justice. During my time in practice and my previous organizational management positions, I felt those moments. I’m not sure I totally fulfilled that dream, but I have had the honor to work for countless lawyers who brought the idea of Atticus Finch to life every day. You are my heroes. Few people in life get to work for their heroes. How lucky was I?

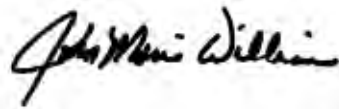
During my time at the OBA, I have worked with some legends. I always knew I worked as much for the staff as anyone. An early mentor taught me that you are fired by the people under you in the flow chart, the people at the top just acquiesce to it. My high school principal once told me, “Be careful how you treat people, you never know who may be your boss someday.” I had no idea that someday I would have nine Supreme Court justices, a board of 17 governors, 19,000 lawyers and 40-plus

staff members all as my bosses at the same time. But for these early mentors, I probably would have made the fatal error of thinking I was in charge. Thank you to each of you for giving me the honor of working for you.

Every day, I have felt that honor. You are my coworkers, classmates, friends and people whom I have known for a long time. You know my shortcomings and my faults, and you entrusted me with a high honor. You allowed a mediocre guy from Stonewall to toil among giants. For that, I am eternally grateful.

You have been most kind and a blessing to work for. I ask that you bestow those same kindnesses and blessings on our next executive director.

Happiest of holidays to you and all who are dear to you.



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



DELIVERED TO YOUR INBOX EVERY WEDNESDAY!

The Oklahoma Bar Association's digital court issue, *Courts & More*, highlights Oklahoma appellate court information and news for the legal profession.



READ IT ONLINE NOW AT WWW.OKCOURTSANDMORE.ORG

What Technology Do I Need to Set Up a Solo or Small Firm Practice?

By Jim Calloway

I OFTEN CONSULT WITH lawyers setting up a new solo or small firm practice. There are many items involved in setting up any new business – like applying for an employer identification number (EIN) and deciding on the best entity to use for the business.

But there are also aspects of setting up a law practice unique to the legal profession. The OBA Management Assistance Program maintains the *Opening Your Law Practice* resource at www.okbar.org/oyp and provides a day-long seminar on the subject twice a year. Our fall *Opening Your Law Practice* program was recorded and is available on demand at no charge (no MCLE credit) at <http://bit.ly/3tpkkio>.

As the end of the year nears, law firms are making their plans for the next year. So in this month's column, I decided to outline the technology tools a lawyer should consider when opening a new solo and small firm practice.

HARDWARE

There are many different ways to assess cost for law firm technology purchases. First, there is the initial purchase price. Today that is more associated with hardware than software, as most software tools have evolved to subscription-based models.

Everyone in the office needs a computer for their workstation. If there is more than one person in the office, the computers must be networked. Setting up a network for a small firm is not a hard task. But since it is rarely done, it is better to pay a local computer shop to set it up than try to learn how to do it yourself. That vendor will likely know things about network security you do not. But do enough research to know what you need

because, like buying a car, you may be offered additional options.

As for the computers required, you already know whether you are a Mac or PC user, and nothing I write here is likely to change that opinion.

Reception and secretarial workstations are likely best set up with desktop computers. But for the lawyers, I strongly recommend a business-class laptop. Roughly speaking, these will be in the \$1,000 to \$2,000 price range. It is better to purchase one with Windows 11 Pro pre-installed than Windows Home because Pro has superior security and networking tools, including the hard drive encryption tool BitLocker.

For comparison purposes, I have included a screenshot of a Dell XPS 17 laptop costing just over \$2,000. A model just like this, but with Windows Home instead of Pro, costs \$50 less. That is *not* \$50 you would want to save. I would never buy a laptop with smaller than a 17-inch monitor, but that is my opinion. I also believe it is best to have at least 16GB of memory. Note the computer in the graphic has 32GB of memory.

The reason a laptop is highly recommended is that sometimes you need to work from different

XPS 17 Laptop

★★★★ 4.2 (580)

Est. Value ~~\$2,609.00~~

\$2,099.00

Save \$510.00 (20%)

Free Shipping

12th Gen Intel® Core™ i7-12700H

Windows 11 Pro

NVIDIA® GeForce RTX™ 3050, 4 GB GDDR6, 60 W

17.1" FHD+ 1920 x 1200, 60Hz, Non-Touch, Anti-Glare, 500 nit, InfinityEdge

1 TB, M.2, PCIe NVMe, SSD

32 GB, 2 x 16 GB, DDR5, 4800 MHz, dual channel

1 year of Pro Support included.



locations, whether you are working from home or on the road. That will go much better if you use the same machine every day and everywhere. Certainly, you can work remotely from a home computer. But for security and hardware reliability, it is best to have a law office computer no one else uses. Remember the “I’m not a cat” lawyer who became internet famous because his daughter had configured the Zoom settings, so he appeared remotely in court via Zoom as a talking cat? For client confidentiality and many other reasons, the laptop serves as a work computer that your family may not use when you bring it home.

When working in the office with your laptop, you will want to be connected to the network and have an additional monitor (or two). So it is best to purchase a port replicator that works with your model so you can quickly and easily connect to the network, the additional monitor, the printer

and other peripherals. Old-style “docking stations” that had custom housing that attached to the computer have been replaced with plug-in port replicators.

I continue to be a fan of the Fujitsu ScanSnap line of desktop scanners. The ScanSnap iX1600 is the recommended model. But you can save money by buying the older ScanSnap iX1400.

I have little to say about printers, except that this is where the needs of large firms and solo and small firms differ. A small firm is usually better off buying low-range to mid-range-priced printers and locating them where needed. A large firm may still decide to buy massive printer/scanner combination devices. They have an IT department helping them to get the most from those machines.

SOFTWARE

Today, most software is sold on a subscription basis, paid annually to get a better rate.

Lawyers process words – a lot. But they sometimes need to use a spreadsheet or prepare a presentation. So the first thing one needs to purchase is a Microsoft 365 subscription. Word, Excel, PowerPoint and Microsoft Teams are all included in the Microsoft 365 Apps for business (\$8.25 per user, per month with a one-year commitment and auto-renewal) and Microsoft 365 Business Standard (\$12.50 per user, per month with a one-year commitment and auto-renewal). Both come with 1TB of secure cloud storage in OneDrive.

Business Standard is recommended. The Business Basic plan is too basic for lawyers with only web-based apps. Those who want enhanced security and data access controls may choose the pricier Business Premium. Teams is an included secure videoconferencing tool that is great for internal communications.

Over the years of serving in this role, I have developed a strong opinion on the next subject.

A solo and small firm lawyer should next subscribe to a practice management software (PMS) solution. Products such as Clio, MyCase, CosmoLex, Rocket Matter and PracticePanther combine most tools needed by law firms into one interface, including time capture, billing and invoicing, digital client files containing all documents, attorney notes, a secure client portal for sharing sensitive material and much more.

I often tell lawyers seeking a billing program to consider just subscribing to a PMS because they contain – among their many features – time and billing (and frankly, the cost is not much greater for the entire PMS package as compared to a good, dedicated billing software). Even if they are not ready to embrace digital client files powered by PMS solutions, it is still better to learn the time-capture and billing tools within the PMS solution so you will not have to change billing programs when you ultimately adopt digital client files, as you likely will.

Even if you put together a combination of time capture, billing, client portals and cloud storage for

documents instead of the all-in-one PMS solution, you still might miss one positive aspect of PMS solutions: great tech support included at no extra charge. Their business goal is to keep you as a customer forever. That means they will continue to assist you until your tech support inquiry is answered. And their cloud storage was built from the beginning to provide lawyers with a secure place to store client matters. Protecting lawyers' confidential information is one of the provider's most important goals.

Client portals are simple to use when the documents are already in your digital client file. If all documents are scanned or saved to a client file, sharing them with clients via the portal is typically quick and easy.

PRACTICE MANAGEMENT SOFTWARE ALSO PROVIDES BUSINESS CONTINUITY PROTECTION

These days, with so many online threats to our data, it is not only important that we protect our clients' data, but also that we should protect our business continuity – our ability to continue with operations in the face of a disaster or adverse circumstances. How would you proceed if you learned your office

had been flooded or destroyed by fire? Obviously, it would be a difficult situation with time devoted to dealing with insurance adjusters and coming up with a new place for operations. But what about your court appearances scheduled that week, and the next? Today, most lawyers would at least have their calendars available on their smartphones and hopefully client contact information as well. But what about the client files, needed exhibits and your notes on questions to ask witnesses?

Larger law firms with dedicated IT staff may utilize other options. But for a small firm lawyer, the best way to protect your client's confidential information, along with your work product and your business continuity requirements, is a subscription to a cloud-based practice management solution. Then, if the physical office is destroyed or inaccessible, your staff can either go home or to another location with internet access and log in to the exact same interface they use every day with access to the digital client files. With practice management software, all you need is an internet connection, a computer with a web browser and your username and password to log in and do your work.

Practice-specific tools are also important. I simply cannot imagine preparing a bankruptcy petition and schedules without using software to keep everything organized.

You can contact OBA Practice Management Advisor Julie Bays with questions about practice management software or to set up a demo of PMS for you and your staff.

OTHER SOFTWARE TOOLS

There are many other software tools and services that may be useful for the new solo and small firm lawyer – from customer relationship managers (CRMs) to document management systems (DMSs). But starting with the tools we have discussed here and mastering them gets you started on a firm foundation.

Practice-specific tools are also important. I simply cannot imagine preparing a bankruptcy petition and schedules without using software to keep everything organized. Many will benefit from form and automated document assembly services like www.oklahomaforms.com.

Our biggest security threats today often appear in our inboxes. Most malware and ransomware attacks begin with someone in your organization clicking on an email attachment or a bad link in an email. Often, these attacks result in the criminal interloper gaining access to usernames and passwords.

A password manager allows you to use long, complex passwords and different passwords for every site or service you log in to. Two-factor or multifactor authentication tools mean that even if your username and password are obtained by a criminal, they still won't be able to log in to your account because they won't have access to your cell phone to receive a text or another alternate authentication method. Anti-virus, firewalls and other security tools are also important.

Several years ago, I would have added speech recognition tools to

this list. But now, the dictation feature built into Microsoft Word in Microsoft 365 means you probably will not have to use a different tool.

CONCLUSION

I hope this overview has been useful to readers. Certainly, these tools are not limited to solo and small firm operations. You can contact the attorneys at the OBA Management Assistance Program if you have further inquiries about software or any other aspect of law office management.

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

PRACTICE WELL, NO MATTER WHERE YOU ARE, WITH RUBY.

Running a firm in a moment of uncertainty isn't easy, but one thing hasn't changed: Ruby is still turning callers into clients for over 5,000 attorneys just like you.

"Frankly, I love your company. As much as you extend the compassion and optimism I try to provide my clients, I've also learned even more about the value of good customer service from all of you."

-DIANE HAAR, HAWAII DISABILITY LEGAL

20%+

BOOST IN POTENTIAL
NEW BUSINESS

10hrs

OF DISTRACTION FREE
TIME REGAINED

10%+

INCREASE IN HAPPY
CUSTOMERS



Use promo code **OKBAR** to receive **6% off.**

VISIT WWW.RUBY.COM/OKBAR TO LEARN MORE
OR BETTER YET CALL US AT **844-569-2889**

ruby.

Meeting Summary

The Oklahoma Bar Association Board of Governors met Oct. 14, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended a meeting of the Search Committee to review executive director applicants and plan interviews and, along with the committee, participated in interviews of five executive director applicants. He also organized final candidate interviews with the Board of Governors. He also attended Annual Meeting planning sessions, consulted with Executive Director Williams on various bar matters and met with the board's officers to discuss an employee contract.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended the Oklahoma Attorneys Mutual Insurance Company board meeting, the Boiling Springs Legal Institute, and he virtually attended an Oklahoma District Attorneys Council Legislative Committee meeting. He participated in budget discussions with Executive Director Williams and Administration Director Brumit and had discussions with the Budget Committee and voted on the amended budget. He also attended the public hearing on the budget. He worked on appointments for next year and on planning 2023 Board of Governors meetings. He virtually attended the Membership Engagement Committee meeting. He also attended the Executive

Director Search Committee meeting and interviewed candidates. He virtually attended a meeting on an employee contract and attended photography sessions with the OBA Communications Department. He also attended the board gathering at Iguana Mexican Grill.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he worked with the Search Committee on evaluating applicants and conducted interviews for the executive director position. He submitted an article for the upcoming Transactional Law issue of the *Oklahoma Bar Journal*, attended and spoke at the swearing-in ceremony for new OBA admittees and attended a meeting of the Membership Engagement Committee. He also presented on virtual currencies for the Financial Institutions and Commercial Law Section's Annual Banking and Commercial Law update on Oct. 14.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended dinner with the Board of Governors the evening prior to the board meeting. He also attended a Supreme Court conference to present amendments to the Rules for Judicial Elections, an OBA directors meeting to review the Annual Meeting plan, the monthly staff celebration and a meeting with Corporation Commission staff to discuss use of space. He also met

with a representative from Sen. Lankford's office to discuss various topics. He met with Ford Audio to discuss A/V updates in Emerson Hall, attended the Membership Engagement Committee meeting, the public hearing on the budget, the Women in Law Conference reception and luncheon, the swearing in of new admittees, and he participated in Solo and Small Firm Conference preliminary planning.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported by email he attended the Boiling Springs Institute in Woodward and met with the Executive Director Search Committee.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended a Board of Governors dinner the evening prior to the last board meeting and participated in the Budget Committee meeting. She also participated with the Oklahoma County Bar Association Community Engagement Committee and created packages of diapers for Infant Crisis Services. She also attended the Women in Law Conference reception and luncheon. **Governor Bracken** reported he attended the Oklahoma County Bar Association board meeting, OCU School of Law Mentorship Reception and met with his OCU law student mentee. **Governor Conner** reported he attended the Garfield County Bar Association meeting. **Governor Davis** reported

he attended the Bryan County Bar Association meeting and was a panelist and presenter at Southeastern Oklahoma State University's Constitution Day events for a forum titled "Conflicts Between State and Federal Law on Marijuana." **Governor Dow** reported she attended the Cleveland County Bar Association monthly meeting and the Oklahoma County Bar Association Family Law Section meeting. She also attended the Family Law Section Adoption Committee meeting. **Governor Edwards** reported he attended the Children's Court Improvement Program CLE. **Governor Rochelle** reported he attended the Comanche County Bar Association monthly CLE. **Governor Smith** reported she attended the new admittee swearing-in ceremony and was invited to serve as a panel member at the OCU Law Career Exploration event as a Civil Practice Pathway presenter. She and Awards Committee Chair McGill participated in a call to congratulate 2021 YLD Chair April Moaning for her selection as the OBA's Outstanding Young Lawyer Award recipient. **Governor Vanderburg** reported he attended a Cost Administration Implementation Committee meeting at the Oklahoma Judicial Center (second in the series) and was appointed to the subcommittee to draft statutory language and attended its Oct. 7 meeting. He attended the Kay County Bar Association meeting,

which included several business items as well as CLE. **Governor White Jr.** reported he presented a Professionalism Moment to the Tulsa County Bar Association.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended the September YLD meeting and the swearing-in ceremony for new OBA members, where the YLD sponsored Junction Coffee drinks and pastries for new bar admittees and their families. He also reviewed and voted on the amended budget with the Budget Committee and attended the Access to Justice Committee meeting.

He also reported that the YLD's upcoming October meeting will be an "email meeting" to finalize last-minute details before the OBA Annual Meeting. Additionally, while the YLD typically does not have a meeting in December, its board is planning a volunteer event at the Oklahoma Regional Food Bank on either the second or third weekend in December.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported that the Office of the General Counsel has a full hearing schedule for the next two months. Furthermore, she updated the board on the work of the Clients' Security Fund and anticipated claims against the fund through the end of the year. From Sept. 1

to Sept. 30, the office received 23 formal grievances and 90 informal grievances. These numbers compare with 13 formal grievances and 66 informal grievances respectively the same time period last year. From Sept. 1 to Sept. 30, there were five disciplinary cases and one petition for reinstatement awaiting decisions from the Oklahoma Supreme Court. One order of a 75-day suspension was issued by the Supreme Court. In summary, as of Sept. 30, there were 184 grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission. In addition to the pending investigations, there is one grievance awaiting a private reprimand, one grievance awaiting a letter of admonition and 13 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 17 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 **Access to Justice Committee** met to primarily discuss the upcoming virtual Access to Justice Summit on Oct. 21. He encouraged his fellow board members to register

Governor Garrett reported the Lawyers Helping Lawyers Assistance Program Committee is meeting regularly, and monthly discussion groups are also meeting regularly. She said the committee is encountering roadblocks in establishing monthly discussion groups in non-metro areas and said a new committee member has a background in clinical mental health.

and attend the summit. President-Elect Hermanson reported the **Membership Engagement Committee** met and discussed a planned app for members. He also reported that 170 people attended a CLE aimed at training OBA members on the Fastcase legal research service. Governor Garrett reported the **Lawyers Helping Lawyers Assistance Program Committee** is meeting regularly, and monthly discussion groups are also meeting regularly. She said the committee is encountering roadblocks in establishing monthly discussion groups in non-metro areas and said a new committee member has a background in clinical mental health. She also reported the **Cannabis Law Committee** is meeting virtually monthly, and two new committee members have been added. She said the committee has identified the need for awareness of intersectionality between cannabis and other areas of law to improve client services. The

committee is working to improve cross education, such as CLEs, in conjunction with other committees. Governor White reported the **Legal Internship Committee** will present its Intern of the Year Award at the upcoming OU College of Law alumni luncheon. Vice President Pringle reported the **Legislative Monitoring Committee** will meet during the Annual Meeting, and new leadership is being sought. Governor Smith reported the **Diversity Committee** has selected its annual Diversity Award winners and invited board members to attend the annual Diversity Dinner.

2023 BUDGET AND PERSONNEL SCHEDULE

The board passed a motion to approve the submission of the 2023 annual budget as presented or amended to the Oklahoma Supreme Court.

The board unanimously passed a motion to approve the hiring of Janet K. Johnson as the OBA's

next executive director. The board also passed a motion to approve a 12-month employment contract to be offered to retiring Executive Director Williams.

2023 BOG MEETING SCHEDULE

President-Elect Hermanson outlined the notional schedule and provided key highlights, which will include some travel outside of the metro area.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the third annual Access to Justice Summit, Oct. 21, Oklahoma City; OBA Annual Meeting, Nov. 2-4, Oklahoma City Convention Center, Oklahoma City; Board of Governors holiday party, Dec. 8, Oklahoma City; Board of Governors Swearing-In Ceremony, Jan. 20, 2023, Oklahoma State Capitol, Ceremonial Courtroom; Legislative Kickoff, Jan. 27, 2023, Oklahoma Bar Center; and Day at the Capitol, March 21, 2023, Oklahoma State Capitol.

NEXT BOARD MEETING

The Board of Governors met in November, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be at 10 a.m. on Friday, Dec. 9, at the Oklahoma Bar Center in Oklahoma City.

THURSDAY & FRIDAY,
DECEMBER 15 & 16

9 a.m. - 3:20 p.m.

Oklahoma Bar Center



DAY ONE: MCLE 6/1
DAY TWO: MCLE 6/0



37TH ANNUAL
**ADVANCED
BANKRUPTCY SEMINAR**

DAY ONE:

Penn Square at 40 - Remembering the Good Old Days!

Burns Hargis; Blaine Schwabe; Patrick J. Malloy III

Wait, Wait, Don't Disbar Me!

Prof. Robert Lawless; Mark Craig; Judge Terry Michael;
Judge Sarah Hall; Judge Janice Loyd; Judge Paul Thomas

Post-Petition Appreciation in Ch. 7 - Who Gets it?

Professor Robert Lawless, University of Illinois

Chapter 11 Survivors - Tales from General Counsels

James Webb; Al Givray;
Sharolyn Whiting-Ralson

Cannabis Receiverships

Andy Turner; David Rhoades; John Hickey; Felina Rivera

Judge Panel

Judge Terry Michael; Judge Sarah Hall;
Judge Janice Loyd; Judge Paul Thomas

DAY TWO:

Real World Sub-Chapter 5

Steve Moriarity; Clay Ketter; Ron Brown; Gary Hammons

Student Loan Discharge Issues

Austin Smith

Fraud and Forensic Examinations

Leah Weitholter

Consumer Fraud Panel

Rodney Hunsinger; Michael Avery; Luke Wallace

Advanced Account Receivable Sales

Professor Kara Bruce, University of Oklahoma

Annual Case Update - Still the Sid and Sam Show

Brandon Bickle; Chuck Greenough

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.

IOLTA Interest Rate Comparability is Fully Implemented, Effective Jan. 1, 2023

By Valerie Couch

EVERY DAY IN THE COURSE of the Oklahoma Bar Foundation's work, we hear compelling stories. We hear stories of lives transformed by the foundation's support. We also hear tragic stories of people derailed by the lack of legal services. Our work takes us to the intersection of the law and mental illness, drug dependency, domestic violence, homelessness and child abuse and neglect. These stories drive us to be better, more effective and more connected to the urgent needs of Oklahomans.

To increase resources to meet these ever-growing needs, the foundation recently asked the Oklahoma Supreme Court to amend Oklahoma Rule of Professional Conduct 1.15, Safekeeping Property. On Oct. 10, the Supreme Court granted the request and amended the rule, effective Jan. 1, 2023. With this change, Oklahoma joins 38 other state jurisdictions that have fully implemented interest rate comparability as a requirement for lawyers' trust accounts – a step that will significantly increase revenues for the foundation's grant programs in the coming years.

Prior to the amendments, Rule 1.15 contained a provision for interest rate comparability on lawyers' trust accounts by stating, "The rate of interest payable on [an IOLTA] account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors."

The problem, however, was the rule did not contain any provisions implementing rate comparability. The rule did not have a mechanism for determining the interest rates financial

institutions were paying on non-lawyer deposit accounts or what the IOLTA rates should be. Consequently, many financial institutions offering preferred interest rates to non-IOLTA depositors did not provide comparable rates on IOLTA accounts and, in fact, routinely paid extremely low rates, even on IOLTA accounts with large balances. We needed technical adjustments to the rule to ensure that fair and comparable interest rates were paid on lawyers' trust accounts.

AMENDMENTS TO OKLAHOMA RULE OF PROFESSIONAL CONDUCT 1.15, SAFEKEEPING PROPERTY

On Oct. 10, 2022, upon application made by the Oklahoma Bar Foundation, the Oklahoma Supreme Court amended Rule 1.15, Safekeeping Property, of the Oklahoma Rules of Professional Conduct to clarify the meaning and implementation of "interest rate comparability" in the rule. The amendments will become effective Jan. 1, 2023.

Scan the QR code with your phone or visit <http://bit.ly/3GFHSHD> to read the order.



The new amendments to Rule 1.15 correct the problem and ensure that banks and other qualifying financial institutions treat IOLTA accounts fairly and equally – the same as accounts of other non-lawyer depositors. Importantly, the rule accomplishes this without regulating banks and without imposing any new requirements on Oklahoma attorneys.

A financial institution's participation in the Oklahoma IOLTA program has always been voluntary, and so it will continue to be. Each institution will continue to set its own depository interest rates based on the factors it normally considers. Each institution will also continue to decide whether to meet the requirements necessary to be qualified by the OBA Office of the General Counsel to offer IOLTA accounts – the same as in the past.

Similarly, Oklahoma attorneys will proceed as usual. When an attorney seeks to open a new IOLTA account, the attorney can check with the Oklahoma Bar Foundation to identify financial institutions qualified to offer IOLTA accounts. In the unlikely event an institution decides not to pay the same rates on IOLTA

accounts that it pays on non-attorney accounts with the same balances and other requirements, the foundation will work with the attorney and the institution to resolve the matter.

This is a welcome and needed change! Fully implemented interest rate comparability will increase revenue for the foundation's IOLTA grant program and bring us in line with many other states that have long benefitted from this program. IOLTA forms the bedrock of our ability to help others in accordance with our mission. Through this change, Oklahoma lawyers have greatly strengthened our profession's ability to have an impact where human need is most urgent.

Thank you to everyone involved in this effort and to the OBA Board of Governors for their support!

Valerie Couch serves as the 2022 Oklahoma Bar Foundation president.

FREQUENTLY ASKED QUESTIONS ABOUT IOLTA RATE COMPARABILITY

What is IOLTA? IOLTA is an acronym for *interest on lawyers' trust accounts*, established by Oklahoma Rule of Professional Conduct 1.15, Safekeeping Property. Under this rule, client funds held by attorneys that cannot earn net interest for a client must be deposited into an interest-bearing trust account. Interest earned by pooling these funds in an IOLTA account is paid to the Oklahoma Bar Foundation. IOLTA funds support legal aid programs for the poor, elderly, children, domestic violence survivors, the homeless and many others. It also supports access to justice programs, law-related education, high school mock trial programs and many other critical law-related charitable programs and activities throughout Oklahoma.

What do the amendments to Rule 1.15 do? The amendments clarify the presence and meaning of rate comparability in Rule 1.15 and clarify what bank fees and service charges can be assessed on an IOLTA account.

What is rate comparability? Rate comparability ensures that IOLTA accounts are treated fairly and equally, like the accounts of other bank customers. Rate comparability means a financial institution that wishes to offer IOLTA accounts to attorneys must pay the same rates of interest on IOLTA accounts as it pays on other non-attorney accounts with the same balances and other requirements.

What did Rule 1.15 say about interest rates before the amendment? The rule that was amended included rate comparability by stating, "The rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors." It did not, however, contain necessary language or a process for determining what rates financial institutions were paying on accounts of other non-lawyer depositors or how to determine comparable rates.

Does rate comparability regulate banks? Is a bank required to offer IOLTA accounts? No, rate comparability provisions do not regulate banks. A bank's participation in the Oklahoma IOLTA program has always been voluntary and will continue to be voluntary. Each bank individually decides whether it wants to meet the requirements necessary to qualify to offer IOLTA accounts to attorneys.

Does an IOLTA comparability rule set bank rates? No, rate comparability does not set or compare rates among banks. Rates paid under comparability are set by each bank and are based on all the factors a bank normally considers when it sets rates. Comparability only requires a participating bank to pay interest rates comparable to what it already pays its similarly situated non-attorney customers. For example, most financial institutions offer non-IOLTA depositors preferred interest rates for larger balances. However, these same institutions do not distinguish between small- and large-balance IOLTA accounts. The amended Rule 1.15 simply ensures that financial institutions now pay the large-balance IOLTA account the same rate it would otherwise qualify for if it were not an IOLTA account.

How do banks comply with rate comparability? The amendments to Rule 1.15 offer banks several different options if they want to offer IOLTA accounts. They can 1) perform an analysis of their different products to establish what they pay as a comparable rate, 2) pay a safe harbor interest rate keyed to the familiar federal funds target rate, which would be more than 60% of the federal fund target rate or 0.60%, or 3) pay a rate that is agreed to by the financial institution and the foundation.

Why would a bank choose to pay a safe harbor rate? A safe harbor rate is extremely simple and easy to implement. If a bank chooses to pay a safe harbor rate, it does not have to perform an analysis of its products. The bank will be automatically presumed to meet the rate comparability requirements. In the 38 other IOLTA jurisdictions that have rate comparability in their rules, banks often choose to pay a safe harbor rate.

Do rate comparability provisions impose any new requirements on Oklahoma attorneys? No. The prior Rule 1.15 already required attorneys to open IOLTA accounts at financial institutions that have been approved by the OBA Office of the General Counsel to offer IOLTA accounts. The amendment simply adds the rate comparability provision a bank must meet to be approved. Oklahoma attorneys do not have to do anything different from what they already do.

How will attorneys know if a bank is in compliance and is a bank that is approved to offer IOLTA accounts? The Oklahoma Bar Foundation, as the administrator of the IOLTA program, will make an individual determination on whether a bank is in compliance with the rate comparability provisions documentation and reporting requirements. The foundation will report its determinations to the OBA Office of the General Counsel and continue to maintain in its office a list of approved institutions.

What is the impact when banks pay low interest rates? Low interest rates paid on IOLTA accounts mean the Oklahoma Bar Foundation's ability to make grant awards to meet the legal service needs of Oklahomans is impaired. Low rates impair the ability to make awards to programs that rely on the foundation for annual funding and the ability to make consistent annual awards nonprofits can rely on. Low rates can even jeopardize the existence of some programs and prevent the funding of new programs.

What changes do the amendments make regarding bank fees and service charges on IOLTA accounts? The prior Rule 1.15 said lawyers can only deposit their own funds in an IOLTA account to pay for bank fees and service charges in the amount necessary for that purpose. The amendments clarify what fees may be charged to an IOLTA account and what normal service charges are paid by a lawyer or law firm. Because IOLTA funds are used for charitable purposes, banks participating in the IOLTA program are asked to waive all fees and service charges on those accounts.

Specifically, the only fees that may be deducted from IOLTA interest or dividends are the reasonable costs for banks to comply with their IOLTA reporting and payment requirements under Rule 1.15 and any fees for use of automated investment features assessed to similar non-IOLTA customers on bank products, if they are used to establish a comparable rate. A bank may not assess against the interest or dividends earned on an IOLTA account those service charges normally imposed on business accounts, such as insufficient funds charges, fees for certified or cashier's checks, etc. Such charges remain the financial responsibility of the lawyer or law firm as a normal operating cost of the practice and should be properly disclosed to the lawyer or law firm by the bank.



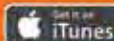
REACH *Beyond*

Power your law practice with industry-leading legal research. Fastcase is a free member benefit of the Oklahoma Bar Association.



LEARN MORE AT WWW.OKBAR.ORG

DOWNLOAD TODAY



Our Revels Now Are Ended

By Dylan D. Erwin

ASI SIT DOWN TO WRITE this – my final article for the *Oklahoma Bar Journal* in my capacity as your Young Lawyer’s Division chairperson, the afterimage of the 2022 Annual Meeting has yet to fade from my mind’s eye. The Annual Meeting, at least for me, is an annual tonic. A yearly reinvigoration. A reminder of why I am so immensely proud to call myself a member of the OBA – to consider you all my colleagues and to have the immeasurable honor of representing a broad swath of you.

After trudging bent-backed through the last few pandemic years, contrary to statistics, I’m of the belief that 2022 was the first year we were able to return to some semblance of normalcy. Throughout the year, the YLD was still able to have in-person meetings, we were all able to gather for the Solo & Small Firm Conference, and as the evanescent flashbulbs of recent memory remind me, we topped everything off with an amazing Annual Meeting. But all good things must come to an end. Prospero’s words to Ferdinand in Act IV of *The Tempest* come to mind:

You do look, my son, in a moved sort,
As if you were dismayed. Be cheerful, sir.
Our revels now are ended.

My year at the helm may be drawing to a close, but I am excited beyond measure to see what the

upcoming year brings. I will soon be passing the torch to the indefatigable and unbreakable Caroline Shaffer Siex. To say the YLD is in good hands would be an understatement. Caroline is an amazing leader, and I’m lucky to call her a friend. She was irreplaceable as my second-in-command this past year, and believe me when I say anything good you may have experienced at the hands of the YLD in 2022 was 125% her doing.

Along with Caroline, we welcomed two new directors onto our board for next year. Nick Marr of Oklahoma City and Dayten Israel of Norman will be serving two-year terms as at-large directors. 2023 is going to be an amazing year for lawyers of every vintage, but especially our young lawyers. Keep an eye on your *Oklahoma Bar Journal* to find out how you can get involved in 2023!

Before I fade into the mist, I want to take this opportunity to thank four very important people. First, my law partner, Gary S. Chilton. Over the years, Gary has always remained endlessly supportive of my involvement with the bar association, and I wouldn’t have been able to do all that I wanted without his support. Second, to John Morris Williams, our soon-to-be former executive director of the OBA. When I found out John was retiring, I thanked him for staying on until the end of my time with the YLD – if for no other reason than to make sure I didn’t burn the place to the ground accidentally. Plus, it’s only fitting that John began



his OBA tenure in the YLD with my dad and ends his OBA tenure suffering through another Erwin. Third, to my wife, Leslie. The term better half is criminally overused, such that at times, like now when it’s appropriate, it doesn’t pack a punch. Leslie’s love and support over this past year, if I could be so bold as to return to Prospero, was such stuff as dreams are made on. Lastly, to my daughter, Eloise, who turns a year old this month – everyone has a *raison d’être*, but I’m forever thankful she gets to be mine.

It’s been real, it’s been fun and it’s been real fun. See you in the funny papers.

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.



MEET YOUR NEW EXECUTIVE DIRECTOR

After an extensive search, the OBA Board of Governors has unanimously selected Janet K. Johnson as the association's next executive director. She will assume her new leadership role Jan. 1 upon the retirement of long-time Executive Director John Morris Williams.

Since 2020, Ms. Johnson has served as director of educational programs for the OBA Continuing Legal Education Department. Previously, she served in different roles within the Department of Human Services Child Support

Services, including as the managing attorney in the Office of Impact Advocacy and Legal Outreach. In that role, she advocated as lead counsel in appellate proceedings and managed legal training and workshops for Child Support Services and the legal community. Before joining DHS, she was a solo practitioner focusing on family law and collections.

Ms. Johnson received her J.D. from the OCU School of Law in 2010. She is licensed to practice in Oklahoma and the United States District Court for the Western District of Oklahoma. Look for an in-depth interview with Ms. Johnson in the January *Oklahoma Bar Journal*.

MEMBER DUES STATEMENTS ARE AVAILABLE ONLINE

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 was mailed around Dec. 1 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.

SAVE THE DATE! LEGISLATIVE KICKOFF IS JAN. 27

The Oklahoma Legislature reconvenes in February, and hundreds of bills will be prefiled. Much of the proposed legislation could affect the administration of justice, and some will undoubtedly affect your practice.

Join the OBA Legislative Monitoring Committee at 9 a.m. Friday, Jan. 27, at the Oklahoma Bar Center as they identify top bills of interest to the OBA and your practice area. Plus, earn two hours of MCLE credit. Donuts and coffee will be provided. RSVP to Alisha Davidson at alishad@okbar.org if you'd like to attend.



IMPORTANT UPCOMING DATES

Don't forget, the Oklahoma Bar Center will be closed Monday and Tuesday, Dec. 26-27, in observance of Christmas. The bar center will also be closed Monday, Jan. 2, for New Year's Day and Monday, Jan. 16, for Martin Luther King Jr. Day.

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.

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.



From left Scholarship Committee Co-Chair Brian Candelaria, Colby Cook, Madelynn Dancer, Lindsey Prather, Eastman Holloway and Chair Austin Vance

INDIAN LAW SECTION AWARDS SCHOLARSHIPS

The OBA Indian Law Section has selected Colby Cook, Madelynn Dancer, Eastman Holloway, Lindsey Prather and Palmer Scott as recipients of the section’s 2022 G. William Rice Memorial Scholarship Award. The section developed the scholarship in order to encourage future OBA members to pursue practices within the field of Indian law. It honors and remembers G. William

Rice, a distinguished Indian law practitioner, law professor and co-director of the Native American Law Center at the TU College of Law, who passed away Feb. 14, 2016.

Debra Gee, the Scholarship Committee chair, explained, “This year we have expanded both the number of recipients and the aggregate amount of funds awarded, with \$8,000 in scholarships granted. We drew a distinguished pool of applicants who have shown a passion for and interest in carrying on Professor Rice’s legacy as a practitioner, scholar and mentor.”

Oklahoma is home to 39 federally recognized tribes and has the second-largest American Indian population in the United States. The OBA Indian Law Section is comprised of Oklahoma practitioners with an interest in Indian law. If you are interested in joining the committee, please visit www.okbar.org/committees/committee-sign-up.

KICK IT FORWARD PROGRAM PAYS DUES FOR MEMBERS WITH DIFFICULTIES

The Kick It Forward Program paid four members’ dues for 2022, totaling \$1,100. The program was born out of a desire to help fellow lawyers with financial difficulties. With the many economic challenges

lawyers face today, it can be a struggle to build up and maintain a legal practice. That’s why the Young Lawyers Division launched Kick It Forward in 2015, with a mission to assist lawyers of all ages in need by paying their OBA dues while they get on their feet.

The program is funded by donations made through an election on your dues statement. By completing the Kick It Forward line, lawyers agree to pay \$20, or the amount of their choice, to the program in addition to annual dues.

OBA members who would like to donate to the program or request assistance paying their 2023 membership dues may visit www.okbar.org/kif for more information or to download an assistance request application.



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.



LHL DISCUSSION GROUP HOSTS JANUARY MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Jan. 5 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Jan. 12 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.

ON THE MOVE

Kimberly A. Wurtz has joined the Oklahoma City office of Phillips Murrah as of counsel. She practices primarily in the areas of property, water and energy law, focusing on landowner property matters, water rights and asset protection. As an Oklahoma delegate to the Interstate Oil and Gas Compact Commission, she serves as the vice chair of the Legal and Regulatory Affairs Committee and is a member of the Energy Resources, Research and Technology Committee. She is also currently serving on the Oklahoma National Association of Royalty Owners Board of Directors and the NARO Foundation Board of Directors. Ms. Wurtz is a co-author for *Patton and Palomar on Land Titles*.

The office of LKDLAW PC, attorney **Laurence K. Donahoe**, has moved to 3035 NW 63rd St., Ste. N 201, Oklahoma City, 73116. He may be contacted at LaurenceDonahoeLaw@gmail.com. The firm's phone and fax numbers remain the same.

Tyler A. Stephens has joined the Tulsa office of Riggs Abney Law Firm as an associate. Mr. Stephens received his J.D. from the TU College of Law in 2022, where he graduated in the top 15% of his class and served as business manager of the *Tulsa Law Review* and president of the Public Interest Board. He also received the Martin H. Belsky Award in public interest law and the CALI Award for the highest individual performance in administrative law.

Angela Smoot has joined the Tulsa office of Riggs Abney Law Firm as a shareholder. Her experience includes brief writing and oral arguments for all types of civil litigation, including family and domestic cases with complex business issues. Ms. Smoot has numerous published state and federal appellate opinions and is admitted to practice law in the Northern, Eastern and Western districts of Oklahoma and the U.S. Court of Appeals for the 10th Circuit.

Abigail E. Bauer has joined the Tulsa office of Riggs Abney Law Firm as an associate attorney. She received her J.D. from the TU College of Law in 2022, where she graduated with honors and served as president of the Sports and Entertainment Law Society. Ms. Bauer also received the CALI Award for the highest individual performance in computer crime.

Ryan J. Gray has joined the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds as an associate. He practices in the area of civil litigation, with an emphasis on research and writing. Mr. Gray received his J.D. from the TU College of Law in 2011, where he earned a Sustainable Energy and Resources Law Certificate and received CALI Awards in administrative law and taxation of estates, trusts and gifts.

Mark A. Yancey has retired after 36 years with the United States Department of Justice, much of which was served in the United States Attorney's Office for the Western District of Oklahoma.

Beginning Nov. 14, he will join the University of South Carolina School of Law as a professor of practice and director of graduate programs.

Connor M. Andreen, Mason B. McMillan and **Sarah E. Sadler** have joined the Tulsa office of Hall Estill. **Hilary Hewitt Price** and **John P. Slay** have joined the firm's Oklahoma City office. Mr. Andreen joins the firm's commercial litigation and bankruptcy, restructuring and creditor-rights practices. Mr. McMillan joins the firm's energy litigation practice. Ms. Sadler joins the firm's trusts and estates litigation practice. Ms. Price joins the firm's litigation practice. Mr. Slay joins the firm's transactional practice.

Samantha Barber and **Erica Parks** have joined the Tulsa office of Rhodes Hieronymus Jones Tucker and Gable PLLC as associates. Ms. Barber practices primarily in the areas of litigation, insurance defense and employment law. She received her J.D. and Sustainable Energy Natural Resources Law Certificate in 2022 from the TU College of Law, where she was a notes editor for the *Energy Law Journal* and a recipient of the Tulsa County Bar Association's Energy and Natural Resources Award. Ms. Parks has many years of experience representing clients and resolving cases through litigation, negotiation and mediation. She primarily practices in the area of family law, including divorce and separation, child custody, child and spousal support and property division. She is also adept in criminal defense and civil litigation in a variety of areas, including personal injury cases and insurance defense.

Alyssa Lankford has returned to McAfee & Taft after serving one year as a federal law clerk to Chief Judge Glenn T. Suddaby of the U.S. District Court for the Northern District of New York. She originally joined the firm in 2019 and represents 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. Her practice includes counseling and representing clients in a broad range of matters arising out of the employer-employee relationship, including employment discrimination, harassment, approved leave, wage and hour issues, collective and class actions, discipline and termination, and non-solicitation and confidentiality agreements, as well as litigation avoidance and compliance with other federal and state laws.

Adam Panter has been appointed by Gov. Stitt to serve as district attorney for the 23rd Judicial District, including Pottawatomie

and Lincoln counties. Prior to his appointment, Mr. Panter had served as an assistant district attorney in Oklahoma's 7th District Attorney's Office since 2019. In this position, he held the roles of general felony team leader, special assistant United States attorney for the Western District of Oklahoma and Domestic Violence Division team leader.

Adria Berry has been appointed by Gov. Stitt to serve as executive director of the Oklahoma Medical Marijuana Authority, which officially transitioned to an independent state agency Nov. 1 per SB 1543.

J. Blake Patton has joined the Oklahoma City office of GableGotwals as a litigation shareholder. A business-focused litigator, Mr. Patton has a diverse trial and appellate practice before state and federal courts and administrative agencies. His practice also includes advising on numerous constitutional challenges to legislative action. In addition, he represents clients in federal white-collar criminal

investigations and prosecutions, including federal RICO prosecutions initiated by the U.S. Department of Justice, cyber fraud investigations related to international aircraft lease and purchase transactions conducted by the FBI and Lacey Act investigations conducted by the U.S. Fish and Wildlife Service.

Rachel Jordan and **Allison Lubbers** have joined the Norman litigation firm HB Law Partners PLLC. They handle a wide variety of civil litigation matters for plaintiffs and defendants, including complex business/shareholder disputes, real estate disputes and consumer fraud and abuse. Ms. Jordan also handles a variety of post-trial criminal matters, including appeals in state and federal courts. She received her J.D. from the OU College of Law in 2015. Ms. Lubbers received her J.D. from the OU College of Law in 2022.

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 February issue must be received by Jan. 1.

KUDOS

Kent Watson was elected president of the Oklahoma Association of Community Action Agencies during the Big Five Community Services' fall conference. He will serve a two-year term, guiding the association's 18 community action agencies during his term. Mr. Watson has served Big Five Community Services since 2009, first as Head Start director and later becoming the executive director in 2013, leading the continued expansion of the agency and its programs and services.

David Halley will serve as Canadian County's next special judge and will take the bench in early 2023. He was selected to succeed Judge Khristan Strubhar when she moves up to the district judgeship. Mr. Halley has worked in private practice in El Reno for more than 30 years, practicing in the areas of family law, divorce, estate planning, criminal law and civil litigation. He has been the city of El Reno's associate municipal judge since 2010, and in 2021, he was named the Family Law Section Guardian Ad Litem of the Year. He had been the announcer for El Reno Indians football games for two decades and was an El Reno city councilman for six years.

John J. Foley was elected to chair the Executive Council of the State Bar of Arizona Juvenile Law Section. Mr. Foley formerly served as the initial general counsel of the Office of Juvenile Affairs. He also served as the head of the Juvenile Division of the Oklahoma County District Attorney's Office. Before moving to Phoenix, he maintained a private law practice in Oklahoma City. He now works for a Phoenix civil firm, handling juvenile and civil cases.



HAVE CURRENT MARKET CHANGES LEFT YOUR CLIENTS WITH QUESTIONS ABOUT RETIREMENT?

At Retirement Investment Advisors, Inc., we act as a legal fiduciary - which means we have a duty of care and loyalty to act in the best interests' of our clients. Our advisors are **CERTIFIED FINANCIAL PLANNER™** professionals, having obtained ancillary professional and ethical training. We provide complimentary, objective portfolio reviews to ensure your clients are on their way to a worry-free retirement.

CALL US TO LEARN ABOUT WAYS WE CAN HELP YOUR CLIENTS START 2023 ON A SOLID PATH.

TheRetirementPath.com/OKBar
405.942.1234



FEE-ONLY. FIDUCIARY. FOCUSED ON YOU.

Don't let
distance
keep you from
getting
involved

Attend section
and committee
meetings remotely
via BlueJeans.



Use a mobile device,
phone or computer. Visit
www.okbar.org/bluejeans.



NONPROFIT LAW & FINANCE CONFERENCE

Presented by the Oklahoma Center for
Nonprofits and Philanthropy Southwest

May 18-19, 2023

Oklahoma City University
School of Law

Topics include:



Economic Viability



Social Equity



Talent & Environmental
Management



Research & Policy

Register today at
nonprofitlawfinance.com
or scan here



Shawn Joseph Adkison of Shawnee died Oct. 24. He was born July 12, 1972. Mr. Adkison graduated from Shawnee High School, attended St. Gregory's University and received his J.D. from the OCU School of Law. He was a successful attorney in Oklahoma City and Shawnee for many years.

John N. Brewer of Pauls Valley died Sept. 11. He was born Jan. 15, 1944. After graduating from Pauls Valley High School in 1962, he attended OU and earned his master's degree in 1967. **Mr. Brewer served in the U.S. Army in Vietnam.** He received his J.D. from the OU College of Law in 1974 and practiced law in Oklahoma City. He was a devoted member of the First Christian Church of Pauls Valley and an active supporter and leader of the National Alliance on Mental Illness. Memorial contributions may be made to NAMI of Greater Oklahoma City.

Jerry S. Duncan of Oklahoma City died Oct. 1. He was born Dec. 23, 1936, in Shawnee. Mr. Duncan attended Britton Elementary School and graduated from John Marshall High School in 1955. He received his bachelor's degree in petroleum engineering from OU in 1959 and his J.D. from the OCU School of Law in 1962. He practiced law for over 40 years in Oklahoma and Tennessee and was a founding member of the John Marshall Foundation. Mr. Duncan enjoyed teaching and was a mentor to young lawyers as well as an adjunct professor at Tennessee Tech University. He also completed many hours of

pro bono work. Memorial contributions may be made to the John Marshall Foundation.

Bill J. English of Rush Springs died Oct. 18. He was born Nov. 12, 1946, in Duncan. **Mr. English enlisted in the U.S. Marine Corps in 1968 and was active during the Vietnam War and Desert Storm. He was awarded the Combat Action Ribbon, Navy Commendation Medal, Meritorious Service Medal and the Legion of Merit.** In 1976, he received his J.D. from the OU College of Law. He was an associate professor of political science at OU and a visiting professor for the criminal justice program at the University of Central Oklahoma. Mr. English spent 30 years practicing law and was an associate judge from 1997 until 2002. He was a member of the Rush Springs Lions Club.

Frederick J. Hansen of Wichita, Kansas, died Nov. 4. He was born Aug. 30, 1931, in Brayton, Iowa. **Having taken four years of reserve officers' training while attending the University of Iowa, he was called to active duty with the U.S. Air Force for two years following his graduation.** Mr. Hansen received his J.D. from the OU College of Law in 1961. That same year, he moved to Wichita and began his legal career at Koch, then known as Rock Island Oil & Refining Co., where he worked until his retirement in 1988. Memorial contributions may be made to the Wichita Genealogical Society, the Danish American Archive & Library or Fern's Place Home Plus.

Martha Elaine Hirst of Oklahoma City died Oct. 11. She was born April 27, 1943, in Oklahoma City. Ms. Hirst attended OU, where she played tennis, performed water ballet and was voted Outstanding Freshman Coed. She received her J.D. from the OU College of Law in 1970. Ms. Hirst began her legal career with the Oklahoma County District Attorney's Office and started a private practice in the early '80s. In 1993, she moved to New York and joined the New York City Law Department, one of the oldest law offices in the world and ranking among the top three largest public law offices in the country. She was recognized by her tort special litigation unit division chief for exceptional performance.

Charles Lewis Hunnicutt of Oklahoma City died Oct. 14. He was born June 12, 1938, in Sulphur. Mr. Hunnicutt worked at Tinker Air Force Base while attending OU and later Central State College, where he earned a bachelor's degree in history. **Upon receiving his J.D. from the OCU School of Law, he enlisted in the U.S. Air Force and served state-side as a captain and judge advocate general during the Vietnam War.** Mr. Hunnicutt had a long and distinguished legal career in the aeronautical industry, working for Boeing, Lockheed-Martin and Aerospatiale (now Eurocopter). His work took him all over the world, including Saudi Arabia, Algiers, Argentina and South Korea; but in 2001, he retired to Oklahoma City. There, he devoted much of his time to service, volunteering with the Small Business Administration's SCORE program and Legal Aid

Services of Oklahoma, where he served on the Senior Advisory Board. Memorial contributions may be made to Legal Aid Services of Oklahoma.

John Pearson Keller of Edmond died Sept. 29. He was born May 23, 1956, in Oklahoma City. Mr. Keller graduated from Heritage Hall High School and OU and received his J.D. from the OU College of Law in 1979. He spent much of his career in the oil and gas industry, working for Kaiser Francis Oil Co. and Chesapeake Energy Corp., among others. He also provided consulting services during his later years.

Milford M. McDougal of Portland, Oregon, died Oct. 2. He was born July 4, 1922. **Mr. McDougal served in the U.S. Army in World War II as a liaison pilot and in the Korean Conflict as an Army aviator.** He was awarded two Purple Hearts and two Air Medals, among other medals. He received his J.D. from the TU College of Law and was an attorney and district judge in Tulsa. Memorial contributions may be made to Samaritan's Purse.

John Vernon Rainbolt II of Steubenville, Ohio, died Sept. 16. He was born May 24, 1939, in Cordell. Mr. Rainbolt earned his bachelor's degree in English from OU and his J.D. from the OU College of Law. **He volunteered in the U.S. Army and was trained as an airborne infantryman. Following completion of Officer Candidate School, he was commissioned as a platoon leader in the 3rd U.S. Infantry Regiment (Old Guard), whose**

responsibilities include guarding the Tomb of the Unknown Soldier. He was a first lieutenant. At the end of his military service, he worked as senior staff to former Rep. Graham Purcell before serving as chief counsel to the Committee on Agriculture of the U.S. House of Representatives. While there, he was credited with drafting the Commodity Futures Trading Act of 1974, which created the Commodities Futures Trading Commission. He was later nominated to the commission by President Gerald Ford and received Senate confirmation in 1975, serving as vice chairman of the CFTC. He later established a private practice in northern Virginia.

Robert R. Reis Sr. of Tulsa died Oct. 12. He was born March 13, 1939, in Tulsa. **Mr. Reis served in the Army's Judge Advocate General's Corps for four years, first as a defense attorney at Fort Hood and then as an attorney addressing nuclear security matters at the Killeen Base Defense Atomic Support Agency. He joined the Army Reserves in 1969, serving for 22 more years before retiring as a lieutenant colonel in 1990.** He received his J.D. from the OU College of Law in 1964 and became a natural gas liquids and processors lawyer. He worked for Cities Service and Occidental Petroleum Corp. and as general counsel and vice president of legal affairs for Trident NGL. He also served as general counsel for the Gas Processors Association Midstream for over 20 years. In 1995, Mr. Reis opened a private practice in Tulsa, branching into other areas of legal counsel and as a mediator and arbitrator.

He practiced law for more than 50 years as a member of the Oklahoma, Texas and American Bar Associations. Memorial contributions may be made to All Souls Unitarian Church or the American Lung Association.

Sandra McCommas Sawyer of Ashland, Oregon, died Oct. 9. She was born Sept. 1, 1937, in Tulsa. After earning her bachelor's degree in journalism from OCU, she received her J.D. from the OCU School of Law in 1967. After law school, she clerked for Chief Judge Alfred P. Murrah of the United States Court of Appeals for the 10th Circuit. She went on to work as a bill drafter for the House and Senate, chief of the Oklahoma Supreme Court Traffic Court Project and partner at Moran & Johnson. In 1978, she was appointed a special judge for the 7th Judicial District – she was the second woman seated as a judge in Oklahoma. She remained seated until her move to Medford, Oregon, in 1981. In Oregon, she worked as an attorney with Grant, Ferguson and Carter and as legal counsel at Kogap. Ms. Sawyer spent her life fiercely advocating for women's rights and equality for all. Memorial contributions may be made to St. Jude Children's Research Hospital.

Thomas Lee Toland II of McAlester died July 26. He was born May 9, 1968, in Dallas. Mr. Toland received his bachelor's degree in radio and television from Southern Methodist University, where he was a member of the Sigma Phi Epsilon fraternity. He then worked in television and was known for producing television programs in the Texoma region and as a movie reviewer. Later, he became

a registered nurse after obtaining a nursing degree from Texas Woman's University in Denton, Texas. Mr. Toland received his J.D. from the TU College of Law in 2002. With his background in nursing, he represented clients with Social Security disability claims. He was a member of the South McAlester Masonic Lodge 96 and a 32° Scottish Rite Mason in the Valley of McAlester, Orient of Oklahoma.

Timothy M. White of Tulsa died Oct. 1. He was born Jan. 4, 1952. Mr. White received his J.D. from the TU College of Law in 1980.

TRUSTED. EXPERIENCED. RESPECTED.

40 YEARS PRACTICING | OVER 1,000 MEDIATIONS



"He is reasonable, practical, knowledgeable, thoughtful and fair."
-Ben Butts

"Jake works hard to make sure all avenues of resolution are explored which leads to great success for all involved."
-Margaret Clarke

"Jake is an extraordinary mediator. He is really effective."
-Mark Engel

"He has succeeded in resolving the claims I did not believe had a reasonable chance of settling."
-Rachel Mathis

"He is willing to put in the time and work to make a mediation successful."
-Phil R. Richards

"He has always been unfailingly respectful to my clients throughout the process."
-Phil Watts

www.jakejonesmediation.com
(405) 866-5253



Sweet.



**New frequency discounts. New digital ad sizes.
Design services available. How refreshing.**

Tap into a niche audience and reach more than 15,500 offices and homes with print ads in the *Oklahoma Bar Journal* and digital ads in the new, weekly *Courts & More* issues.

www.okbar.org/barjournal/advertising



OKLAHOMA BAR ASSOCIATION



BAR BENEFITS

**You make a difference.
OBA member benefits
make it easier.**

MYOKBAR

DID YOU KNOW?

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

CHECK IT OUT

Log in with the "MyOKBar Login" link at the top of www.okbar.org.

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

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.

WE WANT TO FEATURE YOUR WORK ON "THE BACK PAGE"!

Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen, lorir@okbar.org.

DON'T MISS
YOUR CHANCE
TO GET

**AFFORDABLE
HEALTH
INSURANCE**

WITH



3000 INSURANCE GROUP

Scan below to
start a quote
today:



3000IG.COM
405.521.1600

SERVICES

Briefs & More – Of Counsel Legal Resources – Since 1992 – Exclusive research and writing. Highest Quality. State, Federal, Appellate, and Trial. Admitted and practiced United States Supreme Court. Dozens of published opinions. Numerous reversals on certiorari. **MaryGaye LeBoeuf, 405-820-3011, marygayelaw@cox.net.**

HANDWRITING IDENTIFICATION POLYGRAPH EXAMINATIONS

Board Certified State & Federal Courts
Diplomate - ABFE Former OSBI Agent
Fellow - ACFEI FBI National Academy

Arthur Linville 405-736-1925

DENTAL EXPERT WITNESS/CONSULTANT

Since 2005
(405) 823-6434

Jim E. Cox, D.D.S.

Practicing dentistry for 35 years
4400 Brookfield Dr., Norman, OK 73072
JimCoxDental.com
jcoxdds@pldi.net

PERFECT LEGAL PLEADINGS works on Microsoft Word and contains automated Oklahoma pleadings and forms for divorce, paternity, probate, guardianship, adoption, real property, civil procedure, criminal procedure, and personal injury. We also provide access to thousands of other state and federal pleadings and forms. PerfectlegalPleadings.org.

CONSULTING ARBORIST, TREE EXPERT WITNESS, **BILL LONG**. 25 years' experience. Tree damage/removals, boundary crossing. Statewide and regional. Billlongarborist.com. 405-996-0411

SERVICES

PROBATE/OIL & GAS HEIRSHIP RESEARCH. Paralegal and Professional Genealogist with 30 years' experience in research offering heirship research services for Probate and Oil & Gas cases. Michelle Bates, My Genealogy Roots, 918-901-9662, Michelle@mygenealogyroots.com.

SEEKING

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

OFFICE SPACE

TWO LARGE OFFICES AND SUPPORT STAFF AREA NEAR OK COUNTY COURTHOUSE. Internet/parking/conference room provided. Phone/copier/support staff optional. Potential for referrals. (405) 235-1551.

MIDTOWN TULSA OFFICE AVAILABLE (Month-to-Month). Professional office in an established Tulsa firm at 16th and Boston. One large office plus access to full kitchen, conference room, inviting lobby, and excellent parking. Ideal for individuals or small team. Call 918-901-9000 for photos and more information.

POSITIONS AVAILABLE

SMOLEN LAW, PLLC, SEEKS AN ATTORNEY with a minimum of 5 years of experience handling primarily legal research and writing, and appellate briefing at both the state and federal levels. The position will consist of providing briefing and trial support at the trial court level and briefing in the state and federal appellate courts. Additional responsibilities include but are not limited to: researching legal issues arising in individual cases, with an emphasis on catastrophic tort litigation and medical malpractice, and drafting motions and related affidavits. Willing to consider hybrid/remote work arrangement for the right candidate. The candidate should possess superior writing skills. Please provide a resume and at least two writing samples to don@smolen.law. Perks and Benefits: We offer a competitive salary and a full suite of benefits including medical and dental insurance; holiday schedule and PTO; referral incentives and regular performance-based bonuses.

POSITIONS AVAILABLE

THE LAW FIRM OF CHUBBUCK DUNCAN & ROBEY, P.C. is seeking an experienced associate attorney with 2-4 years of litigation experience. We are seeking a motivated attorney to augment its fast-growing trial practice. Excellent benefits. Salary commensurate with experience. Please send resume and writing sample either via email or by mail to, Attn: Danita Jones, Chubbuck Duncan & Robey, P.C., located at 1329 Classen Drive, Oklahoma City, OK 73103.

AV RATED INSURANCE DEFENSE/CIVIL LITIGATION FIRM seeks sharp, self-motivated associate attorneys with 2-5 years of experience in civil litigation. Openings in both Tulsa and Oklahoma City offices. Candidates should be organized, detail oriented, have strong research and writing skills and able to handle cases from start to finish. Firm believes in strength through diversity and inclusion and therefore encourages all to apply. Excellent career opportunity for the right applicants. Send replies to Box W, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

TULSA AV RATED LAW FIRM OF JONES, GOTCHER & BOGAN seeks to hire an associate attorney with 3-5 years' litigation experience. The practice will include business, real estate, trusts, estate, and corporate litigation. Send replies to Jones, Gotcher & Bogan P.C., Attn: Terri White, 15 E. 5th Street, Ste. 3800, Tulsa, OK 74103.

CITY OF TULSA CRIMINAL DIVISION MANAGER

Rare opening for an attorney with criminal law and management experience. Position guides 5 attorneys and 2 staff in prosecution of municipal crimes in a court of record. It is part of a skilled team of 25 attorneys and plays a critical role in the administration of justice enforcing misdemeanors and traffic codes. We offer great benefits (and you might qualify for public service loan forgiveness), a government pension, generous leave for work-life balance, promotional opportunities, and pay range from \$106,000-\$142,000 (DOE).

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

POSITIONS AVAILABLE

Assistant City Attorney

Salary: \$70,720.00 - \$118,310.40 Annually
Dependent Upon Qualifications and Experience

Make a difference with a rewarding legal career in public service! This full-time position will defend and prosecute high-profile complex civil lawsuits; draft legal documents; advise City officials as to legal rights, obligations, practices and other phases of applicable local, state and federal law; draft resolutions, ordinances and contracts and prepare legal opinions.

Applicants for the position must have graduated from an accredited law school, be a member in good standing in the Oklahoma Bar Association and admitted to or eligible for immediate admission to practice in the U.S. District Court for the Western District of Oklahoma and the Tenth Circuit Court of Appeals. Applicants must possess a valid Oklahoma driver's license. Interested applicants should apply and submit a resume, law school transcript, and two (2) samples of legal writing filed in legal proceedings. See job announcement at <https://bit.ly/3TYTPvF>. Open until filled. EOE

ATTORNEY POSITION OPEN FOR WORK in the Oklahoma City metropolitan area. Moderate to heavy criminal defense caseload. Experienced preferred, but not mandatory. Base pay is \$72,000.00 per year, with opportunity for significant additional income. Office space, internet and malpractice insurance provided. Additional benefits not provided. Include a letter of interest and writing sample with your resume. Send replies to advertising@okbar.org with the subject line "Position CA."

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.

POSITIONS AVAILABLE

LEGAL AID SERVICES OF OKLAHOMA, INC. (LASO) is seeking PARALEGALS and ATTORNEYS in the OKC and Tulsa areas. The ideal candidate is driven by a passion to help right wrongs committed against those least likely to have equal access to the judicial system. LASO offers exceptional benefits to include employer-paid health and dental insurance, an employer-funded pension, generous paid leave, and training, just to name a few. But the best benefit LASO has to offer is to Make a Difference. If you or someone you know has the passion to help provide access to justice with us, please apply at: www.legalaidok.org/employment.

OFFICE MANAGER. Build your resume/professional profile with the leading Women In Agriculture Association in the world! Assist with overseeing personnel responsibilities and sustainable agriculture practices. Draft correspondence, and payroll records, review and revise contracts, agreements, policy and procedures, food policy legislation, civil rights, and land retention/estate planning. Additionally, assist with community-based fundraising, corporate sponsorships, marketing, and innovative outreach techniques that will have a positive influence on the communities. Communicate with Washington, D.C., Leadership such as: White House Leaders, Congress Members as well as USDA Leaders. To apply, email womeninag@gmail.com, Subject Line: Office Manager, Attention: Dr. Tammy Gray-Steele (202) 643-0590.

THE OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION seeks an Executive Director. The Commission licenses and regulates used motor vehicle dealers, automotive dismantlers and manufactured home manufacturers, dealers, and installers. The Commission is a non-appropriated state agency, supervised by a board of ten Commissioners who are appointed by the Governor. The board members hire the Executive Director, who reports to the Commissioners in its monthly meeting. The Director is responsible for managing the daily operation of a staff of 10-12 employees consisting of office staff, auditors, and investigators. Sufficient knowledge of the motor vehicle industry to effectively execute the duties of the Director is required. If the successful applicant is a licensed attorney, the duties would include filing injunctions in District Court, prosecuting disciplinary proceedings and writing Rules. The Director must have good verbal and writing skills. Some interaction with other state agencies and state government officials is required. Send resume to Used Motor Vehicle and Parts Commission, 421 NW 13th Street, Suite 330, Oklahoma City, OK 73103.

POSITIONS AVAILABLE

Assistant General Counsel

MidFirst Bank, one of the largest privately held financial institutions in the United States, is currently seeking a results oriented professional to join our Legal team. The Assistant General Counsel will work in the Bank's Legal Department providing services to multiple areas of the Bank, including advising company's management on a wide array of issues including: bank operations, deposits, payments, trusts and corporate law; bank regulatory and compliance matters; human resources, intellectual property; litigation including oversight of external counsel; reviewing and drafting complex documents including banking forms and agreements and general contracts. This position will also work with other corporate attorneys in all divisions of the Bank.

The qualified candidate will possess a law degree and must have at least 5 years of legal experience in either banking or general corporate law with a law firm or financial institution. Candidate must be licensed in Oklahoma or be willing to pursue same immediately. The successful candidate will have excellent academic credentials, strong drafting, negotiation and oral communication skills and must possess the ability to manage large numbers of projects simultaneously in a variety of legal areas. The candidate must be able to work under pressure, possesses a willingness and ability to develop a level of expertise in banking and other relevant areas of law, possess strong critical thinking skills, and have good judgment and the ability to identify potential legal issues.

Experience with US laws and regulations governing retail banking and cash management products and services, including Regulations CC, D, DD, E, J, P, and V, and knowledge of UCC articles 3, 4 and 4A, and payment system rules, is strongly preferred.

If you are interested and would like to learn more about this position, please visit our website to complete an online application:

www.midfirst.jobs

Equal Opportunity Employer - M/F/Disability/Vets

ASSISTANT DISTRICT ATTORNEY – DISTRICT 27 (Wagoner, Cherokee and Sequoyah counties). Salary range: \$55,000 to \$80,000. Full benefit package. Submit resume to: diana.baker@dac.state.ok.us.

POSITIONS AVAILABLE

1ST ASSISTANT DISTRICT ATTORNEY POSITION OPEN WITH DISTRICT 17 DA'S OFFICE. Located only a short drive from majestic Broken Bow State Park/Hochatown, an outdoorsman's paradise. Fastest growing area in Oklahoma! Requires a Juris Doctorate from an accredited law school. Salary commensurate with experience. Must be admitted to the Oklahoma state bar and be in good standing. Submit a resume by email: tammy.toten@dac.state.ok.us. Office: 580-286-7611, Fax: 580-286-7613. DEADLINE 01/15/2023.

POSITIONS AVAILABLE

NEW POSITION OPEN WITH DISTRICT 17 DA'S OFFICE FOR AN ASSISTANT DISTRICT ATTORNEY. Located only a short drive from majestic Broken Bow State Park/Hochatown, an outdoorsman's paradise. Fastest growing area in Oklahoma! Requires a Juris Doctorate from an accredited law school. Salary range \$65,000 - \$85,000. Must be admitted to the Oklahoma state bar and be in good standing. Submit a resume by email: tammy.toten@dac.state.ok.us. Office: 580-286-7611, Fax: 580-286-7613. DEADLINE 01/15/2023.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for:

Judge for the Oklahoma Court of Civil Appeals, District 2, Office 2.

This vacancy is created by the passing of the Honorable Keith Rapp.

To be appointed to the office of Judge of the Court of Civil Appeals, one must be a legal resident of the respective district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms can be obtained online at www.oscn.net (click on "Programs", then "Judicial Nominating Commission", then "Application") or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, December 9, 2022. Applications may be hand-carried, mailed or delivered by third party commercial carrier. Whether mailed or delivered, they must be postmarked on or before December 9, 2022 to be deemed timely. Applications should be mailed/delivered to:

James Bland, Chairman
Oklahoma Judicial Nominating Commission
c/o Tammy Reaves
Administrative Office of the Courts
2100 N. Lincoln Blvd., Suite 3
Oklahoma City, OK 73105



Holiday lights illuminate the Philbrook Museum of Art satellite gallery formerly in downtown Tulsa. Photographer: OBA member Lynn R. Anderson, who practices in Tulsa.

TUESDAY,
DECEMBER 27, 2022

Noon - 2 p.m. CST

Live Replay

MCLE 2/0



FEATURED PRESENTER:
LENNE' ESPENSCHIED,
LAWYER, AUTHOR, NATIONAL SPEAKER
AND PROFESSOR

TO REGISTER GO TO [HTTPS://OK.WEBCREDENZA.COM/](https://ok.webcredenza.com/)

SURVEY SAYS

TOP 5 DRAFTING ERRORS THAT CAUSED CONTRACT LITIGATION IN 2021

Join Lenne for a review of 100 cases from 2021 federal and state court opinions where the court said "yep, this is ambiguous" to determine...

- 1) What kinds of contracts;
- 2) What types of provisions; and
- 3) What types of drafting errors are most likely to cause litigation

About Our Speaker:

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

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.

FREE

CONFIDENTIAL

ASSISTANCE



Willingness is the key. **Recovery is available for everyone.** The trouble is that it's not for all who need it, but rather for those who want it.

- Clif Gooding, Oklahoma Bar Association Member

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



Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Program

800-364-7886 | WWW.OKBAR.ORG/LHL