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### THEME: **TRANSACTIONAL LAW** Editor: Cassandra Coats

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### FROM THE PRESIDENT

# **New Beginnings**

By Brian Hermanson

### **TATITH THE BEGINNING OF A NEW YEAR**,

with the wind of change comes changes to the Oklahoma. With the wind of change comes changes to the Oklahoma Bar Association. We begin the year with a new OBA executive director. Janet Johnson, who has been serving as the OBA's educational programs director, is now our association's executive director. This is a change that marks the end of John Morris Williams' nearly 20-year tenure in that role. John has honorably and skillfully led the OBA through many years of change and challenges. Thank you, John, for all you did for us. You will be missed in so many ways.

Janet is the first woman to hold the executive director role. She is uniquely qualified to provide strong leadership as we head into the future. We expect great things from her, and I look forward to working with her. Please take the time to meet her.

This is also a time for new beginnings for me. While I have been active in the OBA for more than 40 years, this opportunity to serve as your president is one that takes my breath away. The responsibility of leading an organi-





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zation that is made up of more than 18,000 attorneys is quite the challenge. I feel I have been preparing for this moment for a long time, but now that it is here, I am cautiously optimistic about the path before me.

I want to claim the days of COVID are behind us and that everything will be back to normal. However, it is more and more apparent to me that there will be a new normal that will not only change the practice of law but also our everyday life.

With that as a background, I still look forward to this coming year. This year, the Board of Governors will travel around the state to reach out to our membership. Please take advantage by attending any events that happen near you and get to know the OBA leadership. This is We should be proud of our association and the way we do so much for our membership and all the citizens of the state of Oklahoma.

*your* bar association, and you should take every opportunity to become active in areas of interest to you.

As president, I intend to make myself available to all the county bars. I truly like attorneys and look forward to anything I can do to meet and get to know our membership. I know it is impossible for everyone to come to the bar center every year, so I will do my best to bring it to you.

I had the privilege to work on the Board of Governors with many great leaders. This past year, President Jim Hicks has done an outstanding job providing strong leadership through some very trying times. His willingness to always be an active leader was incredibly important. Jim would always greet you with a smile and a handshake, and he was always truly happy to see you. I only hope that I can provide the type of leadership Jim provided.

Finally, I would like to discuss what I hope to accomplish during the next year. I hope to continue to lead the bar through these times when it seems outsiders continually try to attack the OBA. We should be proud of our association and the way we do so much for our membership and all the citizens of the state of Oklahoma. In every community across *(continued on page 55)* 

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**Subscriptions** \$75 per year. Law students registered with the OBA and senior members may subscribe for \$40; all active members included in dues. Single copies: \$4

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# Virtual Currencies Explainer

By Miles Pringle

**F** YOU WATCHED THE 2022 SUPER BOWL, you may be excused for concluding that the virtual currency revolution was here, and you were missing out. In fact, it was reported in February 2022 by Bloomberg News, "\$112.9 million has been spent on national cryptorelated ads since the start of 2020." For perspective, the number of Americans with exposure to crypto assets is estimated to be 12%,<sup>1</sup> while approximately 58% own stock.<sup>2</sup> Since the Super Bowl, digital assets have experienced a "crypto winter" in which many notable digital assets were more than 70% off their highs<sup>3</sup> – and that was before the epic collapse of FTX and its sister company, Alameda Research. Here, we will discuss some of the concepts behind virtual currencies so you can have a better understanding of what is occurring.

The best way to think about a virtual currency is as a virtual token. The U.S. Commodity Futures Trading Commission defines virtual currencies as "a digital representation of value that functions as a medium of exchange, a unit of account, and/ or a store of value."<sup>4</sup> There are three main types of virtual currencies:

- Stablecoin: A virtual currency that is secured by another form of value – typically the U.S. dollar.<sup>5</sup> For example, USD coin, a product of the FINTECH Circle, trades at a 1-to-1 rate with the U.S. dollar. Circle holds reserves, so it can always exchange with anyone who wants to exchange their USD coin. Theoretically, the value of a stablecoin should be "stable."
- Cryptocurrency: A privately issued virtual currency<sup>6</sup> that is not tied to any other form of value. As a result, the

dollar value of any cryptocurrency can fluctuate quite dramatically, *e.g.*, bitcoin, ethereum and cardano.

3) Central Bank Digital Currency (CBDC): A fiat currency issued in the form of a digital token by a central bank.<sup>7</sup>

Virtual currencies often utilize "blockchain" technology. "At its core, a blockchain is just a database that is maintained by a network of users and secured through cryptography."<sup>8</sup> The information being maintained can be a ledger of virtual tokens, but it does not have to be. Also, the users maintaining the network do not need to be controlled by a single entity – the basis of the term "DeFi" or decentralized finance.

A ledger is only one type of information that can be maintained. Blockchain technology may have practical uses beyond virtual currency, such as virtual real estate or medical records. For example, non-fungible tokens, or "NFTs," are unique, one-of-a-kind digital tokens that are managed on a blockchain (unlike other virtual currencies that are fungible, *i.e.*, one token is fundamentally the same as any other token of the same issuance).<sup>9</sup> Theoretically, instead of a car title being recorded on paper, it could be in the form of a digital token.

Bitcoin is the original cryptocurrency, and it was created by Satoshi Nakamoto, a pseudonym for an unknown person or group, in 2008-2009.<sup>10</sup> Bitcoin was intended as a response to the 2008 financial crisis to circumvent the role of banks in the financial system. According to Satoshi Nakamoto, reliance on financial institutions as trusted third parties to process electronic payments "suffers from the inherent weaknesses of the trust-based model. Completely nonreversible transactions are not really possible since financial institutions cannot avoid mediating disputes."11 Whether or not Satoshi's premise is true is

another question, as anyone who deals with international payments would disagree with this premise. Moreover, people seem to want mediation or intervention if they are a victim of fraud or theft.

While a speculative investment that some have profited from, bitcoin has never operated well as a currency. It has some inherent weaknesses, such as there is a limit on the number of bitcoin that will ever be created.<sup>12</sup> That can be good for an investment but can create liquidity issues as a currency if ever widely adopted. Bitcoin is also very price volatile, making it difficult to price goods and services for both the vendor and the customer. More importantly, bitcoin is incredibly inefficient. "The Bitcoin network uses about the same amount of electricity as Washington State."13 As a result of its design, the Bitcoin network can process about seven transactions per second.<sup>14</sup> Visa, on the other hand, can process 24,000 transactions per second.<sup>15</sup>

Many of the successor virtual currencies build on the opensource software created by bitcoin. According to SoFi Technologies Inc. (an online personal finance company), there are more than 18,000 different types of cryptocurrencies.<sup>16</sup> Some have made significant modifications to the bitcoin structure to solve some of the problems outlined above. In September 2022, for instance, etherum switched from a proof-of-work model to a proof-of-stake model that it claims will cut its energy use by 99%.<sup>17</sup> If and which cryptocurrencies are prevalent in the future is anyone's guess at this point.

Crypto assets hit their peak value in November 2021 and have come crashing down since, coining the phrase "crypto winter." In total, crypto assets fell from about \$3 trillion to about \$1 trillion with "[a]round 95.5% of cryptocurrencies fall[ing] by more than 99.99% from their peaks, with the vast majority effectively plummeting to zero."<sup>18</sup> To put that into context, during that timeline, the S&P 500 fell about 25% and the composite NASDAQ about 35%.

The crypto winter has affected stablecoins as well. Tether, the world's biggest stablecoin, dropped below its \$1 peg in May 2022.<sup>19</sup> Other stablecoins that were backed by crypto assets and not more stable investments or cash have cratered entirely. Terra coins, for example, saw \$60 billion go up in "algorithmic smoke."<sup>20</sup> Thus, despite its name, stablecoins can be very unstable, and their value very much depends on the quality of the firm standing behind their issuance.

As a result of the crypto winter, several crypto companies have filed for bankruptcy, including crypto exchanges. For example, the crypto exchange Voyager Digital filed for Chapter 11 in July 2022, following "the collapse of Three Arrows Capital, a so-called hedge fund that took loans from other institutions, like Voyager Digital, to make risky gambles on tokens – including the collapsed stablecoin terraUSD."21 Interestingly, or concerningly, people who purchased crypto assets through the Voyager Digital platform were (at least initially) being treated as account holders and not actually owners of the assets they thought they purchased (or secured parties).<sup>22</sup>

We must also address the illicit activity associated with cryptocurrencies and digital assets.

As noted by the U.S. Department of the Treasury, "Crypto-assets and markets that operate out of compliance with applicable laws and regulations, or are unregulated, can breed fraud, abusive market practices, and disclosure gaps."<sup>23</sup> This has borne out with digital assets, particularly cryptocurrencies. "According to one private sector estimate, there was \$14 billion worth of crypto-asset-based crime,"24 and 2022 appears on track to surpass that record again. For example, it was reported in August 2022, "Nomad, a bridge protocol for transferring crypto tokens across different blockchains, lost close to \$200 million in a security exploit."25 To address these issues, the Department of Justice has formed the National Cryptocurrency Enforcement Team to serve as the focal point for tacking the growth in crime involving virtual currencies and digital assets.<sup>26</sup>

Private actors are not alone in issuing virtual currencies – central banks are also dipping their toes into the proverbial water. In October 2020, the Central Bank of The Bahamas issued the "Sand Dollar."<sup>27</sup> China, the world's secondlargest economy, has been piloting its digital yuan, coupled with a crackdown on users of private virtual currencies.<sup>28</sup> El Salvador adopted bitcoin as a national currency.<sup>29</sup> All these issuances appear to have little adoption to date.

In the United States, the Board of Governors of the Federal Reserve System has also been exploring a "digital dollar." In January 2022, the Federal Reserve published a white paper titled "Money and Payments: The U.S. Dollar in the Age of Digital Transformation" outlining several of the policy implications of issuing a CBDC. The paper was clear that the "Federal Reserve does not intend to proceed with issuance of a CBDC without clear support from the executive branch and from Congress, ideally in the form of a specific authorizing law."

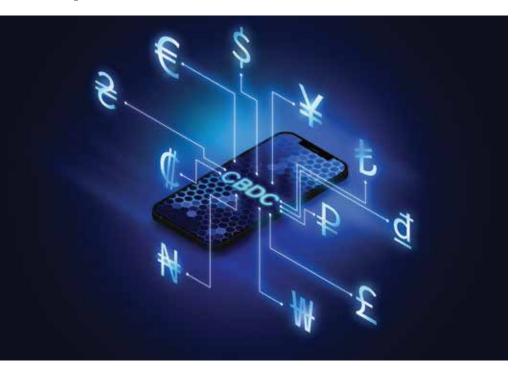
Many, including past governors of the Federal Reserve, have questioned the utility of a U.S. CBDC. Former Vice Chair Randal Quarles has observed: "The general public

already transacts mostly in digital dollars - by sending and receiving electronic balances in our commercial bank accounts ... the dollar is already highly digitized. The Federal Reserve provides a digital dollar to commercial banks, and commercial banks provide digital dollars and other financial services to consumers and businesses. This arrangement serves the nation and the economy well: The Federal Reserve functions in the public interest by promoting the health of the U.S. economy and the stability of the broader financial system, while commercial banks compete to attract and effectively serve customers."30

Other board members have been more open to the potential for CBDC. In her testimony to Congress, current Vice Chair Lael Brainard stated, "It is prudent to consider how to preserve ready public access to safe central bank money, perhaps through the digital analogue of the Federal Reserve's issuance of physical currency ... New forms of digital money such as stablecoins that do not share these same protections could reintroduce meaningful counterparty risk into the payments system."

Banking trade associations have pushed back hard on a U.S.-issued CBDC. In its statement before the House Financial Services Committee, the American Bankers Association stated that a CBDC was not necessary to "digitize the dollar." It went on to state, "There is a growing recognition that the deployment and use of CBDCs would be weighed down by very significant real-world trade-offs. The main policy obstacle to developing, deploying, and maintaining a CBDC in the real economy is the lack of compelling use cases where CBDC delivers benefits above those available from other existing options."

It is the early days for virtual currencies when it comes to laws and regulations. By and large, the Securities and Exchange Commission (SEC) has taken the lead in regulating virtual currencies. In 2019, the SEC published its "Framework for 'Investment Contract' Analysis of Digital Assets," which applies the *Howey* test<sup>31</sup> to determine if an investment



contract (which is a type of security) exists. Under the Howey test, an investment contract exists if there is: 1) an investment of money, 2) a common enterprise and 3) a reasonable expectation of profits to be derived from the efforts of others. In 2021, the SEC's Crypto Assets and Cyber Unit (formerly known as the Cyber Unit) in the Division of Enforcement grew to 50 dedicated positions. In September 2022, the SEC announced plans to add an Office of Crypto Assets and an Office of Industrial Applications and Services to the Division of Corporation Finance's Disclosure Review Program. The SEC has filed many enforcement lawsuits, particularly targeting alleged Ponzi schemes.

The Commodity Futures Trading Commission (CFTC) has determined that even if virtual currencies can be securities, they can also meet the definition of commodities. While the CFTC does not have authority over "spot transactions" (transactions for instant delivery on a specific date), it does have oversight over futures, options and derivatives contracts. The CFTC's jurisdiction is also triggered if there is fraud or manipulation in interstate commerce. The CFTC has acted against unregistered cryptocurrency futures exchanges and has, like the SEC, pursued virtual currency Ponzi schemes.

Other regulators have assumed authority regarding virtual currencies as well. The Office of Foreign Assets Control (OFAC) has determined that U.S. "sanctions compliance obligations apply equally to transactions involving virtual currencies and those involving traditional fiat currencies." The Office of the Comptroller of the Currency (OCC), which regulates nationally chartered banks, has issued several interpretive letters determining that banks under its supervision were authorized to engage in certain crypto-related activities such as 1) custodial services for virtual currencies, 2) holding reserve deposits for certain stablecoins and 3) operating independent node verification networks (INVNs) and stablecoins for payment activities. However, a bank must demonstrate to the OCC that it has controls in place to conduct these activities in a safe and sound manner.

While the regulatory framework is still being established, a significant step toward obtaining clarity came on March 9, 2022, when President Biden issued the "Executive Order on Ensuring Responsible Development of Digital Assets." The priorities included 1) protection of consumers, investors and businesses, 2) protection of financial stability and mitigation of system risk, 3) illicit activity, 4) U.S. competitiveness, 5) financial inclusion, 6) financial innovation and 7) international coordination. The executive order requires multiple federal agencies, particularly the Department of the Treasury, to issue several reports and recommendations. Some of those reports have already been published and are relied upon in this article, but there are many more to come.

It is the author's interpretation that President Biden's executive order will develop the concepts and priorities to bring the regulation of virtual currencies into focus. It will likely require one or more acts of Congress to ensure such regulations have been properly delegated. Thus, while we are still in the early days of virtual currencies and other digital assets and we do not know what the future holds, the legal and regulatory framework is beginning to come into focus. Stay tuned!

### **ABOUT THE AUTHOR**



Miles Pringle is executive vice president and general counsel for The Bankers Bank in Oklahoma City. He is

president-elect of the OBA, having previously served as a governor and vice president. Mr. Pringle is past chair of the Financial Institutions and Commercial Law Section and the Legislative Monitoring Committee.

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# **Remedies for the Freeze-Out: Employment Rights of Minority Shareholders of Close Corporations**

By D. Benham Kirk and Alexandra J. Gage

**\*FREEZE-OUT,"** ALSO KNOWN AS A "SQUEEZE-OUT," is a classic problem in the world of close corporations in which a minority shareholder is ousted by the majority. Depending on the state in which you reside, there are remedies currently available to minority shareholders in this situation. However, this issue is currently unsettled under Oklahoma law. This article explores how the issue may be decided under Oklahoma law in the future and provides options lawyers may consider to protect their clients in the interim.

### WHAT IS A FREEZE-OUT?

To understand the issues involved in a freeze-out, one must first have a basic understanding of close corporations. A close corporation (also commonly referred to as a "closely held corporation") is a privately held corporation whose shares are owned by a small group of investors and are not available to the public.<sup>1</sup> This is also known as a privately held corporation. Within a close corporation, there may be minority shareholders and majority shareholders. However, the expectations of a minority shareholder are generally similar to those of the majority shareholder: 1) an active participating role in management, 2) an employment or consulting role for compensation and 3) a return on investment. A minority shareholder holds less than 50% of the shares, while a majority shareholder holds more than 50% of the shares. By holding less than

50% of the shares, minority shareholders are subject to situations like a freeze-out by the majority shareholders. A freeze-out can be explained by the following example:

Steve, Jon and Audra start their own manufacturing business by incorporating under Oklahoma law using the standard form of certificate of incorporation available from the secretary of state's office. Each founder contributes \$5,000 for one-third of the authorized stock and begins working full time for the company as an officer and employee. The bylaws provide that the board will consist of three directors elected annually by majority vote of the shareholders, all officers and employees will serve at the pleasure of the board, and the bylaws may be amended by majority vote of the board or shareholders. The founders do not enter into a

shareholders' agreement or any employment agreements.

It is now 10 years later, and the business has flourished. The company has never paid a dividend. Any amounts not paid out to the shareholders in the form of salaries have been retained to grow the business. Steve and Audra suddenly have a serious falling out with Jon regarding a matter unrelated to Jon's performance. At the next annual meeting of the shareholders, after giving proper notice and following all corporate procedures correctly, Steve and Audra amend the bylaws to reduce the number of directors to two and elect only themselves as directors. They fire Jon as an officer and employee, change the locks to the plant and issue orders to the company's security guards to refuse Jon admittance to the premises. They also give themselves



substantial raises. The aggregate increase in their salaries is equal to the salary formerly paid to Jon. They comply with all of Jon's requests for inspection of the books and records of the corporation; however, they refuse his demands for declaration of dividends, saying the company needs to retain earnings for future capital needs. They also decline Jon's request that either they or the company purchase his stock. Jon attempts to find other buyers for his one-third interest but can find no one interested in purchasing a minority interest in a closely held corporation.<sup>2</sup>

What protections or remedies are available for Jon, who was a victim of the classic freeze-out? Is it possible to protect Jon from such treatment before it happens? What can lawyers do to ensure their clients' interests are protected in such situations? These questions are further examined in this article.

### DEFINING OPPRESSIVE CONDUCT

States have defined "oppression" in different ways, but it generally includes a violation of the standards of fair dealing and fair play, a violation of a fiduciary duty owed to the minority shareholder or conduct that results in frustration of the minority shareholder's reasonable expectations.<sup>3</sup> For example, the Colorado courts have defined oppression as "burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of the company to the prejudice of some of its members; or a ... departure from

the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely."<sup>4</sup> Other courts have expanded that definition to also include conduct that substantially defeats the minority shareholder's reasonable expectations.<sup>5</sup>

These definitions leave the court with the task of subjectively determining whether shareholders' actions are oppressive. Terms such as "burdensome," "harsh," "wrongful" and "fair" in these definitions all lend themselves to any number of subjective interpretations and applications. What could be "wrongful" to one court may be completely tolerable to another. Courts appear reluctant to suggest a list of elements or even a "bright line" test for determining the presence of such behavior,

preferring instead to consider factors, as applied to each case in the context of the applicable jurisdictional law. As a result, the broad term can be used to cover a multitude of cases in which improper conduct occurred. In acknowledgment of this fact, the New Mexico Supreme Court has stated, "The absence of a rigidly defined standard for determining what constitutes oppressive behavior enables courts to determine, on a case-by-case basis, whether the acts complained of serve to frustrate the legitimate expectations of minority shareholders, or whether the acts are of such severity as to warrant the requested relief."6 Although these broad, subjective and expansive definitions allow courts to conduct a case-by-case analysis of wrongful behavior, they provide very little guidance as to what the court will likely include as oppressive conduct. Courts continue to refine their jurisprudence on the subject, but shareholder "oppression" will likely never be distinctly defined.

### PROTECTIONS AND REMEDIES PROVIDED IN OTHER STATES

Oklahoma currently has no statutory protection for minority shareholders absent "mismanagement, collusion, or fraud."<sup>7</sup> However, 60% of states now provide some form of statutory relief for minority shareholders of closely held corporations in the form of a petition to the court for dissolution of the corporation on the grounds of "oppression" or similar conduct by the majority shareholders.<sup>8</sup>

The states that have not enacted oppression into their corporation statutes seek out a remedy that may be less severe than dissolution. One ambitious state Supreme Court listed no less than 10 potentially available remedies for the disenfranchised minority shareholder.<sup>9</sup> The draconian remedy of dissolution can certainly affect much more than simply the shareholders, who were acting in bad faith or in violation of their fiduciary duties. In pursuit of a less extreme remedy, Massachusetts developed a judicial remedy that may be a middle ground to the harsh statutory schemes of the majority of states.<sup>10</sup>

In Wilkes v. Springside Nursing Home, Inc., the Massachusetts Supreme Judicial Court was trying to determine whether a close corporation can fire one of four shareholders for the sole purpose of denying him income from the corporation.11 The court determined the majority shareholders failed to advance a legitimate business reason for firing the shareholder and frustrated the minority stockholders' purposes.<sup>12</sup> The fired shareholder, therefore, could recover from the other three shareholders the salary he would have received had he not been fired.<sup>13</sup> Under this scheme, a more moderate form of relief replaces the extreme measures enacted by statutory dissolution schemes. The Massachusetts court, rather than dissolving the corporation, provided a judicial remedy to the minority shareholder to recover damages due to the wrongful conduct or "oppression" by the majority shareholders.

However, other jurisdictions have rejected the idea of both statutory and judicial relief for minority shareholders in a freeze-out. The Delaware courts have affirmed that minority shareholders in close corporations have two protections available to them, which will not be distracted by judicial relief.<sup>14</sup>

First, Delaware maintains a close corporation statute that contains certain protections to minority shareholders.<sup>15</sup> If a closely held

corporation wishes to be protected by the close corporation statute, it must incorporate under such statute or forfeit those protections.16 Second, minority shareholders have the chance to contract for protections prior to purchasing shares in a close corporation.<sup>17</sup> The court declared, "The tools of good corporate practice are designed to give a purchasing minority stockholder the opportunity to bargain for protection before parting with consideration."18 Since the close corporation statute and contract law preempt the field in their respective areas, the court determined it would be inappropriate to fashion a special judicial remedy when plaintiffs fall outside the provided statutes.<sup>19</sup>

The Supreme Court of Texas has followed Delaware's lead and denied judicial relief outside of the close corporation statute and other statutory schemes that already exist in its law.<sup>20</sup> The Texas court further noted that other causes of action exist for minority shareholders, including breach of fiduciary duties, breach of contract, fraud, conversion, etc., which warrant a further judicial remedy for "shareholder oppression" unnecessary.<sup>21</sup>

### WILL OKLAHOMA COURTS ACCEPT JUDICIAL RELIEF?

To date, Oklahoma has no statutory grounds to seek involuntary dissolution of a corporation for shareholder oppression of minority shareholders. Oklahoma has also chosen not to implement a close corporation chapter in its corporation laws. Since Oklahoma has not dealt with the issue of shareholder oppression, at least within its body of reported case law, minority shareholders are provided essentially no protection or remedy for oppression outside of contractual schemes. Under such circumstances, is it likely Oklahoma will accept judicial

relief against oppression? Previous Oklahoma decisions may provide a clue as to how Oklahoma will decide this issue.

In general, Oklahoma's corporate law is derived from the corporate law of Delaware.<sup>22</sup> Therefore, it seems Oklahoma would likely follow Delaware's law on the issue. Much like Delaware, Oklahoma does not have a statutory provision to petition for dissolution in cases of oppression. However, unlike Delaware, Oklahoma elected to exclude the statutory close corporation chapter of corporate law. The Delaware case law denying a judicial remedy for oppression specifically relied upon the fact that statutory schemes for close corporations already existed and preempted the field on this issue. Thus, if Oklahoma were to follow Delaware's lead, it would have to rely on separate reasoning. One potential resource upon which Oklahoma could rely would be the American Law Institute's Principles of Corporate Governance, which seems to provide a remedy for a freeze-out of minority shareholders.<sup>23</sup> Section 7.21 states that a shareholder is entitled to a fair value of their shares in the event of

any "corporate act or transaction that has the effect of involuntarily eliminating the eligible holder's equity interest" or an amendment of the charter documents whose effect is to exclude or limit the voting rights of shares.<sup>24</sup> Oklahoma courts could use this provision for authority to provide a judicial remedy in freeze-out situations should the Legislature continue to decline to do so. However, in as much as the above principles are not specifically codified in Oklahoma statutory law, Oklahoma's jurisprudence may veer away from the corporate laws of Delaware and perhaps accept a judicial remedy for minority shareholders experiencing a freeze-out.25

Another indication that Oklahoma may choose to implement a judicial remedy for minority shareholders stems from reasoning similar to that in *Renberg v. Zarrow.*<sup>26</sup> Although this decision does not discuss a freeze-out situation, it does provide insight into the Oklahoma Supreme Court's stance on minority shareholder rights. In *Renberg*, the court determined that mandatory buy-sell provisions in a stock agreement may be unenforceable under the following circumstances: 1) where there is bad faith, 2) where there is a failure to disclose an enhancement in stock value or 3) where there is a misuse of power to promote personal interests at the expense of the corporation.<sup>27</sup> In making such determination, the court stated, "A court of equity will not enforce stock transfer restrictions adopted under circumstances which indicate bad faith and inequitable treatment of stock purchasers. ... [Further], a majority shareholder has a fiduciary duty not to misuse his power by promoting his personal interests at the expense of the corporation, and the majority shareholder has the duty to protect the interests of the minority."28 The court makes it clear that Oklahoma seeks to protect minority shareholders from oppression. However, it is less clear if that protection extends to a judicial remedy for such oppression.

Other points of Oklahoma law seem to suggest that no such judicial remedy will be enacted in Oklahoma. For instance, minority shareholders of farming and ranching corporations may petition the court for dissolution of the corporation "for good cause shown" if

Since Oklahoma has not dealt with the issue of shareholder oppression, at least within its body of reported case law, minority shareholders are provided essentially no protection or remedy for oppression outside of contractual schemes.

the shareholder owns 25% or more of the shares in the corporation.<sup>29</sup> Neither the Legislature nor the judiciary have explained what is considered "good cause" under this statute. Oklahoma courts have noted that, in general, dissolution may occur if the minority shareholder proves fraudulent mismanagement or misappropriation of funds by the officers.<sup>30</sup> Although mismanagement and misappropriation are not the same as oppression, it does correspond to the majority shareholders' fiduciary duties.<sup>31</sup> The existence of this statute for a specific type of corporation may be evidence that Oklahoma will enact further statutory protections for minority shareholders in close corporations rather than implementing judicial relief for the issue.

### A LAWYER'S RESPONSE

No matter how Oklahoma ultimately decides, lawyers should utilize what they know to best protect the interests of their clients incorporating under Oklahoma law. If a client is seeking to set up a close corporation or purchase shares of a close corporation, a lawyer should discuss the possibility of oppression with their client. The client should know the risks of freeze-out in such circumstances and be able to make an informed decision on whether to enter into this kind of business venture. If the client desires to move forward, providing provisions to protect the client in a subscription and/or shareholder agreement, corporation bylaw or another governing document may evidence the parties' intent to guard against oppressive conduct and minimize the prospect of litigating an unsettled issue in the future.

However, a client can also end up as a majority shareholder on some issues. In these instances, the protection of minority rights could hinder the majority's aims. Be sure to discuss with your client which assets and issues need the highest levels of protection. Instead of doing a general or overall protection of minority rights, it may be best to simply protect the interests and assets most important to them and accept the business risk with the people whom the client has chosen to do business with respect to other minor issues.



If a lawyer represents a minority shareholder who did not negotiate contractual provisions to protect the client's interests, it may be possible to utilize an argument for a judicial remedy in case of a freeze-out. Since Oklahoma provides essentially no protection for minority shareholders in either statutory or case law, a fair argument could be made for the implementation of a judicial remedy to the freeze-out, not unlike the authorities discussed within this article.<sup>32</sup>

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### ENDNOTES

1. "Close Corporation," *Black's Law Dictionary*, (11th Ed. 2019).

2. M. Thomas Arnold and H. Wayne Cooper, "Protection of Employment Rights of Minority Shareholders of Close Corporations," *Vernon's Okla. Forms* 2d, p. 2 (November 2021).

3. Id.

4. *Polk v. Hergert Land & Cattle Co.,* 5 P.3d 402, 404-05 (Colo. App. 2000).

 Argo Data Resource Corp. v. Shagrithaya,
 S.W.3d 249, 265 (Tex. App. Ct. 2012); Litle v.
 Waters, 18 Del. J. Corp. L. 315, 328 (Del. Ch.
 1992); Gee v. Blue Stone Heights Hunting Club Inc., 604 A.2d 1141, 1145 (Penn. 1992); Brenner v.
 Berkowitz, 634 A.2d 1019, 1029 (N.J. 1993).
 McCauley v. Tom McCauley & Son, Inc.,

724 P.2d 232, 236 (N.M. 1986).

7. Western v. Acme Tool, Inc., 441 P.2d 959, 962 (Okla. 1968).

8. See M. Thomas Arnold and H. Wayne Cooper, "Protection of Employment Rights of Minority Shareholders of Close Corporations,' Vernon's Okla. Forms 2d, p. 2 (November 2021); See generally Ala. Code §10-2A-195 (1987); Alaska Stat. §10.06.628 (1989); Ark. Code Ann. §4-27-1430 (1989); Cal. Corp. Code §1800 (1990); Conn. Gen. Stat. §34-267(5) (2017) Ga. Code Ann. §14-2-940 (1989); Idaho Code §30-1-97(A) (2) (1980); Ill. Ann. Stat. Ch. 32, Para. 12.50 (1992); Iowa Code Ann. §490.1430 (1991); Md. Code Ann., Corps. & Ass'ns §3-413 (1993); Mich. Comp. Laws Ann. §450.1489 (1990); Miss. Code Ann. §79-4-14.30 (1992); Minn. Stat. Ann. §302a.751 (1992); Mo. Ann. Stat. §351.494 (1991); N.H. Rev. Stat. Ann. §293-A:98 (1987); N.D. Cent. Code §10-19.1-115 (1985); N.J. Stat. Ann. §14a:12-7; N.M. Stat. Ann. §53-16-16 (1983); N.Y. Bus. Corp. Law §1104-A(A) (1) (1986); Or. Rev. Stat. §60.661 (1992); Pa. Stat. Ann. Tit. 15, §1981 (1992); S.C. Code Ann. §33-14-300 (1990); S.D. Codified Laws Ann. §47-7-34 (1983); Tenn. Code Ann. §48-24-301 (1992); Utah Code Ann. §16-10a-1430(2) (1992); Vt. Stat. Ann. Tit. 11, §2067 (1984); Va. Code Ann. §13.1-747 (1989); Wash. Rev. Code Ann. §23b.14.300 (1992); Wis. Stat. Ann. §180.1430 (1992); Wyo. Stat. §17-16-1430 (1989).

9. Baker v. Commercial Body Builders, Inc., 507 P.2d 387, 395 (Or. 1973). The Supreme Court of Oregon's list of potential remedies included appointing a receiver to continue the operation of the corporation for the benefit of all shareholders until the oppressive conduct ceases, issuance of an injunction to prohibit continuing acts of oppressive conduct, an order for affirmative relief of a distribution of capital, an order requiring majority stockholders to purchase the minority shares at a price deemed fair and reasonable and an award of damages to minority shareholders for the oppressive conduct.

10. Wilkes v. Springside Nursing Home, Inc., 370 Mass. 842, 353 N.E.2d 657 (1976).

- 11. *Id.*
- 12. *Id.* at 662-63. 13. *Id.*

13.*10.* 

14. See generally Nixon v. Blackwell, 626 A.2d 1366 (Del. 1993).

- 15. *Id.* at 1380.
- 16. *Id.*
- 17. *Id.*
- 18. *Id.*
- 19. *Id.* at 1381.

20. *Ritchie v. Rupe*, 443 S.W.3d 856 (Tex. 2014). 21. *Id.* at 882.

22. Watkins v. Hamm, 419 P.3d 353, 356 (OK Civ App 2017); Woolf v. Universal Fidelity Life Ins. Co., 849 P.2d 1093 (OK Civ App 1992). 23. Principles of Corporation Governance §7.21 (Am. L. Inst. 1994) (further codification of these principles are anticipated due to the ALI's ongoing work regarding the Restatement of the Law, Corporate Governance, Tentative Draft No. 1, 2022). 24. *Id.* 

25. Oklahoma Supreme Court frequently relies on the ALI doctrinal restatements of law for guidance in applying Oklahoma law. See e.g., *Schovanec v. Archdiocese of Oklahoma City*, 188 P.3d 158, 2008 OK 70; *Panama Processes, S.A. v. Cities Service Co.*, 796 P.2d 276, 1990 OK 66.

26. 667 P.2d 465 (Okla. 1983).

- 27. Id.
- 28. Id. at 471-72.
- 29. 18 O.S. §953(D).

30. Sutter v. Sutter Ranching Corp., 14 P.3d 58, 62, n.18 (Okla. 2000).

31. Whether acts of oppression equate to a breach of fiduciary duty would necessarily require a subjective case-by-case analysis given applicable law on fiduciary duty. See Lowrance v. Patton, 710 P.2d 108, 111 (Okla. 1985).

32. For a more in-depth understanding of the issues related to a "freeze out," one may wish to consult the following additional sources: M. Thomas Arnold and H. Wayne Cooper, "Protection of Employment Rights of Minority Shareholders of Close Corporations," *Vernon's Okla. Forms* 2d, p. 2 (November 2021); F. Hodge O'Neal and Robert B. Thompson, *O'Neal and Thompson's Oppression of Minority Shareholders and LLC Members §1:2* (Rev. 2d ed. 2005); Douglas K. Moll, "Shareholder Oppression in Texas Close Corporations: Majority Rule (Still) Isn't What it Used to Be," 9 *Hous. Bus. Tax L.J.* 33 (2004); Daniel S. Leinberger and Douglas K. Moll, Oppression in LLCs, 2020 LLC Institute.

TRANSACTIONAL LAW

# You Shall Not Pass ... Or Shall You?

Should a Title Examiner Object to a Conveyance Wherein a Trustee Conveys Trust Property to or From Themselves?

By Rhonda J. McLean

**S A TITLE EXAMINER,<sup>1</sup> YOU SEE MANY THINGS THAT MAKE YOU GO, "HMM."** Some of them you do not like, but you have the protection of certain presumptions, the Marketable Record Title Act or the Simplification of Land Titles Act to rely on. Other times, you must make a judgment call about whether something that feels "icky" rises to a level of litigious uncertainty that prevents the grantee's title from being marketable.<sup>2</sup>

One of those judgment calls is when you see a conveyance from a trustee to themselves, individually particularly when the trustee is not the settlor of the trust, or the trust is irrevocable. Often, a successor trustee is also the sole beneficiary of that property, so a deed from the trustee to themselves is not only warranted, it is required. But when reviewing the record, a title examiner 1) likely hasn't reviewed the terms of the trust and 2) cannot tell from the face of the document that it is for the purpose of distributing the trust asset to the sole beneficiary.<sup>3</sup> Further, without specific language in the conveyancing document, a title attorney has no way to distinguish a deed made for distribution purposes versus a sale of trust assets.4

### OKLAHOMA TITLE EXAMINATION STANDARDS

When determining whether to make objection to an instrument, the Oklahoma Title Examination Standards (OTES) are, or should be, a title examiner's first stop.<sup>5</sup> OTES §15.1 states:

The trustee of an express trust has the power to grant, deed, convey, lease, grant easements upon, otherwise encumber and execute assignments or releases with respect to the real property or interest therein which is subject to the trust. A trustee's act is binding upon the trust and all beneficiaries thereof, in favor of all purchasers or encumbrancers without actual knowledge of restrictions or limitations upon the trustee's powers by the terms of the trust, and without constructive knowledge imposed by the trust instrument containing restrictions

and limitations having been recorded in the county where the real estate is located.

This standard is based on the language of 60 O.S. §§171 *et seq.*, 175.7 and 175.45. These statutes, in summary, provide that when dealing with an express trust, any conveyance by the trustee is binding upon the trust in favor of purchasers without notice of any restrictions or limitations established upon the trust by the trustee. Further, 60 O.S. §175.24(2) states a trustee has the power to grant options and sell real or personal property at public auction or private sale.

All of this would lead one to believe OTES §15.1 is spot on, and without anything to the contrary in the record, a title examiner should presume the trustee's conveyance is valid. However, the standard does not address or refer to 60 O.S. §175.11, which states: No trustee shall directly or indirectly buy or sell any property for the trust from or to itself or an affiliate; or from or to a director, officer, or employee of such trustee or of an affiliate; or from or to himself, a relative, employer, partner, or other business associate; provided a national banking association or a state bank and trust company performing trust functions, where acting as executor, administrator, guardian, or trustee, may sell stock of itself to one or more of its officers, stockholders, or directors upon a court of competent jurisdiction finding that such sale will be for the best interest of the trust estate and making an order for such sale. [emphasis added]

Further, the OTES are built upon the Model Title Standards developed in 1960 by the University of Michigan Law School in Ann Arbor. Model Title Standard 11.2 recites:

Since a conveyance by a fiduciary to himself, either directly or indirectly, cannot be set aside after the five-year period of limitation on such a proceeding has expired, no objection



should be made to a title on this ground after the expiration of five years from the date of record of such instrument.<sup>6</sup>

One can presume from this language that within the five-year period, a title examiner either can or should make such an objection. In Oklahoma, the "five-year period" presumably would be 10 years under the Simplification of Land Title Act (SLTA), which protects a purchaser for value, without notice, from one claiming under a conveyance by a trustee where the trust agreement is not of record.<sup>7</sup>

As a title examiner, within the 10-year period between the recording of the conveyance and the application of the SLTA, should one rely on OTES §15.1 and pass the title without objection, or does the prohibition in 60 O.S. §175.1 prevent the application of OTES §15.1? Further, does said prohibition prevent the application of the SLTA even after 10 years have passed?

### COBB V. NEWMAN

This author found no Oklahoma case law interpreting the intersection between these seemingly competing statutes. One case that may yield some insight is Cobb v. Newman,<sup>8</sup> wherein the court discussed cestui que trusts in relation to stockholders of a corporation. J.O. Kuyrkendall owned several tracts of land that included minerals interests. Some tracts were owned by himself individually and some by D.O.K. Land and Cattle Co., of which he owned 879 of 1,200 shares. His will gave specific tracts to specific children and distributed specific numbers of shares of the corporation to specific children. The will stated a child could sell their tract before discovery of minerals (or discovery and production, depending on how you read it), but after the minerals were discovered (or discovered and produced), the "oil, gas or valuable mineral shall be the property of all my said children above named and they shall



participate, share and share alike, in such gas, oil or valuable mineral and in all profits and royalty arising therefrom."<sup>9</sup>

In 1932, all the shareholders agreed to convey the lands owned by the corporation to the individual children based on the distributions in the will, so each child was the owner of one or more divided tracts. The shareholders further agreed that any royalties received would be used to pay off certain corporate debt if there were not sufficient corporate funds to do so. In 1934, one child leased her minerals and received a bonus, but she did not turn the bonus money over to the corporation to apply toward the agreed debt. In 1936, the same child requested that the other children join her in a lease of the minerals. At least some of the other children refused to join the lease unless they received a share of the bonus. The lessor child did not agree to share the royalties, and the suit was filed to void the conveyances from the corporation to the children and to determine rights to the bonus and royalty money from both the 1934 and 1936 leases.<sup>10</sup>

The court declined to void the conveyances based on the trial court's finding that all the children were stockholders and, as such, gave full assent to the conveyances.<sup>11</sup> However, the court extensively discussed the general prohibition on self-dealing by quoting at least three prior decisions:

It makes no difference what the consideration of deeds made in the execution of such an agreement was, even though it was adequate and full, and no actual injury was done to the stockholders. The principle will still be strictly adhered to that, against the dissent of any stockholder of a corporation or cestui que trust protesting and asserting his right in the matter, the rule which prohibits the trustee from dealing with his trust in such a manner as to appropriate it with and mingle it with his own estate, will be set aside and no inquiry on the subject [of the adequacy of consideration] will be permitted.<sup>12</sup>

So jealous is the law of dealings of this character by persons holding confidential relations to each other, that the cestui que trust may avoid the transaction, even though the sale was without fraud, the property sold for its full value, and no actual injury to his interests be proven. It does not follow however, that the sale is absolutely void in the sense that the purchaser takes no title, which he can convey to a third person – a bona fide purchaser without notice: nor that the cestui que trust may not, upon notice of all the facts, ratify and affirm the sale by his acquiescence or silent approval.<sup>13</sup>

The character of vendor and that of purchaser cannot be held by the same person. They impose different obligations. Their union in the same person would at once raise a conflict between interest and duty, and, constituted as humanity is, in the majority of cases duty would be overborne in the struggle. ...<sup>14</sup>

The court summarized such holdings in headnote No. 3, stating:

A person cannot legally purchase on his own account that which his duty or trust requires him to sell on account of another, nor purchase on account of another that which he sells on his own account. He is not allowed to unite the two opposite positions of buyer and seller. In such situation the law will avoid the transaction at the instance of the cestui que trust even though the sale was without fraud, the property was sold for its full value and no actual injury to his interests is proven. Such sale, however, is not void but voidable only and where the cestui que trust consents to or acquiesces in such transaction the sale is valid and binding upon him.

### OTHER STATES HAVE MORE DIRECTLY ADDRESSED THE ISSUE

Ark. Code Ann. §28-73-802(b)(2) contains language similar to 60 O.S. §175.11 and further requires that a transfer "... involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless: ... (2) the transaction was approved by a court." This prohibition was reinforced in Matter of GNB III Trust,<sup>15</sup> wherein the court held that a co-trustee's transactions involving the purchase of trust property – a house - required court approval, not just majority agreement by co-trustees, under statute providing that a transaction by a trustee for a trustee's own account or that is affected by conflict is voidable unless approved by a court.

Standards for Examination of Real Estate Titles in Arkansas (2021 edition) (ATES) Standard §4.1 states that in the absence of actual or constructive notice to the contrary, it may be presumed by the examiner that a recorded

document has been delivered, is not a forgery, the grantor was not a minor, the grantor had the capacity to execute the instrument and the grantor was acting voluntarily in exchange for consideration. Note that this standard does not include the presumption that a trustee had the authority to convey. In fact, ATES §4.7(1)(c) states, "Proof of the authority of the trustee of an express trust to convey land owned by the trust should be furnished." Such proof can be included in a recorded certification of trust.<sup>16</sup>

North Carolina has similarly held that when reviewing selfinterested transactions by a trustee, certain precautions must be taken "not because there is fraud, but because the trustee, because of his fiduciary relationship, is skating on the thin and slippery ice of presumed fraud, which he must rebut by proof that no fraud was committed and no undue influence exerted."17 Further, "Transfers of trust property resulting in a breach of the duty of loyalty are voidable by the trust beneficiaries affected, regardless of whether the transaction was supported by fair consideration."18 Delaware also prohibits self-dealing.<sup>19</sup> Indiana requires court approval where a trustee self-deals.<sup>20 21</sup>

### CONCLUSION

The questions remain. Is a violation of 60 O.S. §175.11 void or simply voidable? Would an Oklahoma court begin with the presumption that the conveyance is void, placing the burden on the trustee to defend the conveyance? Would an examiner then be bound by 60 O.S. §175.11 to require evidence of the trustee's authority to self-deal? Or would an Oklahoma court presume such conveyance is valid unless the challenger proved

breach of the fiduciary duty? If so, may a title examiner rely on the presumption afforded by OTES §15.1 and the corresponding statutes and pass title without objection? Does any of this analysis change under the SLTA after the conveyance has been of record for 10 years? Until a clarifying statute or decision is reached and published, each title examiner should determine their own comfort level with passing title.

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### ENDNOTES

1. This article is written strictly from a title examination standpoint and whether a title examiner should pass title or make a requirement for review of the trust document or other curative measures. This article does not address remedies beneficiaries may have against a trustee beyond avoidance of the conveyance.

2. A marketable title is one free from apparent defects, grave doubts and litigious uncertainty and consists of both legal and equitable title fairly deducible of record. Oklahoma Title Examination Standard §1.1.

3. On occasion, a trust agreement will be filed of record. However, that is the exception rather than the rule. And even when filed of record, the examining attorney cannot know with any certainty whether the trust agreement has been amended since recording.

4. When bringing up this point in various groups, the answer is often, "Look at the documentary stamps." This isn't conclusive for a few reasons: 1) the author is aware of instances when a clerk recording the document told the individual that if it had the same names for the grantor and grantee, documentary stamps

weren't required; 2) documentary stamps are not conclusive evidence of the total consideration paid for the property; 3) documentary stamps do not, in and of themselves, indicate that fair market value was received for the property; and 4) exchange for fair market value may not validate the conveyance. As a practical matter, if this examiner prepares a deed for distribution purposes, they will include a recital stating the deed is made pursuant to the distribution terms of the trust.

5. The Oklahoma Title Examination Standards Handbook can be found as an appendix to Title 16 at www.oscn.net, www.eppersonlaw.com, or you may obtain a hard copy from the OBA.

6. An electronic copy of the Model Title Standards can be found at www.eppersonlaw.com. 7. Oklahoma Title Examination Standard

§29.2(D)(4).

8. 1949 OK 37, 205 P.2d 858, 201 Okla. 318. 9. *Id.*, at ¶3-8.

10. Id., at ¶9-13.

11. *Id.*, at ¶25.

12. *Id.*, at ¶22, quoting *Barnes et al v. Lynch et al*, 9 Okla. 156, 59 P. 995, at ¶6.

13. *Id.*, at ¶23, quoting *Hoyt v. Latham*, 143 U.S. 553, 12 S.Ct. 568.

14. *Id.*, at ¶24, quoting *Marsh v. Whitmore*, 21 Wall. 178, 88 U.S. 178, 22 L.Ed. 482.

15. Court of Appeals of Arkansas, Division III, 2019 Ark. App. 171, 574 S.W.3d 159 (March 13, 2019).

16. Arkansas Standard §4.7(1)(c) refers to Arkansas Standard §4.16 "Certificates of Trust." Standard §4.16(4) includes powers of the trustee as one of the recitations to be included in a certificate of trust.

17. Howe v. Links Club Condominium Asso., Inc., 263 N.C.App. 130 (2018). The North Carolina Uniform Trust Code also illustrates that a trustee's sale of trust property is "rebuttably presumed to be affected by a conflict of interest if the trustee enters into the transaction with[,]" *inter alia*, an "officer, director, member, manager, or partner of the trustee, or an entity that controls, is controlled by, or is under common control with the trustee;" or "[a]ny other person or entity in which the trustee, or a person that owns a significant interest in the trust, has an interest or relationship that might affect the trustee's best judgment." N.C. Gen. Stat. §36C-8-802(c)(3)&(4) (2017).

18. *THZ Holdings*, *LLC v. McCrea*, 231 N.C.App 482 (2013) discussing N.C.G.S.A. §36C-8-802(b):

Subject to the rights of persons dealing with or assisting the trustee as provided in G.S. 36C-10-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account, or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests, is voidable by a beneficiary affected by the transaction, without regard to whether the transaction is fair to the beneficiary, unless:

(1) The terms of the trust authorized the transaction;

(2) The court approved the transaction;(3) The beneficiary did not commence a judicial proceeding within the time

allowed by G.S. 36C-10-1005;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with G.S. 36C-10-1009; or

(5) The transaction involves a contract entered into, or claim acquired

by, the trustee before the person became or contemplated becoming trustee.

19. Stegemeier v. Magness, Supreme Court of Delaware, 728 A.2d 557 (1999) holding that a person acting in a fiduciary capacity cannot also act for themselves and cannot be a purchaser from the estate for which they are trustee, however fair the terms of the sale or however honest the circumstances.

20. *Huff v. Huff*, Court of Appeals of Indiana, 892 N.E. 2d 1241 (2008) referencing IC 1985, 30-4-3-5.

21. This author has been unable to locate a copy of North Carolina, Indiana or Delaware title standards if such standards exist.

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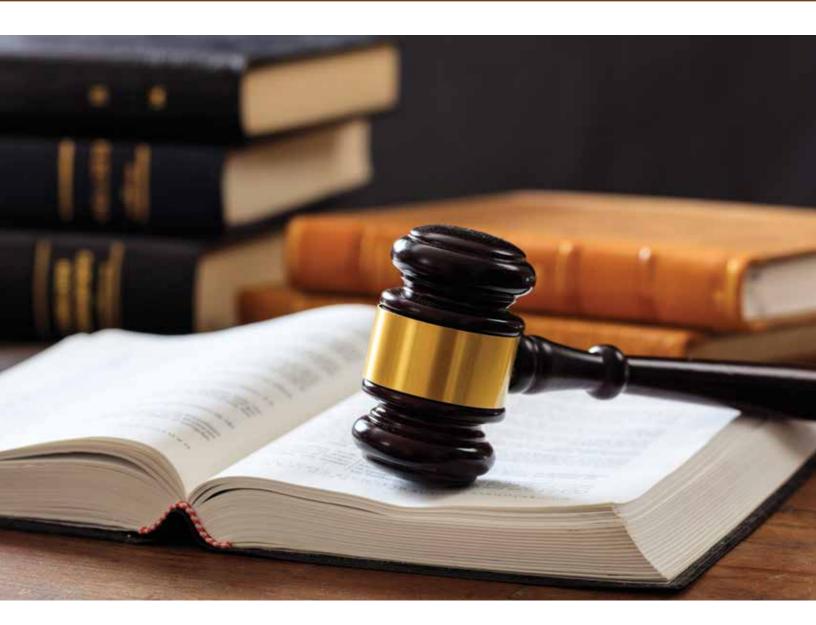
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### TRANSACTIONAL LAW

# Financial Institutions and Commercial Law Committee Report on the 2022 Amendments to the Uniform Commercial Code

By Alvin C. Harrell



**THIS REPORT IS PROVIDED BY THE LEGISLATIVE REVIEW SUBCOMMITTEE** of the Uniform Commercial Code (UCC) Committee of the Financial Institutions and Commercial Law (FICL) Section of the OBA. The report reviews and summarizes (along with one possible nonuniform amendment) the 2022 amendments to the uniform text of the UCC (the amendments are also known as the Uniform Commercial Code and Emerging Technologies amendments) and their possible impact on Oklahoma law if enacted.

Citations to the "present" UCC reference the uniform text or the Oklahoma UCC prior to the 2022 amendments. Citations to the UCC reference the uniform text unless otherwise noted.

### **ARTICLE 1**

The 2022 amendments to UCC Article 1 bring consistency as to terminology, cross-references and choice of law provisions in light of the new Article 12 and corresponding amendments elsewhere in the UCC regarding controllable electronic records. For example, various definitions in Section 1-201 are slightly revised to accommodate electronic records. The amendments to Article 1 do not have any apparent adverse effect on existing Oklahoma law. The amendments to Section 1-201(b) are as follows:

- The present definition of "conspicuous" in Subsection (10) provides examples of terms deemed conspicuous in (A) and (B). The amendment redefines "conspicuous" to apply more broadly to terms in both tangible and electronic agreements by deleting (A) and (B) and adding a "totality of the circumstances" standard, thus clarifying that the assessment of whether or not a term is conspicuous is to be made on a case-by-case basis.
- Amended Subsection (15) updates the definition of "delivery" for consistency within Article 9 with respect to records that evidence chattel paper and with the

new rules for controllable electronic records.

- Amended Subsection (16A) adds a new definition of "electronic" for consistency with respect to the rest of the UCC.
- Amended Subsection (21) updates the definition of "holder" to bring (C) into harmony with the remainder of the UCC regarding controllable electronic records.
- Amended Subsection (24) updates the definition of "money" to clarify that government-regulated mediums of exchange, whether electronic or tangible, fall within the definition. The amendment further clarifies that preexisting virtual

currencies, like bitcoin, are not "money" for purposes of the UCC.

- Amended Subsection (27) updates the definition of "person" to clarify that a "protected series," *e.g.*, a series LLC, is a person for UCC purposes.
- Amended Subsection (36) updates the definition of "send" for consistency with other provisions of the UCC that substitute the term "record" for "writing" and for further consistency with the rest of the UCC regarding transmission of electronic records.
- Subsection (37) is updated. The present definition of "sign" is amended to give "sign," "signed," "signing" and "signature" consistent meanings. The substance of the definition is updated to include electronic signatures.
- The amendment to Section 1-204 adds the new Article 12 to the list of exclusions from the default rule of Section 1-204 for determination of whether value has been given.
- The present Subsection (b) of Oklahoma's Section 1-301 provides that this section is subject to specific choice of law provisions contained in other UCC articles that apply to the extent a transaction falls within the scope of one of those provisions. The amendment adds the new Article 12 choice of law provision (Section 12-107) to the list of choice of law provisions in the uniform text and creates a new paragraph (8) in Section 1-301(b) of the uniform text.
- Amended Section 1-306 is revised for consistency with the updated definition of "sign" in Section 1-201(b)(37).

### ARTICLE 2

If applied in Oklahoma, the amendments to Section 2-102 will modify existing case law in Oklahoma by recognizing "hybrid transactions" and applying portions of Article 2 to such transactions. A hybrid transaction is defined in amended Section 2-102 as one involving a sale of goods, as well as "(a) the provision of services; (b) a lease of other goods; or (c) a sale, lease, or license of property other than goods."

In the absence of these amendments, under present Oklahoma law, the courts have adopted the "predominate purpose" test and will "consider[] the transaction in its entirety and determine[] whether the goods or services aspect of the contract predominates."1 If the "non-goods" aspect of the contract predominates, the court will conclude that Article 2 does not apply to any part of the transaction.<sup>2</sup> By recognizing a hybrid transaction as such under Article 2, the amendments allow application of those provisions of Article 2 that relate primarily to the sale-of-goods aspect of a transaction - even when those aspects do not predominate. In such a case, provisions of Article 2 relating to the transaction "as a whole" will not apply.

When the sale-of-goods aspect of a transaction *does* predominate, Article 2 will apply to the transaction, but the amendments do not preclude application of other laws to any "non-goods" aspects of the transaction. The amendment provides for application of other laws "in appropriate circumstances," which should allow a court flexibility when applying the most suitable law to the sale of a unique product.

Amendments to Sections 2-201, 2-202, 2-203, 2-205 and 2-209 provide for replacement of the term "writing" with "record" to eliminate the impression that a transaction must be memorialized on paper – this will recognize electronic documents and transactions.

### **ARTICLES 3, 4 AND 4A**

The amendments to Articles 3, 4 and 4A are modest and few and relate primarily to the transmission of electronic check images and the impact of choice of law provisions in a negotiable instrument. Most of the new text is in the official comments, which generally are not enacted by the states and do not become part of the statute but, nonetheless, are persuasive authority.

Among the statutory changes, Section 3-104 is amended to make more clear that a choice of law clause does not render an instrument nonnegotiable. Amended Section 3-105 clarifies the issuance of an electronic image of an item. Existing Subsections 3-401(b) and 3-604(c) are deleted as unnecessary in view of the amended definition of "sign" in Article 1. Subsection 3-604(a) is amended to make clear that the destruction of a check in conjunction with a truncation or imaging process does not discharge the obligation to pay the instrument.

In Article 4A, the definition of "payment order" in Section 4A-103 is revised slightly to substitute the modern UCC term "record" in place of the more cumbersome present language. There are similar minor amendments (using the term "record") in Sections 4A-202, 4A-203, 4A-211 and 4A-305 (and in various official comments). Section 4A-201 is amended slightly to clarify the requirements for a security procedure.

The proposed amendments to Articles 3, 4 and 4A do not have any adverse impact on present Oklahoma law and primarily are clarifications consistent with present law. Amendments to Sections 2-201, 2-202, 2-203, 2-205 and 2-209 provide for replacement of the term "writing" with "record" to eliminate the impression that a transaction must be memorialized on paper – this will recognize electronic documents and transactions.

### **ARTICLE 5**

Present Section 5-104 permits "authentication" by a manner agreed to between the parties or by "standard practice." The amendment requires the letter of credit be "signed" as that term is defined in Section 1-201(b)(37). This brings Article 5 into harmony with the balance of the UCC.

For choice of law rules, liability is determined by the "location" of the issuer, nominated person or adviser. Present Section 5-116 deems the issuer to be "located" at the address on the undertaking or if more than one address is indicated, the address from which the undertaking was issued. Branches are considered separate entities. The amendments add a new Section 5-116(d), making clear that the location of a branch is determined by the same rules as those that govern the location of the issuer.

### **ARTICLE 7**

The definitions of "record" and "sign" in Section 7-102(a) are deleted in the amendments. They are redundant in that both terms are now defined in Section 1-201. The amendment to Section 7-106 provides a more fulsome description of the system of control of electronic documents and is the functional equivalent of the changes to Section 9-105 (electronic chattel paper) and the addition of Section 9-105A (electronic money). It provides system requirements, the meaning of exclusivity and the method of obtaining control through a third person.

### **ARTICLE 8**

The proposed amendments to UCC Article 8 are minimal and designed to bring Article 8's control provisions into harmony with the correlating provisions under Article 9 and the new Article 12. The amendments to Article 8 do not have any adverse effect on existing Oklahoma law and are primarily clarifications.

Amended Section 8-102(a)(6) broadens the application to electronic records; the amendment updates the definition of "communicate" by replacing the word "writing" with "record."

In amended Section 8-102(b), the list of definitions from other articles, which also apply to Article 8, is expanded to include the new definitions in Article 9 for "controllable account" and "controllable payment intangible" and the new Article 12's definition of "controllable electronic record."

The amendment adds a new Subsection 8-103(h) to clarify that digital assets generally are not financial assets unless they fit the definition of Section 8-102(a)(9)(iii) (part of the definition of "financial asset" regarding arrangements for property to be held by a securities intermediary and credited to a securities account).

Present Subsection 8-106(d) specifies the three mechanisms by which a purchaser obtains control of a security entitlement. The proposed amendment revises Subsection 8-106(d)(3) to clarify the procedure for a purchaser obtaining control through another person's control and acknowledgment of control.

The amendments add a new Subsection 8-106(h) to clarify that a person meeting the test for "control" does not have a duty to acknowledge it has control on behalf of a purchaser.

A new Subsection 8-106(i) is added to clarify that, unless otherwise required by contract or by Articles 8 or 9, a person acknowledging it has or will have control on behalf of a purchaser generally does not owe a duty to the purchaser and is under no obligation to confirm the acknowledgment to any other person.

Regarding choice of law, the amendments add a new Subsection 8-110(g) requiring matters noted in Subsection (a) or (b) to be governed by the local law of the issuer's or the securities intermediary's home jurisdiction, even if the matter bears no other relation to the jurisdiction.

The amendments strike the unnecessary clause at the beginning of the present Subsection 8-303(b).

### **ARTICLE 9**

Conforming changes relating to terminology or section references in Section 9-102(a) are as follows:

- Amended Subsection (2) updates exclusions from the definition of "account" for clearly unrelated terms, such as in "statement of account."
- Amended Subsections (7A) and (7B) add definitions of "assignee" and "assignor" to clearly include 1) secured parties and debtors and
   2) purchasers and sellers of certain intangibles.
- Amended Subsection (11) updates the definition of chattel paper to separately address secured loans and leases of goods.
- Amended Subsections (27A) and (27B) add definitions of "controllable account" and "controllable payment intangible" to mean an account or a payment intangible evidenced by a controllable electronic record.
- Amended Subsection (31A) adds a definition of "electronic money" as money in an electronic form.
- Amended Subsection (42) includes "controllable electronic records" in the definition of general intangibles.
- Amended Subsection (47) makes clear that "instrument" does not include a writing evidencing chattel paper.
- Amended Subsection (53A) makes clear that "money" does not include deposit accounts or electronic money.
- Amended Subsection (61) makes clear that "payment intangible" includes controllable payment intangibles.



- Amended Subsection (79A) makes clear that "tangible money" is money in a tangible form.
- Under amended Section 9-104, control of a deposit account would be possible by a third party's obtaining control for the secured party.
- Present Section 9-105 provides for control of electronic chattel paper and sets forth system requirements. The amendment carries forward those system's requirements as applicable to "an electronic copy of a record evidencing electronic chattel paper." It also adds provisions relating to more than one authoritative copy, what it means to have "exclusive control" and how to obtain control through another person.
- Amended Section 9-105A confirms that perfection of a security interest in money is by possession. The amendment provides the control method for perfection in electronic money. It is consistent with the methods for control of other electronic collateral.
- Amended Section 9-107A adopts the control provisions of Section 12-105 to

apply to a controllable electronic record, a controllable account or a controllable payment intangible.

- Amended Section 9-203 extends perfection by control to the new categories of electronic records. Control of chattel paper is pursuant to amended Section 9-314A.
- Amended Section 9-204(c) makes clear that a security interest can attach to commingled goods, consumer goods and commercial tort claims as proceeds.
- Amended Section 9-207 provides conforming changes as to terminology or section references.
- Amended Section 9-208 provides conforming changes as to terminology or section references and imposes on the secured party in control of electronic collateral the same duties as if the collateral was tangible.
- Amended Section 9-209 provides conforming changes as to terminology or section references.
- Amended Section 9-210 provides conforming changes as to terminology or section references.

- Amended Section 9-301 provides conforming changes as to terminology or section references. This amendment specifies that the law of the jurisdiction, in which tangible documents, goods, instruments or tangible money is located, will determine the law governing the perfection of security interests in such collateral.
- Amended Section 9-304 clarifies that the local law of a bank's jurisdiction governs the perfection of a security interest in deposit accounts "even if a transaction does not bear any relation to the bank's jurisdiction."
- Amended Section 9-305 provides that the local law of issuers, security intermediaries and commodity intermediaries govern issues related to perfection "even if a transaction does not bear any relation to that jurisdiction."
- A new Section 9-306A provides the following amendments regarding choice of law:
  - Perfection or nonperfection and priority as to chattel paper evidenced by an electronic copy are to be governed by the jurisdiction of the chattel paper itself.
  - 2) The "jurisdiction of the chattel paper" is determined by applying a "waterfall" provision that determines jurisdiction as follows:
    - a. Any choice of law provision in the chattel paper is given first consideration for determining which law governs;

- b. If the chattel paper is recorded, the state's law where it is recorded will govern;
- c. Any choice of law provision in records associated with the chattel paper will govern, and such state's law will govern; and
- d. If no choice of law provision is provided, the laws of the jurisdiction where the debtor is located will govern.
- If chattel paper is only evidenced by a tangible authoritative record, the law of the jurisdiction where the chattel paper is located governs for perfection and priority.
- 4) Notwithstanding the above provisions governing perfection by possession, the local law of the jurisdiction where the debtor is located governs perfection of a security interest in chattel paper by filing.
- A new Section 9-306B provides that the law governing priority and perfection of controllable accounts, controllable electronic records and controllable payment intangibles is determined by Article 12 Subsections 12-107(c) and (d); however, the law where the debtor is located will govern perfection in such items of collateral by filing and in cases of automatic perfection where a controllable payment intangible is created by the sale of

a controllable payment intangible.

- Amended Section 9-310 provides conforming changes as to terminology or section references.
- Amended Section 9-312 provides conforming changes as to terminology or section references. Subsection 9-312(a)(4) provides that a security interest in electronic money may be perfected only by control.
- Amended Section 9-313 provides conforming changes as to terminology or section references.
- Amended Section 9-314 provides conforming changes as to terminology or section references. The official comments provide an expanded discussion of the concept of shared control of certain controllable records.
- A new Section 9-314A provides that perfection by possession and control of chattel paper occurs once a secured party takes possession of each authoritative tangible and electronic copy of the record. Ongoing possession and control of the chattel paper is required to maintain perfection. When showing possession and attempting to prove what copies are "authoritative," the official comments provide that parties should be afforded considerable flexibility in outlining the procedures for determining what versions of records are "authoritative."
- Amended Section 9-316 provides conforming changes as to terminology or section references.

- Amended Section 9-317 provides as follows:
  - Buyers of chattel paper take free of a security interest if, without knowledge of the previous security interest, they receive delivery of each authoritative tangible copy of the record and take control of all authoritative electronic copies of such chattel paper.
  - Buyers of electronic documents take free if, without knowledge of prior interests, the buyer receives control of each authoritative electronic document.
  - Buyers of controllable electronic records take free of prior security interests if the buyer gives value and obtains control of the controllable electronic record.
  - Buyers of controllable accounts and controllable payment intangibles take free of prior

security interests if the buyer gives value and obtains control.

- Amended Section 9-322 provides conforming changes as to terminology or section references.
- Amended Section 9-323 modifies that section to expand the exceptions to the priority rules of Section 9-322 to additionally allow buyers and lessees in ordinary course of business to take collateral securing future advances free of such security interest to the extent such advances are made after the earlier of the time the secured party acquires knowledge of the purchase or 45 days after the purchase. Under the amendment, buyers in ordinary course of business seeking to take collateral securing future advances free from such security interest will take the collateral subject to or free of the existing security interest to the same extent as all other

buyers if the buyer or lessee does not meet the requirements of Section 9-320 or 9-321. Sections 9-320 and 9-321, which specifically outline instances where buyers or lessees in ordinary course of business are exempt from taking property subject to existing security interests, still serve to pass the collateral free and clear to those buyers and lessees.

- Amended Section 9-324 provides conforming changes as to terminology or section references.
- Amended Section 9-326A provides that a security interest in a controllable account, controllable electronic record or controllable payment intangible held by a secured party having control of the account, electronic record or payment intangible has priority over a conflicting security interest held by a party without control.
- Amended Section 9-330 provides conforming changes as to terminology or section references

Amended Section 9-330 provides conforming changes as to terminology or section references in an effort to emphasize the importance of taking control of the authoritative copy of records evidencing chattel paper where there are competing claims to the chattel paper by secured parties. in an effort to emphasize the importance of taking control of the authoritative copy of records evidencing chattel paper where there are competing claims to the chattel paper by secured parties. These changes are meant to align the new definition of chattel paper with existing priority rules.

- Amended Section 9-331 provides conforming changes as to terminology and section references to incorporate the terms controllable accounts, controllable electronic records and controllable payment intangibles into the priority rules previously governing instruments, documents and securities under other articles. This rule coordinates the UCC with the Uniform Electronic Transactions Act (UETA) and Electronic Signatures in Global and National Commerce Act (ESIGN).
- Amended Section 9-332 updates the treatment of priority rules with regard to the transfer of money. The rules regarding "tangible money" are largely unchanged, and a new section concerning the receipt of "electronic money" largely mirrors the tangible money rules and conditions the "takes free" rule on the transferee's receipt of control of the electronic money. The official comments to this section provide an expanded distinction between possessing a security interest in a deposit account (the right to payment by a depository) and a security interest in electronic or tangible money.
- Amended Section 9-334 provides conforming changes as to terminology or section references.

- Amended Section 9-341 provides conforming changes as to terminology or section references.
- Amended Section 9-404 provides conforming changes as to terminology or section references.
- Amended Section 9-406 clarifies that the term "promissory note" includes negotiable instruments that are not an instrument solely because they are a writing that evidences chattel paper. Further, Subsection (l) of the amendments excludes Subsections (a) through (c) from applying to controllable accounts or controllable payment intangibles. Note that Oklahoma did not include Subsections (j) and (k) of the uniform text in its previous enactment.<sup>3</sup>
- Amended Section 9-502 provides conforming changes as to terminology or section references.
- Amended Section 9-508 provides conforming changes as to terminology or section references.
- Amended Section 9-509 provides conforming changes as to terminology or section references.
- Amended Section 9-513 provides conforming changes as to terminology or section references.
- The FICL subcommittee suggests inserting the following (italicized) language into Oklahoma Section 1-9-515(g)<sup>4</sup>:

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under subsection (c) of Section 1-9-502 of this title remains effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

- Amended Section 9-516 provides conforming changes as to terminology or section references.
- Amended Section 9-601 provides conforming changes as to terminology or section references.
- Amended Section 9-605 provides that a secured party owes no obligation to an unidentified debtor or obligor. The amendment adds a duty to unidentified debtors or obligors when the secured party knows the identifying information is missing from the record.
- Amended Section 9-608 provides conforming changes as to terminology or section references.
- Amended Section 9-611 provides conforming changes as to terminology or section references.
- Amended Section 9-613 updates the language used in the notice of disposition.
- Amended Section 9-614 updates the language used in the notice of plan to sell property.
- Amended Section 9-615 provides conforming changes as to terminology or section references.
- Amended Section 9-616 provides conforming changes as to terminology or section references.

- Amended Section 9-619 provides conforming changes as to terminology or section references.
- Amended Section 9-620 provides conforming changes as to terminology or section references.
- Amended Section 9-621 provides conforming changes as to terminology or section references.
- Amended Section 9-624 provides conforming changes as to terminology or section references.
- Amended Section 9-628 provides that, as with amended Section 9-605, the secured party owes no obligation to an unidentified debtor or obligor. The amendment adds a duty to unidentified debtors or obligors when the secured party knows the identifying information is missing from the record.

### **ARTICLE 12**

The new Article 12 adds a new article to the uniform text of the UCC in response to concerns about the lack of clear commercial law rules relating to digital assets.

Article 12 does not adversely impact existing Oklahoma law and instead provides much-needed clarity surrounding a new category of assets referred to as "controllable electronic records," which includes cryptocurrency (such as bitcoin and ethereum), non-fungible tokens and other electronic payment rights.

Section 12-102 creates a new definition of a "controllable electronic record," which is a record stored in an electronic medium that can be subjected to control under the new Section 12-105.

Section 12-103 provides that if there is a conflict between Article 12 and Article 9 of the UCC, Article 9 governs. Also, an Article 12 transaction is subject to a different rule for consumers, if any, such as a rule under the Uniform Consumer Credit Code or the Consumer Protection Act.

Section 12-104 establishes the rights acquired by a transferee of a controllable electronic record, including whether a transferee takes free of third-party claims. Specifically, if the transferee of a controllable electronic record is a "qualifying purchaser," the transferee acquires its interest free from any competing property claims to the controllable electronic record. A "qualifying purchaser" is a purchaser that obtains control of the controllable electronic record for value, in good faith and without notice of a property claim to the controllable electronic record. These provisions are consistent with provisions in other articles of the UCC that protect innocent parties acquiring an interest in property, such as negotiable instruments.

Section 12-105 introduces the concept of "control" as it applies to controllable electronic records. Thus, Section 12-105, in conjunction with the amendments to Article 9, facilitates the use of controllable electronic records as collateral for loans and credit sales. Under the present version of Article 9, there is no effective method for a creditor to perfect or ensure the priority of its security interest in digital assets. Section 12-105 establishes what it means to "control" a controllable electronic record, which generally is the power to transfer the controllable electronic record, prevent others from using the controllable electronic record and be positively identifiable in some manner, such as the use of a cryptographic key. In conjunction with the proposed amendments to Article 9, a secured party with "control" of controllable electronic records will have a perfected security interest with priority over the interests of other creditors who do not have "control."

Section 12-106 deals with controllable electronic records that represent a right to payment (specifically, a controllable account or a controllable payment intangible), such as an electronic promissory note, and provides that the person having control of the controllable



electronic record has the right to derive the benefit of the digital asset, including requiring that any payments be made directly to the person with control of the controllable electronic record.

Section 12-107 provides the choice of law rules for Article 12 and generally states that the law of a controllable electronic record's jurisdiction governs matters covered by Article 12. If a controllable electronic record expressly states its jurisdiction, then that jurisdiction is the controllable electronic record's jurisdiction. If the controllable electronic record does not state its jurisdiction, then its jurisdiction is the jurisdiction whose laws govern the system in which the controllable electronic record is recorded. If neither the controllable electronic record nor the system states a jurisdiction, the controllable electronic record's jurisdiction is deemed to be Washington, D.C. However, if Washington, D.C., has not enacted Article 12, then the official text of Article 12 promulgated by the Uniform Law Commission will apply. The rationale for choosing Washington, D.C., as the jurisdiction of last resort, is that the district is likely to enact Article 12 in a timely fashion, and it does not favor the laws of one state over another. This concept is similar to 12A Okla. Stat. Section 1-9-307(c), (f)(3) and (h), which also provides for Washington, D.C., to be the default location of a debtor under certain circumstances.

The 2022 amendments to the uniform text, including the new Article 12, bring much-needed clarity to the transactional rules in the uniform text, especially with respect to digital assets, and in some cases should be of persuasive authority even if a state does not enact the amendments. Author's Note: The author would like to recognize the members of the Legislative Review Subcommittee as co-authors of the article. The subcommittee members are Kaitlyn Chaney, Dudley Gilbert, Andrew Harrell, Whitney Humphrey, Eric L. Johnson, Bob Luttrell, Jonathan Rogers, Jeff Vogt, Ashley Warshell and Moira Watson.

### **ABOUT THE AUTHOR**

Alvin C. Harrell is a professor emeritus at the OCU School of Law and president of the Home Savings & Loan Association of Oklahoma City. He is the co-author of a dozen books, including *The Law of Modern Payment Systems and Notes*.

### ENDNOTES

1. See, e.g., Fairchild v. Swearingen, 377 P.3d 1262, 1264 (2013).

See Fairchild, id. at 1266.
 This raises some issues relating to

Subsection (j) of the uniform text in order to preserve the superiority of this section. To the extent there are contrary provisions of law (and a more thorough review of Oklahoma statutory law may be necessary to locate such contradictions), these issues may need to be considered to ensure there is no express contradiction. For example, many states provide exceptions to the subordination of these account debtor rules to compensate for injuries or sickness under federal law or the right to receive benefits under federal special needs trusts or the right to receive lottery prize winnings. One other state has adopted the following language: "(j) This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section."

4. The underlined language is not included in the 2022 uniform text amendments to the UCC but would provide a substantial benefit to practitioners and align the treatment of as-extracted collateral filings and timber-to-becut filings with the treatment of fixture filings, which exist as substantially similar categories of collateral. This amendment mirrors the adoption of similar provisions by oil-and-gas-producing states, such as Texas and West Virginia.



### MEET YOUR BAR ASSOCIATION

# Brian Hermanson Brings Service Leadership to his Role as 2023 OBA President

By Emily Buchanan Hart

#### **CROM ONLY NINE YEARS OLD,**

I Mr. Hermanson knew he wanted to be a lawyer. Every step he took from grade school through law school helped set him up for success.

#### EARLY LIFE

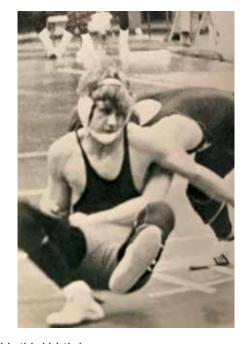
Born in Milwaukee and raised in Green Bay, Wisconsin, 2023 OBA President Brian Hermanson has always had a competitive spirit. At Green Bay East High School, he was on the school wrestling team, the football team and the tennis team. He went on to wrestle at Carroll College (now Carroll University) in Waukesha, Wisconsin.

That competitive spirit showed through not only in sports but also in his fondness for a good debate.

"I like winning arguments," Mr. Hermanson chuckled. "My mom said I was always debating with her."

While in high school, Mr. Hermanson had the opportunity to





Left: Young Brian Hermanson celebrating his third birthday Right: Mr. Hermanson during his wrestling days at Carroll College in Waukesha, Wisconsin

serve as Brown County, Wisconsin's "DA for the Day." He also served as president of his high school debate team, later going on to major in political science and history at Carroll.

It was during his days at Carroll that one of his instructors, an OU graduate, inspired him to pack up and move to Oklahoma to attend law school.

"I thought if I were in Oklahoma, I could buckle down and study," he said.

Upon graduating from OU, Mr. Hermanson interned at Phipps, Johnson and Holmes in Ponca City, where he later became partner. At his swearing-in ceremony to become a lawyer in 1978, Mr. Hermanson met his nowwife, Ruslyn.

"Ruslyn was attending to see a friend of hers get sworn in," Mr. Hermanson said. "A mutual friend knew I was moving to Ponca City, so she introduced me to her. A year later, we went on our first date."

Mr. Hermanson then married Ruslyn, and they had two daughters – Charlcy, who is now a church music director in Ponca City, and Brianna, who works as an illustrator in Northampton, Massachusetts. Mr. Hermanson's wife, Ruslyn,



The family attends a reenactment of the Cherokee Strip's 100th anniversary run, riding their horses from the Kansas state line to Ponca City. From left daughters Brianna and Charlcy, Mr. Hermanson and Mr. Hermanson's wife, Ruslyn

worked as director for various nonprofits over a span of 16 years, including AmeriCorps and CASA of Kay & Noble counties.

For many years, the Hermansons had a ranch in Ponca City where they bred and raised horses. "It was great stress relief," Mr. Hermanson said. "But it took a lot of time. When my wife retired, we got out of the horse business – sold the herd."

Mr. Hermanson now spends the majority of his "free" time volunteering. He has served as president of the YMCA, the Rotary Club and Ponca Playhouse, serves on the board of the Community Christian Church, has been an ex-officio member of the Ponca City Chamber of Commerce for 12 years, is the former president of the Kay County Bar Association and the current president of the Noble County Bar Association. He also works with many other organizations.

#### **A WINDING LEGAL CAREER**

In 1985, following his seven years as partner at Phipps, Johnson, Holmes & Hermanson, Mr. Hermanson served as attorney in the capital defense in the *McBrain v. State* case. He then partnered again with Judge Charles Johnson for a year before embarking on a more than 20-year stint in solo practice, practicing primarily in criminal law as well as the general practice of law.

In April 1999, Mr. Hermanson's time in Ponca City was interrupted as he was appointed by the court to serve as lead counsel for Terry Nichols in the state trial of the Oklahoma City Bombing case. The trial took seven years, required a move to McAlester for six months during the trial and made a major impact on his legal career.

"But it didn't change who I was," he said. "I have always believed everyone's rights need to be protected, even now as a prosecutor."

According to Mr. Hermanson, the most significant development in his career came when he quit private practice in December 2010 to become district attorney for the 8th District of Oklahoma. "It was a huge change when I became DA," he said, "a good change. It transformed my practice 180 degrees."

After 32 cumulative years in private practice, as he packed up his files, he felt a little melancholy but was largely looking forward to the new adventures that lay ahead. And, he said, he certainly does not miss the billing and timekeeping that comes along with solo practice.

Mr. Hermanson has now spent 12 years as DA – a position he has embraced wholeheartedly. As district attorney, Mr. Hermanson feels he is doing God's work.

"I love the people I work with, and I love helping victims of crimes – children, seniors, men, women," he said. "As DA, I work to preserve justice for those who feel lost, left behind. We have to be there for the victims of crimes."

#### SERVICE LEADERSHIP

Throughout his career, Mr. Hermanson has made service a priority. Influenced by his childhood Sunday school teacher, Mr. Hermanson brings patience,

"Everyone is different, but being an attorney is so much more than making money. We're here to serve. You may not get paid as a volunteer, but you gain the chance to have fun with fellow lawyers, you get to see many good things about the practice of law." benevolence and empathy into his work and beyond.

"I respected him a lot," Mr. Hermanson said. "I was struck with his patience and caring nature. I've also been inspired by the lawyers I first worked with fresh out of law school, who were so helpful. Everyone cared for each other – that greatly affected how I looked at and practiced law."

For more than 40 years, Mr. Hermanson has set aside time to volunteer in various capacities for the Oklahoma Bar Association and Oklahoma Bar Foundation. starting in 1980 on the Law Day Committee. In 1993, he served as OBF president; he served on the OBA Board of Editors from 1994 to 1999; and he has served 13 (going on 15) years on the OBA Board of Governors. He has spoken at numerous seminars and has also won various awards, including his most recent Kline-Brown Award for Outstanding Service to the Oklahoma Bar Foundation in November 2022.

This year, Mr. Hermanson is excited to give back to the bar in his role as president.

"I am always amazed at people who have served in the past, their willingness to make time to serve the bar," he said. "We are blessed with these people. I want to emulate them as much as I can."

Mr. Hermanson's service leadership style will carry through his year as president as he makes an effort to travel the state, hearing from OBA members on what they need from their bar association.

"I want to let our members know we are out there working for them, doing the best we can. Meeting and talking to them – that's what I'm looking forward to the most," he said.

Mr. Hermanson's goals for the OBA this year are not only to provide excellent member service but also to bring joy back into the practice of law. He wants to empower OBA members by providing seminars on mental health, wellness and professionalism;



From left Brianna, Ruslyn, Mr. Hermanson and Charlcy



Charlcy and Mr. Hermanson as Scout and Atticus Finch during a performance of To Kill a Mockingbird at the Ponca Playhouse

inspire them to get out in their communities once again; and encourage members to get involved in their bar association.

Mr. Hermanson is open to suggestions on how the OBA can best meet members' needs. He also encourages all members to sign up for a committee and get involved in their bar association.

"When you make a living doing something, you have to be ready to give back," he said. "Everyone is different, but being an attorney is so much more than making money. We're here to serve. You may not get paid as a volunteer, but you gain the chance to have fun with fellow lawyers, you get to see many good things about the practice of law."

## **PRESIDENTIAL Q & A**

#### **Background:**

Born in Milwaukee; married to Ruslyn. Two daughters -Brianna, an illustrator living in Northampton, Massachusetts, and Charlcy, a church music director living in Stillwater; Mr. Hermanson is the district attorney for Kay and Noble counties and lives in Ponca City.

#### **Education:**

Graduated from college at Caroll College, recently renamed Caroll University, in Waukesha, Wisconsin, with a double major in political science and history and a minor in business; received a J.D. from the OU College of Law; was president of the Student Bar Association, on the National Moot Court Team and inducted into the Order of the Barristers. Also served as governor of the ABA Law Student Division and received the Golden Key Award from the ABA.

### What is your most important goal during your service on the OBA Board of Governors?

It is my hope that over the next year, we can regain some normalcy back after this long period of COVID. The Board of Governors will go out across the state this year to reengage with the lawyers throughout Oklahoma. My goal will be to reestablish contact with our volunteers and strengthen our resolve to improve the practice of law and make it more enjoyable.

## Why is it important for OBA members to serve and volunteer?

Some of my best memories about the practice of law revolve around the friends I have made through my volunteer work with the OBA. Legal work can be incredibly stressful, and we need to bring joy into our lives. I find the people who I have worked with in these volunteer activities bring so much fun and laughter into my life. Also, we need to have involved attorneys protecting the practice of law. It seems that we as a profession are under attack from many sides, and we need to be ready to do what we can to ensure the practice is robust.

## What challenges are OBA members encountering, and how can the OBA help find solutions?

It seems that there is more and more stress in the practice of law. We have more and more demands in our daily work, and it seems that people are more and more aggressive in their dealing with their



fellow lawyers. We need to bring that professionalism back and, with the help of the courts, turn the courtrooms into an appropriate level of civility.

#### What's your favorite OBA member benefit?

My favorite benefit is the Management Assistance Program. The help that it provides to the practicing lawyer is priceless. Every attorney needs to reach out to the program to learn what it can do to help your practice.

## What technology gadget could you not function without?

I could not last five minutes without my iPhone. I find that I am doing more and more of my work on the iPhone. I do so much of my research on it as well as scheduling, meeting and, strangely enough, communicating.

#### What's the best book you've read this year?

No time to read for fun. You are more likely to find me in front of the television at the end of the day.



# 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!



## MEET YOUR BAR ASSOCIATION

# **Volunteers Who Guide Your Association**



#### MILES T. PRINGLE

President-Elect Oklahoma City

Background: I am an Oklahoma City native and third-generation attorney. I live in Oklahoma City with my wife, Andrea, and two sons, Fischer and Harrison. I played basketball and ran track in high

school and continue to be a big basketball fan – particularly the Thunder and Jayhawks. After graduating from law school, I moved back to Oklahoma City to practice with the firm my parents founded. Currently, I am general counsel for The Bankers Bank.

- **Education:** I earned my bachelor's degree from the University of Kansas, where I double majored in political science and history. I received my J.D. from the University of Missouri – Kansas City, where I was a member of the National Moot Court Team.
- What is your most important goal during your service on the OBA Board of Governors? Improving engagement with our members and enhancing the prestige of attorneys in Oklahoma
- Why is it important for OBA members to serve and volunteer? Mahatma Gandhi is often quoted, "Be the change you wish to see in the world." The profession has given us a lot. Attorneys are leaders and should set an example. It is important to give back and improve our communities, personally and professionally.
- What challenges are OBA members encountering, and how can the OBA help find solutions? One is communication. We have more ways to communicate with clients and colleagues, but that communication may be less effective. The OBA has great CLE on communications, technology resources/recommendations and staff to help.

#### What's your favorite OBA member benefit?

Fellowship. Whether through a section, CLE or service on the Board of Governors, I enjoy spending time with my fellow attorneys the most.

- What technology gadget could you not function without? My iPhone
- What's the best book you've read this year? *The Verge* by Patrick Wyman



#### **D. KENYON (KEN) WILLIAMS JR.** Vice President *Tulsa*

Background: I was born in Tulsa but grew up in the (then) town of Skiatook. My grandparents were well known for the Williams Greenhouse they operated for many

years, and because my grandmother was the Southwestern Bell switchboard operator who knew everyone's business. Even so, we were still "newcomers" after the family moved there in the early 1940s. Dad was a steel salesman, and Mom was a high school English teacher. I have three brothers; two of us are lawyers, and two are dentists. Teresa and I married in 1974, two weeks before I started law school. Our first child, Kenyon, was born the same day I received my bar exam results in 1977. Our daughters, Kristen and Kara, were born after we moved to our rural home near Skiatook Lake, where we still live. Teresa taught and worked as a public school librarian until she retired. Our focus is on family (our adult children and eight grandchildren) and church. I serve as one of the elders of The Park Church of Christ in Tulsa. Teresa and I love to travel, which is the closest thing to a hobby, except for our love of reading and cooking shows.

**Education:** My education was at TU for seven years – petroleum engineering and then law.

- What is your most important goal during your service on the OBA Board of Governors? My goal in every level of service for the Tulsa County and Oklahoma bar associations has been and remains to communicate to non-lawyers the high level of professionalism I have observed among our members during my 45 years of practice. As many have heard me say, Oklahoma lawyers are some of the finest people I have ever met.
- Why is it important for OBA members to serve and volunteer? Because our license is a privilege and not a right. We should always be looking for ways to elevate the regard of non-lawyers for our profession. Service volunteering is certainly one way to do so.
- What challenges are OBA members encountering, and how can the OBA help find solutions? From my service on the OBA Professional Responsibility Tribunal and several of our recent CLE programs, I have come to believe the stress of our profession has resulted in a disproportionate percentage of our members falling victim to substance abuse. Our Lawyers Helping Lawyers Assistance Program is a wonderful resource for our members.
- What's your favorite OBA member benefit? Clearly, our continuing legal education system is extremely helpful. I, and I think many of our members, particularly enjoy the opportunities to combine social events with CLE, such as the annual Solo & Small Firm Conference and the Annual Meeting.
- What technology gadget could you not function without? I suppose I could function without my iPhone, but I would not be happy. Today is not like the old days when pay telephones were ubiquitous, and all I needed to keep in touch was a bag of quarters...
- What's the best book you've read this year? I just finished rereading the Childe Cycle series by Gordon Dickson, one of my all-time favorites.



#### JAMES R. (JIM) HICKS

Immediate Past President Tulsa

Background: Born in Blackwell and raised in Denton, Texas. Live and work in Tulsa. Married to Nancy since 1983 with twin children, Hannah and Stan. Three grandchildren ages 13, three months and nine months

Education: OU – bachelor's degree; and TU College of Law – J.D.

- What is your most important goal during your service on the OBA Board of Governors? Onboarding the OBA's newly hired executive director, Janet Johnson
- Why is it important for OBA members to serve and volunteer? Because our work is a profession, and participation in the bar association supports the profession and helps us focus on the goals of our special licenses.
- What challenges are OBA members encountering, and how can the OBA help find solutions? Time crunch and stress. The OBA provides services to assist with office technology and stress management techniques and services.
- What's your favorite OBA member benefit? Fastcase legal research
- What technology gadget could you not function without? iPhone
- **What's the best book you've read this year?** *The Compleat Victory: Saratoga and the American Revolution* by Kevin Weddle



MICHAEL R. VANDERBURG Governor – District No. One Ponca City

**Background:** I come from a military family and moved around when very young, but I was raised in Little Rock, Arkansas, for the majority of my youth. My family consists of my

wife, Linda; two adult children, Robert Vanderburg and Lauren Manaugh; plus three grandchildren, Isaac, Cort and Ellie. Linda and I are semi-retired and live in Ponca City, where I do volunteer work, serve as a juvenile judge for municipal court and recently took up golf.

- **Education:** A bachelor's degree in political science and a J.D., both from the University of Arkansas in Fayetteville, Arkansas
- What is your most important goal during your service on the OBA Board of Governors? I want to see improvement in the communication between the state bar and the county bar associations, but I am also working on legislative amendments on how the court system (all levels) treats the truly indigent.
- Why is it important for OBA members to serve and volunteer? Lawyers frequently see people in their worst moments and in conflict situations. Volunteering allows us to help improve the lives of others without the issue of adverse litigants or the stylized conflict of courts. There can be more creativity in the problem-solving skills we already possess.
- What challenges are OBA members encountering, and how can the OBA help find solutions? The biggest challenge I see is that the aging bar is not recruiting enough young people to replace the older generations of lawyers. Even now, we do not reach all the people who could benefit from legal advice. This problem is, therefore, likely to get worse rather than better.
- **What's your favorite OBA member benefit?** Widely available CLE opportunities in a variety of formats
- What technology gadget could you not function without? Laptops and cell phones – no question What's the best book you've read this year? I am

currently reading The 1619 Project.



#### JOHN E. BARBUSH

Governor – District No. Two Durant

Background: Born in

Oklahoma City. Raised in the suburbs of Chicago. Attended college on an athletic scholarship and am proud to be the first member on either side of my family to graduate

from college. Returned to Oklahoma for law school, where I had the good fortune to meet my future wife. Moved from Edmond to Durant in January 2022 so my wife, Judge Amy J. Pierce, could serve the Choctaw Nation of Oklahoma as the chief district court judge. We have two children: Ella, a senior, and Mac, a freshman. I enjoy watching my kids compete in their respective sports, golf and "lake life" since the relocation.

- **Education:** Bachelor's degree in business administration from Ambassador University before attending the OCU School of Law
- What is your most important goal during your service on the OBA Board of Governors? To serve in such a way that the judges and attorneys who mentored and assisted me throughout my legal career would be proud
- Why is it important for OBA members to serve and volunteer? If those who witnessed and benefitted from the service of others to our bar association are not willing to step up when necessary, eventually the bar association as we know it will no longer exist.
- What challenges are OBA members encountering, and how can the OBA help find solutions? I believe a lack of mentorship on both ends of the legal career spectrum (new attorneys having to go out on their own straight out of school who "don't know what they don't know" and older attorneys who are on their own who might not realize it is time to transition into a different role or retire) is one of the biggest issues the bar association is facing. I know from my time in the Bar Leadership Academy that it was an issue the OBA recognized. I hope that during my time as governor, the OBA will figure out ways to encourage collaborations between these two groups on each side of the spectrum because, to me, that seems like a possible solution. I believe the "business" of private practice is the biggest obstacle to coming up with a solution. What's your favorite OBA member benefit? The

Oklahoma Bar Journal

- What technology gadget could you not function without? Google Maps on my phone. I would be lost without it.
- What's the best book you've read this year? For All Who Love the Game by Harvey Penick. Mr. Penick is considered one of the best golf instructors in history, and he wrote this book for female golfers based on his experiences with some of the best to ever play the game. I reread it before my daughter competed in the Native Youth National Golf Championship this summer and utilized parts of it in her preparation both physically and mentally as well during the tournament, and I have no doubt that using some of Mr. Penick's advice helped her win the championship.



#### S. SHEA BRACKEN

Governor – District No. Three *Edmond* 

Background: I grew up and graduated from high school in Stillwater. I joined the U.S. Marine Corps after high school, which included a deployment to Fallujah, Iraq. Following deployment, I

completed my education and started practicing law. I work with Maples, Nix & Diesselhorst and primarily practice catastrophic injury and medical negligence cases. I have an amazing wife, Lindsay, and two wonderful daughters, Makenna and Teagan. **Education:** Bachelor's degree from OSU in 2008; J.D.

from the OCU School of Law in 2011

- What is your most important goal during your service on the OBA Board of Governors? To spread the word of the amazingness of the OBA and get OBA members more involved and engaged
- Why is it important for OBA members to serve and volunteer? It is a way to pay it forward and truly make a difference. I have been fortunate to have amazing mentors over my career who have helped me at the drop of a hat. The legal community is an amazing group that will go to great lengths to help others, and everyone truly benefits when we serve and help one another.
- What challenges are OBA members encountering, and how can the OBA help find solutions? What is the appropriate dress attire for events and meetings these days?? It seems like every event or group gathering has a different type or style of dress attire – what

is business casual, what is snappy casual, what is formal attire, can I wear sneakers with a suit? Is this shirt and pants appropriate? Of course, the incredible staff at the OBA are more than willing to help with anything you may ever need. If the OBA staff isn't sure of the answer, they will find you one. You can also always reach out to any member on the OBA website and get an answer.

- What's your favorite OBA member benefit? The wonderful events. It is a great way to mingle and network with OBA members from all walks of life. Plus, what is better than a free lunch, free dessert or free drink!
- What technology gadget could you not function without? Google Maps and Outlook Calendar. How did people know where to be and when without our phones telling us? Oh, and it is much easier to have Google tell you where and when to turn instead of trying to read printed-off directions from MapQuest while driving.
- What's the best book you've read this year? *Talking to Strangers* by Malcolm Gladwell. It's an excellent insight into how others think.



#### **DUSTIN E. CONNER** Governor – District No. Four *Enid*

Background: I was born and raised in Garfield County. I attended Garber schools, graduating in 2002. After law school, I came back to Garfield County to serve the community and have been with Gungoll

Jackson Box & Devoll since graduating from law school. I have two daughters, Averly and Emerie, and a son, Charlie. I enjoy working with community groups, attending Oklahoma State athletic events and spending time chasing my kids to school and athletic events.

- **Education:** Bachelor's degree from OSU in 2006; and a J.D. from the OCU School of Law in 2011
- What is your most important goal during your service on the OBA Board of Governors? My goal for 2023 is to attend a local bar activity in every county that encompasses my district.
- Why is it important for OBA members to serve and volunteer? Our organization relies upon an active bar to continue to excel. While the employees at the bar are invaluable to the association, it takes all of us, as attorneys, to volunteer our time to serve

on committees to ensure the bar is properly represented by our members and the committees and boards are active and working toward accomplishing the goals of our organization.

- What challenges are OBA members encountering, and how can the OBA help find solutions? I think one challenge OBA members are encountering is the hangover from the pandemic. We've all seen the reduced attendance at events and the desire to stay away from the bubble.
- What's your favorite OBA member benefit? The community message boards for the various sections and committees. Being able to interact with other attorneys and bounce questions off others is invaluable. It also allows those with a wealth of knowledge the ability to pass that knowledge on to others.
- What technology gadget could you not function without? I, like so many others, would not be able to function without my computer and the associated "gadgets" of scanners and printers.
- What's the best book you've read this year? Anything by Stan and Jan Berenstain



#### ALLYSON E. DOW

Governor – District No. Five *Norman* 

Background: I am from Tulsa. I currently live in Norman with my husband and two sons. I enjoy spending time with my family, going on vacation and exercising.

**Education:** I graduated from the OU College of Law in 2012.

- What is your most important goal during your service on the OBA Board of Governors? To help serve the members of the bar association as a whole and to help bridge the gap between leadership and the general members.
- Why is it important for OBA members to serve and volunteer? Giving back to the community is important because it helps others learn and grow.
- What challenges are OBA members encountering, and how can the OBA help find solutions? It appears that members at large are struggling with work/life balance more than ever before. The OBA is working hard to provide great content through CLE programs to help provide guidance in this area.

- What's your favorite OBA member benefit? The community and fellowship
- What technology gadget could you not function without? My iPhone. I cannot decide if it is a blessing or a curse that I am always accessible by email.
- What's the best book you've read this year? *The Crossing* by Michael Connelly



#### **RICHARD D. WHITE JR.**

Governor – District No. Six *Tulsa* 

Background: I'm from Long Beach, California, and I currently reside in Broken Arrow. I'm married and have five children and 11 grandchildren.
Education: Bachelor's degree

in criminal justice from

California State University Long Beach; J.D. from the TU College of Law

- What is your most important goal during your service on the OBA Board of Governors? To work with our new executive director and other board members in transitioning to new leadership
- Why is it important for OBA members to serve and volunteer? To keep our bar association effective and relevant, we need talented members to serve and volunteer for the many tasks that can only be accomplished by those within our membership. Serving and volunteering bring about numerous benefits not only to those we serve but to those volunteering their services.
- What challenges are OBA members encountering, and how can the OBA help find solutions? The legal profession is evolving. Technology and an ever-greater demand for resources are continuing to bring new challenges. The OBA, as the preeminent lawyers association in Oklahoma, can address these challenges and work in cooperation with others to find appropriate solutions.
- What's your favorite OBA member benefit? As a member of the Board of Governors, I appreciate the opportunity to meet new members throughout the state. As a member of the OBA, I find the continuing legal education offerings to be a great benefit.
- What technology gadget could you not function without? Google Maps
- What's the best book you've read this year? *Black Wall Street 100* by Hannibal B. Johnson



#### **BENJAMIN R. HILFIGER**

Governor – District No. Seven *Muskogee* 

Background: I was born in Muskogee, where I graduated from high school. I met my wife, Amber, at a singles dinner on Valentine's Day in Austin, Texas. Three months later, we were engaged. We have

three kids and a dog, and we spend most of our free time at our family cabin on the Baron Fork River. I work in private practice with my father, Roger Hilfiger, and Jay Cook. I practice criminal and family law, and I am also a certified mediator.

- **Education:** J.D. from the Loyola University New Orleans College of Law; master's degree in energy legal studies from OCU and a BIS in multi-disciplinary studies, commerce theory with a minor in communications from OU.
- What is your most important goal during your service on the OBA Board of Governors? To represent my district as best as I can
- Why is it important for OBA members to serve and **volunteer?** To provide a resource for their community
- What challenges are OBA members encountering, and how can the OBA help find solutions? The abundance of technology available is overwhelming at times. The OBA can help research what is available and then provide an easier way for attorneys to read up on the latest without the worry of being sold something.
- What's your favorite OBA member benefit? Fastcase! Free legal research!!!
- What technology gadget could you not function without? Clio app
- **What's the best book you've read this year?** *My Brilliant Friend* by Elena Ferrante



#### NICHOLAS E. THURMAN Governor – District No. Eight Ada

**Background:** I grew up most of my life in west Texas but graduated from Weatherford High School in Oklahoma. After that, I attended Southwestern Oklahoma State University, where I played for the varsity

basketball team. I began dating my wife, Hannah, while in law school at OCU, and she was attending the University of Hawai'i at Mānoa. Luckily, I was able to find an internship with the District Attorney's Office in Honolulu, where I found my passion for prosecution. My wife and I, along with our two children, Faye and Booker, currently live in Ada, where I am the assistant district attorney. We enjoy traveling and being outside.

- **Education:** I graduated with a bachelor's degree in history from Southwestern Oklahoma State University in Weatherford and then attended the OCU School of Law.
- What is your most important goal during your service on the OBA Board of Governors? I hope to further the community's understanding and knowledge of an attorney's role, especially in a prosecutorial position, in seeking not only justice but a fair and equitable outcome that provides the best result for the victim, the community and the defendant.
- Why is it important for OBA members to serve and volunteer? As attorneys, we not only counsel our clients in legal matters but in life matters as well. In this role, we are meant to be quintessential examples of what truth should be, and it is our responsibility to be pillars of our community.
- What challenges are OBA members encountering, and how can the OBA help find solutions? As more and more young attorneys join our ranks, there continues to be a growing disconnect between our more experienced attorneys and the incoming ones, especially in rural areas. I believe there is a strong desire in young attorneys for mentorship. As a first-generation attorney, I was unaware of the resources available for mentorship, and I don't believe there is a strong representation by other prosecutors in the OBA for this type of mentorship. I would hope to see a stronger presence of OBA mentors in rural areas and a more positive representation of prosecution in this aspect.
- **What's your favorite OBA member benefit?** I appreciate the wide variety of CLE programs provided.

What technology gadget could you not function without? I don't think I'm alone in saying my phone.What's the best book you've read this year? Crazy Love

by Francis Chan

#### JANA L. KNOTT



Governor – District No. Nine El Reno

Background: I grew up in Minco. I now live in El Reno with my husband, Brian, and our two sons, Brecken, who is eight, and Bricen, who is six. I practice at Bass Law in El Reno, where my practice

focuses primarily on appellate litigation. I previously chaired the OBA Appellate Practice Section and currently serve on the *Oklahoma Bar Journal* Board of Editors. I am also currently serving a two-year term as president of the El Reno Public School Foundation.

- **Education:** I spent two years in Vernon, Texas, on a softball scholarship at Vernon Junior College, where I graduated with an associate's degree. I finished my undergraduate education at OU and graduated with a bachelor's degree in sociology in 2008. I attended the OCU School of Law, where I earned my J.D. in 2011.
- What is your most important goal during your service on the OBA Board of Governors? Get members involved not just in the OBA but also in their local bar associations
- Why is it important for OBA members to serve and volunteer? When we serve and volunteer alongside other lawyers, we get to know them as people and not just as opposing counsel in an adverse situation. Getting to know other attorneys outside of day-today practice helps build cordiality and professionalism, which we desperately need.
- What challenges are OBA members encountering, and how can the OBA help find solutions? Burnout and mental health issues in the legal profession, which often make it difficult to retain talented individuals our profession needs. The OBA can help by continuing to raise awareness about the issues lawyers struggle with and encouraging programs like the Lawyers Helping Lawyers Assistance Program.
- **What's your favorite OBA member benefit?** I'm a little biased because I'm on the Board of Editors, but I really enjoy the *Oklahoma Bar Journal*.
- What technology gadget could you not function without? My Surface Pro!
- What's the best book you've read this year? Atlas of the Heart by Brené Brown



#### ANGELA AILLES BAHM

Governor – At Large Oklahoma City

Background: I was born in Berlin, Germany. My mother is German, and my father was in the Air Force. I moved a lot as a young child until our move to Altus. My husband, Mark, owns a

public accounting firm. Our daughter, Isabella, works as a copywriter for an advertising firm in New York City. We love traveling, exploring new places, dining with friends and generally being outdoors.

**Education:** Undergraduate at OU with a bachelor's degree in economics and a baccalaureate degree in accounting. Law school at OU

- What is your most important goal during your service on the OBA Board of Governors? To help educate our membership and the public on a variety of subjects, including the value proposition of our state bar
- Why is it important for OBA members to serve and volunteer? Participation in the bar allows you to expand your network significantly, which is invaluable. This can turn into increased or varied business. You'll expand your resources across the state, which in turn can benefit you and your clients. And more importantly, there are so many ways to serve your community in general, whether it is by helping to educate a legislator about the effect of a piece of proposed legislation or participating in the Oklahoma Lawyers for America's Heroes Program. There are *so* many opportunities.
- What challenges are OBA members encountering, and how can the OBA help find solutions? This is stressful work as a general statement. If there are ways to reduce that stress through access to tools or certain CLE programs, we want to do that.

What's your favorite OBA member benefit? *Courts & More* – it's a great resource

- What technology gadget could you not function without? My iPhone
- What's the best book you've read this year? *We Are All the Same in the Dark* by Julia Heaberlin



#### **TIMOTHY L. ROGERS**

Governor – At Large *Tulsa* 

Background: I grew up in Owasso and now live in Tulsa with my wife, Christa, and my two children, Charlie (5) and Caroline (3). We love being a part of the Maple Ridge community. I am an

avid fan of Premier League soccer, and when I'm not chasing kids on the weekend, I enjoy cheering on the Tottenham Hotspurs. We also wear a lot of orange in my house: "Go Pokes" was one of the first phrases uttered by both of my kids, and I've never been prouder. I am a shareholder at Barrow & Grimm and have been with the firm since law school. My legal practice concentrates primarily on business law with an emphasis on the construction industry. I advise and assist companies with litigation, strategy, risk management, contracts and transactions.

- **Education:** I graduated from OSU with a Bachelor of Science in business administration in economics and from the TU College of Law with a J.D.
- What is your most important goal during your service on the OBA Board of Governors? Raising awareness of the many benefits of the OBA is important to me. I am looking forward to connecting with members across Oklahoma and being an ambassador for the OBA and the many services it provides to the bar.
- Why is it important for OBA members to serve and volunteer? As attorneys we are equipped with specialized skills to give back, whether that means enhancing access to justice, sharing our expertise and leadership with a nonprofit, serving with the OBA or a county bar association or mentoring young lawyers. This service shines a positive light on our profession, but I've also found the service enhances you both personally and professionally.
- What challenges are OBA members encountering, and how can the OBA help find solutions? I think in this digital age, with the demands of a busy practice, it can be hard to make time for meaningful connections. The committees and networking opportunities provided by the OBA are an incredible way to connect with peers and advance your professional expertise at the same time.
- **What's your favorite OBA member benefit?** The OBA gave me one of the biggest benefits of my life: my family. My wife and I were introduced to each other through the OBA Leadership Academy and service

on the YLD board. On a professional note, the quality of educational materials produced by the OBA is unmatched. The programming is always relevant and is a huge value add to me as a practitioner. The ability to access so much of the content online and on demand makes it so convenient. It also enhances the ability of lawyers from across the state to stay current on their particular practice areas without windshield time.

- What technology gadget could you not function without? I am not a huge gadget guy, so I would probably just say my phone. But if you asked my wife, she might say the ESPN app.
- What's the best book you've read this year? *Atomic Habits* by James Clear



KARA I. SMITH Governor – At Large Oklahoma City

> **Background:** I was born in Oklahoma City but moved to Newalla at an early age and attended and graduated from McLoud Public Schools. Following a brief stint in private practice, I

continued my legal career as a public servant, as general counsel to the Oklahoma Office of Personnel Management, as chief assistant attorney general and as chief of the Civil Rights Unit at the Oklahoma Attorney General's Office and now as general counsel with the Oklahoma Health Care Authority. I am also an adjunct professor of law at the OCU School of Law. I have two grown children, Marcel (grandkids Jordan and Allayna) and Kameron (who is a junior at OSU), and two fur babies, Mojo and Travis.

- **Education:** I received my bachelor's degree in political science with a minor in legal studies (Price College of Business) from OU in 1999 and my J.D. from the OCU School of Law in 2002.
- What is your most important goal during your service on the OBA Board of Governors? To be an engaged, respected and trusted member of the OBA Board of Governors
- Why is it important for OBA members to serve and volunteer? Service and volunteerism are not only good for the benefactors of the service or volunteerism, but it is also good for OBA members. It allows them to be engaged, strengthens personal growth, strengthens awareness of the community, and it is simply rewarding.

- What challenges are OBA members encountering, and how can the OBA help find solutions? I would say OBA members are being faced with challenges arising from changing technology due to remote and hybrid work arrangements and competition, especially for solo/small firms and outer counties. I would say the OBA does a great job already in these areas, but improvement and a more targeted approach may be new strategies the OBA should look into implementing.
- What's your favorite OBA member benefit? I am split between online services and networking opportunities.
- What technology gadget could you not function without? Outside of my phone, I would have to say "Alexa"; what would I do without my morning weather report and music!
- What's the best book you've read this year? I would have to say I have not found a book that tops the Bible.



#### CAROLINE M. SHAFFER SIEX

Governor – YLD Chair Tulsa

Background: I was raised most of my life in Texas, where my immediate family still resides. I proudly call Tulsa my home now. I love puzzles, true crime podcasts,

watching the Dallas Cowboys, fishing and yoga. I have been enjoying three years of marriage to a fellow OBA member, Hunter Siex. We have one strong-willed and adorable son, Henry. We also have our two rescue dogs: a pit mix, Lorretta-Lynn, and a Doberman-German Shepard, Blitzkrieg (Blitz).
Education: I graduated from the University of North Texas in 2010 with a bachelor's degrees in psychology and political science. After college, I became

- a paralegal working in the Dallas-Fort Worth Metroplex. I was a "Half L" at the TU College of Law, where I graduated in December 2016.
- What is your most important goal during your service on the OBA Board of Governors? I want to problem-solve boundaries of involvement with young lawyers and bridge more connections between non-YLD and YLD members.

- Why is it important for OBA members to serve and volunteer? We want to maintain the integrity of our bar. Without the support from members serving, we cannot thrive as a community.
- What challenges are OBA members encountering, and how can the OBA help find solutions? I feel we are still feeling the effects of the pandemic, and that is harmful to our new bar members. I want to get back to successful member events to reconnect with networking. There is a large group of new bar members who lost out on opportunities I enjoyed.
- What's your favorite OBA member benefit? The CLE programs
- What technology gadget could you not function without? My iPhone
- What's the best book you've read this year? Where the Crawdads Sing by Delia Owens

# Sweet.



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### Access to Justice

# **Oklahoma Attorneys Provide Significant Contribution to ABA Free Legal Answers**

By Emily Buchanan Hart

#### **N NOVEMBER 2022, THE**

American Bar Association published a report on their web-based, no-cost legal advice program, ABA Free Legal Answers. This program, sponsored by the ABA Standing Committee on Pro Bono and Public Service, welcomes income-eligible individuals to submit civil legal questions which will be answered by attorney volunteers.

Each of the 41 participating states or jurisdictions has a website specific to them, while a federal site exists to answer questions related to immigration and veterans. More than 11,000 attorneys have volunteered nationwide to answer questions for the program, and Oklahoma was one of the first states to sign up for the program in 2016.

According to OBA Practice Management Advisor Julie Bays, who is the program administrator for Oklahoma's Free Legal Answers, 163 Oklahoma lawyers have volunteered to provide free legal advice through the program as of Dec. 14, 2022.

For those who may not be able to afford an attorney, this program has proven to be a beneficial resource. Since the program's launch in 2016, the number of free legal questions has exceeded 253,000 across the United States. Oklahomans are taking advantage of the program too – with thousands of questions having been submitted.

"From its inception in 2016, Oklahoma citizens have asked 6,831 questions," Ms. Bays said. "The majority of questions coming from Oklahoma are regarding family law at 32%, landlord/tenant questions at 14%, and then we have 'other' at 15%. Oklahoma's attorneys have answered 4,180 of these questions. This is 61% of all questions asked which is great because some questions can't be answered due to being criminal law questions."

Volunteers are not authorized to answer criminal law questions, only civil law. Ms. Bays refers any immigration questions to the ABA.

According to the ABA report, many questions from users nationwide include topics on housing or homelessness, children and family, finances or work and unemployment. Since the start of the COVID-19 pandemic, there has been an 86% increase in questions, with more than 12,000 questions being pandemic-related. Housing and employment questions increased by more than 110% since the start of the pandemic.

In 2022, according to Ms. Bays, there were five Oklahoma attorneys who answered more than 50 questions each throughout the year. These attorneys were Travis C. Smith, Paula D. Wood, Margaret E. Travis, Michael J. Miller and Timothy C. Dowd.

"We have some very dedicated lawyers who spend many hours answering questions," Ms. Bays said. "Oklahoma's Free Legal Answers offers lawyers a way to contribute their time to pro bono work with little effort. We could always use more lawyers and hope that they will sign up."

Attorney volunteers can choose which questions to answer and may be alerted when a question is submitted in their practice area.

"They need not worry about malpractice issues because the ABA provides up to \$1,000,000 in liability insurance for lawyers answering questions," Ms. Bays said.

If you are an Oklahoma attorney who has been authorized to provide pro bono legal advice and you are interested in volunteering to provide free legal answers for this program, visit https://bit.ly/3PIIbVW. If you are unable to give your time but are interested in supporting the program, you can also make a monetary donation to the program at https://bit.ly/3FCEBqr.



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

Visit Oklahoma.FreeLegalAnswers.org to learn more



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

# Humbled, Grateful and **Ready to Lead**

By Janet Johnson

"When it comes to careers, instead of searching for the job where we'll be happiest, we might be better off pursuing the job where we expect to learn and contribute the most." – Adam Grant

**REMAIN SOMEWHAT** shocked to begin this new year as your new executive director. Certainly, the last few weeks of the year at the Oklahoma Bar Association are always a whirlwind of CLE offerings, collecting membership dues, holding the Annual Meeting and welcoming newly elected leaders to our Board of Governors. Of course, this year, we also said goodbye to our outgoing executive director, John Morris Williams, and thanked him for his many years of service.

With so much to do, there has not been much time for quiet reflection. There has not been a moment to do much beyond joke about what the search committee must have been thinking to offer me the position! If you had told a much younger Janet that one day, she would be a lawyer, I am not sure she would have taken you seriously. Fast forward to the present, and I am still in shock that my career in law brings me to this moment to serve the members of this association. So I will say thank you to the Board of Governors and Search Committee for placing their trust in me.

I am humbled, grateful and ready. I will have much to learn about this particular leadership role in the coming year, but I bring with me passion, insight and a willingness to jump in and contribute. With our association leadership's guidance and counsel, the experience of our staff and input from members, we have an opportunity to strengthen our organization and our profession together.

We all drink from wells we did not dig. As a country girl, I know the toil of well digging and fence mending. Those skills build a selfless work ethic that carries over to all manner of professions, even the law. We protect and fight for the wells of justice and truth, mending fences along the way.

From the moment any of us decided on a career in law, we learned from all those who came before us. We sat at the feet of our law professors and studied our law books. We sought advice from other lawyers and judges. We didn't know if we could do it, even after we passed the bar exam, until that first client came to us or we stepped in front of a judge for the first time. But we did it! Two of the greatest skills

we must hone as counselors are listening and communicating. And listening and communicating some more with those who went before us and those coming behind.

I pledge to hear you and share information with you. We face many challenges in our profession: burnout is real, dockets are full, stress is high, income is sometimes hard-fought. Balance is a fallacy. But we persist. The OBA has many tools to help us.

The Adam Grant quote rings true for me. "When it comes to careers, instead of searching for the job where we'll be happiest, we might be better off pursuing the job where we expect to learn and contribute the most." That has been my path in each career step, and I intend to learn and contribute and be happy in that pursuit.

Happy New Year.

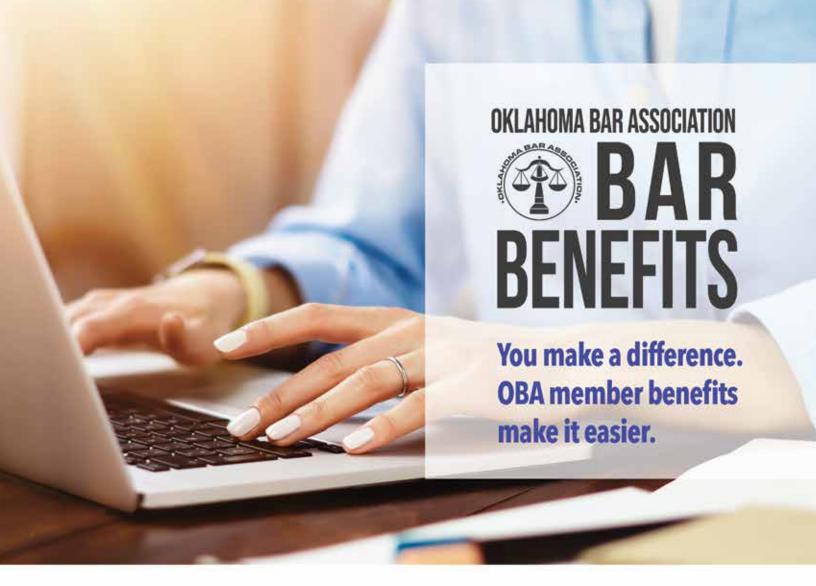
Gand

To contact Executive Director Johnson, email her at janetj@okbar.org.

### **EXECUTIVE DIRECTOR Q & A**



- **Background:** I am a native of Duncan, living now in Oklahoma City. Most of my family is in Oklahoma, but I have some in Texas and Ohio. In my spare time, I enjoy cycling, reading and spending time with loved ones.
- Education: I earned a bachelor's degree in letters from OU in 2006 and a J.D. from the OCU School of Law in 2010.
- What is your most important goal as you begin your new role as executive director? My first goal is to work on engagement and gaining feedback from incoming and existing members early and often. Starting at the law school level and increasing membership involvement going forward.
- Why is it important for OBA members to serve and volunteer? Being engaged and seeing the value of this membership is amazing. There are few things more rewarding than having the ability to give back and help those around you succeed.
- What challenges are OBA members encountering, and how can the OBA help find solutions? Increasing awareness about the member benefits the OBA has to offer is something that needs to be shouted from the mountaintop. From our six hours of counseling to case management and other tips and tricks from our Management Assistance Program, the benefits are extraordinary and need to be communicated early and often.
- What's your favorite OBA member benefit? I might be biased, but the quantity and quality of OBA CLE programming is unmatched. Our members contribute so often and with quality content; each section and committee brings something to the membership table for all.
- What technology gadget could you not function without? Can I pick two? I would be lost without my phone and Apple Watch.
- What's the best book you've read this year? I am really into fantasy books. I will go with the safest answer here give the A Court of Thorns and Roses series a go, and then get back with me for books to add to your to-be-read list!



# **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.

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### FROM THE PRESIDENT

#### (continued from page 4)

the state, it is the lawyers who are providing leadership on thousands of boards and groups with little or no pay. It is the lawyers who are volunteering to make sure children and young adults receive guidance in their development. I think we need to make a conscious effort to highlight the activities of these countless volunteers.

In addition, I would like to see a return to the level of professionalism that is necessary for each of us to responsibly do our job. The practice of law does not require name-calling or disrespect to be shown toward our fellow lawyers. We are professionals, and we all need to step forward to ensure that we practice with the proper respect shown to our adversaries.

We need the courts to hold the lawyers to that level of professionalism. No judge should sit by while actions are happening in their courtroom that diminish the respect that should be shown to every lawyer.

I look forward to working with every one of you this year. Please volunteer to work on one of our committees. You will be better for it. I hope to see you at one of our many activities throughout the year. Remember, any bar association is only as strong as its membership makes it.

Thank you for this opportunity to serve you!

We are professionals, and we all need to step forward to ensure that we practice with the proper respect shown to our adversaries.

# LOOKING FOR SOMETHING? **CHECK YOUR BLUE BOOK!**

To order the official OBA member directory – including government offices, courts, professional associations, OBA sections and more - call 800-447-5375 ext. 2 or visit www.legaldirectories.com. A free digital version is available at www.legaldirectories.com.

### LAW PRACTICE TIPS

# Text Message Reminders: An Important Tech Tool for Lawyers

By Jim Calloway

#### **TRECENTLY ATTENDED A**

presentation by Judge Scott Schlegel, a Louisiana district judge who has received many accolades for his forward-thinking views about the use of technology to improve court proceedings, including text message reminders about appearances and calendars available online for scheduling.<sup>1</sup> He asked those attending the program if they had missed a dentist appointment in the last year. He said, "I know you haven't because one thing about dentists is they are relentless about sending text message reminders about appointments."

His practice of text message reminders to those with scheduled court appearances in his court has not only reduced the number of failures to appear in his court, but many self-represented parties have thanked him profusely, admitting they forgot to write down the date or had it on the wrong day. Considering the possible ramifications of a failure to appear, such as being arrested or losing a court case by default, it seems this judge's experiment is a success. So why is this not the standard practice in law firms the way it is in dentist offices?



Text message reminders are not always necessary. If you represent a corporation, it is perhaps not as important to provide a text reminder to the assistant general counsel you are working with for either a court appearance or an in-office appointment. They will enter the date in Outlook and get a reminder from that. But if you practice "people law," this practice is likely good for your law business and your clients. Like no-shows are a financial hit for dentists, particularly when it is a new patient, the same is true for lawyers. In private practice, we always tried to call those who missed and reschedule. But some never did, whether it was from the embarrassment of missing an appointment or hiring another lawyer in the interim, we never knew.

#### MANUAL TEXT MESSAGE REMINDER TOOLS

Years ago, a lawyer told me about her method of texting to and

from the law office. She bought an inexpensive burner phone and purchased more time for the phone as needed. She left it plugged in at the receptionist's desk, and it was used to text the clients. It would be a simple task for the receptionist to set aside 10 or 15 minutes each day to text out a few reminders for the next day; if anyone responded with a question or canceled, that employee is best set up to reschedule the appointment or get answers to questions.

A slightly more expensive version of that would be to buy a smartphone with a limited data plan. That would allow you to easily set it up to have the text come from the law firm's name and do more sophisticated tasks since many burner phones lack a camera or web browser. You could send a Maps link to the law office or a photo for example.

Either approach is simple and understandable as long as your receptionist is not overwhelmed with current duties. However, both are done manually and require a staff person's or lawyer's time to accomplish the task. That is not terrible, but a person may forget or run out of time. Still, if you improve from never texting reminders about appointments or appearances to doing it 90% of the time, it is a huge improvement that should result in fewer missed appointments.

#### AUTOMATED TEXT MESSAGE REMINDER TOOLS

In today's law offices, anytime you can automate a process, it is usually worth it unless the cost is prohibitive. In January 2020, I wrote about an Oklahoma lawyer who loved the app Apptoto:<sup>2</sup>

Apptoto will integrate with calendar software. That is, if we type an appointment into my calendar and type the client's cellphone number into the appointment, Apptoto will automatically pick up the meeting and will send a text to the client before the appointment, notifying them of the appointment. My secretary likes this feature because she can type an appointment into the calendar and does not have to take any extra steps. I learned to use Apptoto, and then all I had to do was tell the secretary to continue entering appointments into the calendar. I chose Apptoto precisely for this reason [my secretary was

concerned she'd have to do additional work and learn to use a new tool]. My secretary was very happy and thanked me for the choice I made. ...

I can program Apptoto to send the client a text at a specified time before the meeting. I've programmed my account to send each client two texts – one at 6 p.m. the day before the appointment and another text one hour before the appointment. I can also program Apptoto to send a client a different text message based on what I type into the appointment. For example, if I type 'appt' into my calendar, Apptoto will send the client a text saying, "Appt Reminder: You have an appointment with [my name] today at 4:30 p.m." If I type 'Court Appearance' into my calendar, Apptoto will send the client a text saying, "This is [my name]. You have a court hearing tomorrow on Monday, Nov. 4, at 1:30 p.m." The text will also ask the client to press 1 to confirm that they received the message.

Apptoto has set me up with a local number ... If the client texts a response, the client's text response will be emailed to me. If the client calls the number, the call will go to my landline.

When that lawyer gave me his glowing recommendation, Apptoto was \$29 per month. Now the starter pack is \$39 per month, which will link to three calendars and provide 400 auto messages (essentially each text or email).<sup>3</sup>

Capterra lists its top 10 text message reminder tools.<sup>4</sup> Apptoto is included. The highest rated is DoctorConnect, and several others have names linked to the medical profession. DoctorConnect's minimum pricing is \$210 per month. It is HIPAA compliant and has advanced features, including payment reminders.

#### INTEGRATED TEXT MESSAGE REMINDER TOOLS

We can all appreciate that the most affordable technology tool is the one we already have and are paying for but haven't yet utilized or discovered. The developers of practice management software tools appreciate the increasing use of text messages and that these client communications need to be saved in the client file like other communications. Many practice management solutions are now incorporating their own text message solution or integrating with preferred text message providers. Here are a few examples.

MyCase has integrated two-way text messaging so a lawyer can send a client text messages within the MyCase desktop or mobile app and have those conversations retained within the client case file. A subscription to the Pro plan is required at \$59 per user per month.

PracticePanther launched its text messaging application within its practice management solution in late 2021. It's only available with the Business plan at \$89 a month. They offer time capture, event and reminder alerts using a unique phone number for your firm that

The developers of practice management software tools appreciate the increasing use of text messages and that these client communications need to be saved in the client file like other communications. Many practice management solutions are now incorporating their own text message solution or integrating with preferred text message providers. they will assign when you set up text messaging within their product.

Clio provides text messaging, including calendar notifications and reminders, in its Essentials plan. So if you are a Clio EasyStart base-level subscriber, it might make sense to upgrade to Essentials for an additional \$30 per user per month. If you are already a Clio Essentials subscriber and haven't set up text reminders yet, it is time to start implementing it since you already "own" the tool.

CosmoLex and Rocket Matter, both now owned by ProfitSolv, do not offer texting tools within their practice management solution. However, both have a CRM (customer relationship management) suite of tools that includes the feature and many others. CosmoLex's CRM is an extra \$147 per month for up to three users. Rocket Matter's CRM package is an additional \$49 per user per month.

Smokeball has a Communicate feature that allows communications with clients via email or text, but the preferred method is via the free downloadable app.<sup>5</sup>

Using a texting tool provided by your practice management solution has the benefit of making sure all text messages are automatically saved to the client file. These tools are often much easier to use and save you time since they work within the PMS.<sup>6</sup>

#### SERVICES PROVIDING MORE COMMUNICATIONS TOOLS THAN JUST TEXT REMINDERS

To complete this roundup, I wanted to take a deeper dive into a messaging platform with more CRM features. I noted on Bob Ambrogi's *LawSites* blog that Case Status, "a mobile client portal and messaging platform with a primary focus on consumer law firms, has raised \$5 million in a Series B round, bringing its total funding to over \$11 million."<sup>7</sup> We met with some of Case Status's employees to review its features over Zoom, and it has some impressive features.

While Case Status is referred to as a mobile client portal, I've always looked at portals as something that could provide the client access to digital copies of the documents in their file that they could log in to view at any time. I would describe Case Status as a powerful client communication hub. I also suspect many of their subscribers also subscribe to a practice management system.

But that is not intended to diminish what Case Status does. While I won't quote too much from their marketing material, one customer recently participated in a Case Status webinar where the law firm reported a 30% reduction in phone calls from current clients, a 90% reduction in emails from current clients and a triple-digit percentage increase in Google reviews. Those results would draw a lot of attention in most law firms.

The law firm communicates with its clients through a mobile app that is branded for the law firm. The client installs the "Johnson and Smith, Lawyers" app on their mobile device. If your firm has wanted to have a law firm app, here it is. All Case Status communications are sent to the client's mobile phone, but the features go beyond simple texting. There is a client dashboard full of client information, including a progress bar showing how the status of their matter is proceeding. One very interesting aspect of this is the ability to place a client matter "on hold." When the client logs in to the app, the display is colored red and shows the message, "Your matter is on hold." It also indicates what the client needs to do to take the matter off hold, e.g., complete a

client information sheet, schedule a doctor's appointment or make the retainer payment.

The service recognizes a phone set to a language other than English and translates the messages to that language. It also has mass messaging capabilities, so you can easily wish all your clients a happy holiday or let them know the office will be temporarily closed for bad weather. There is no payment app included, but you can easily use the service to send a client a payment link via messaging.

Another interesting feature is having clients give the firm a rating at various stages in the representation. If the client is giving a higher rating, like a Net Promoter Score of 9 or 10, they are encouraged to write a Google review. Conversely, if you are receiving an NPS of 5, the app prompts the law firm to contact the client to see what can be done. But this is not cheap. While a price quote from the company depends on several factors, a subscription for unlimited users in a small law firm could cost \$350-\$400 a month.

#### **BEST PRACTICES**

In my opinion, the best practice today with text reminders is to be a bit relentless:

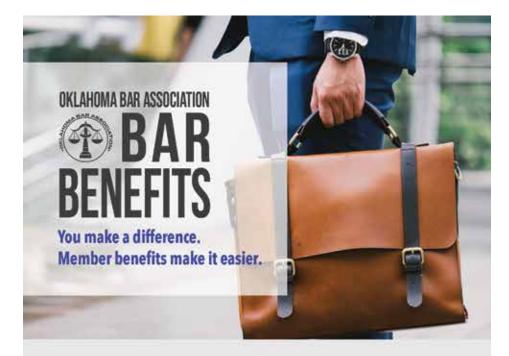
- Send a reminder message a few minutes to an hour after the appointment is scheduled to help a client or potential client get it on their calendar,
- Then send another reminder 48 hours before the appointment (or hearing) and
- 3) A final reminder on the morning of the consultation.

As you can see, there are several methods of text message interaction with your clients available with today's tools. Whatever tool you employ, I believe you will see a financial benefit from confirming your clients' appointments, particularly when it is a new client deciding whether to retain the firm. Cutting down on "no-show" appointments or failure to appear in court situations is in everyone's best interest, clients and lawyers alike.

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

#### ENDNOTES

- 1. www.onlinejudge.us/bio.
- 2. "Generational Changes in Communication Styles," OBJ, January 2020, https://bit.ly/3Fe41dS.
  - 3. www.apptoto.com/pricing-gecko.
  - 4. https://bit.ly/3FJOow1.
  - 5. www.smokeball.com/communicate.
- 6. Some of the rates noted above require an annual prepayment.
  - 7. https://bit.ly/3hlHmV4.



# **OPENING YOUR LAW PRACTICE**

#### **DID YOU KNOW?**

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

# **CLOSING YOUR LAW PRACTICE**

#### **DID YOU KNOW?**

The OBA Management Assistance Program offers a collection of resources on closing a law practice.

#### CONTACT

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

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# **Meeting Summary**

*The Oklahoma Bar Association Board of Governors met Nov. 2, 2022.* 

#### **REPORT OF THE PRESIDENT**

President Hicks reported he met with the chief justice of the Oklahoma Supreme Court to advise of the selection of the new executive director, negotiated and finalized terms of employment with the new executive director and finalized terms of employment with executive director emeritus. He also attended the Southern Conference of Bar Presidents in Austin, Texas, participated in planning the Annual Meeting and attended the TU College of Law luncheon.

#### REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended the District Attorneys Council board meeting and a meeting of its Technology Committee, the Oklahoma District Attorneys Association board meeting, the Southern Conference of Bar Presidents meeting in Austin, Texas, and the OU College of Law luncheon. He is continuing to work on 2023 appointments and has had numerous conversations with Executive Director Williams on various topics.

## REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he worked with the Oklahoma Bar Foundation on implementing the new IOLTA rules. He is also planning to attend several committee and section meetings that will occur during the Annual Meeting.

#### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended Annual Meeting preparation meetings as well as the Southern Conference of Bar Presidents meeting in Austin, Texas, where he beat the State Bar of Texas president at a Texas trivia contest.

#### REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended the Southern Conference of Bar Presidents in Austin, Texas, and the OCU School of Law luncheon.

#### **BOARD MEMBER REPORTS**

Governor Bracken reported he attended the Oklahoma County Bar Association board meeting, the OCU School of Law luncheon and a meeting of the Mock Trial Committee. He will speak at an upcoming OCU Health Law Section meeting about medical malpractice litigation. Governor Conner reported he attended the Garfield County Bar Association meeting. Governor Dow reported by email she attended the Family Law Section monthly meeting, the Cleveland County Bar Association monthly meeting and the Oklahoma County Bar Association Family Law Section meeting. Governor Garrett reported she attended the TU College of Law luncheon and

presented the OBA Outstanding Senior Law Student Award. She also chaired the Cannabis Law Committee meeting. Governor Hilfiger reported he attended the Muskogee County Bar Association meeting and CLE program. Governor Smith reported she attended the Diversity Committee meeting, where Diversity Award Dinner logistics were finalized, and the OCU School of Law luncheon, where she presented an OBA Outstanding Senior Law Student Award. She also attended the OCU School of Law Brennan Lecture. Governor Vanderburg reported he attended meetings of the Oklahoma Municipal League, Oklahoma Association of Municipal Attorneys and OMGAA. He attended the October meeting of the Cost Administration Implementation Committee and two meetings of the CAIC subcommittee that is working on legislative language on behalf of the full committee. He also attended the Oklahoma Association of Municipal Attorneys Board of Directors meeting, the Oklahoma Municipal Judges Association Board of Directors meeting, the two-day OMJA Fall Conference and the business meeting of the OMJA membership, where he was reelected as treasurer. Governor White Jr. reported he presented the Professionalism Moment for the Tulsa County Bar Association. He also attended the Legal Internship Committee meeting.

#### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended the Access to Justice Summit. The YLD will meet during the Annual Meeting and announce the results of its recent election.

#### **BOARD LIAISON REPORTS**

President-Elect Hermanson reported the **Membership Engagement Committee** will meet during the Annual Meeting. Governor Vanderburg reported the **Rules Committee** is considering three changes to be taken up during its meeting during the Annual Meeting. Past President Mordy reported the Lawyers Helping Lawyers Assistance **Program Committee** is hosting a three-hour "Wellness Matters" CLE program during the Annual Meeting. He also said discussions are taking place about better connecting lawyer discipline issues to substance abuse and improving probation/diversion options for addiction treatment. Governor Hilfiger reported the **Law Day Committee** will meet during the Annual Meeting. Governor Garrett reported the Cannabis Law Committee met and is considering a name for its first Cannabis

Law CLE program. Vice President Pringle reported the **Legislative** Monitoring Committee will meet during the Annual Meeting, and he also announced Shanda McKenney of Oklahoma City will take over as committee chair and S. Shea Bracken of Oklahoma City will serve as co-chair. Governor Smith reported the **Diversity Committee** is hosting its annual Diversity Awards Dinner during the Annual Meeting and invited all board members to attend. Governor Bracken reported the Solo & **Small Firm Conference Planning** Committee has met and is searching for a new chairperson.

Past President Mordy reported the Lawyers Helping Lawyers Assistance Program Committee is hosting a three-hour "Wellness Matters" CLE program during the Annual Meeting. He also said discussions are taking place about better connecting lawyer discipline issues to substance abuse and improving probation/diversion options for addiction treatment.

#### PRESIDENT-ELECT HERMANSON'S APPOINTMENTS

President-Elect Hermanson proposed to submit the following names to the governor as suggestions for appointment of a term that will expire July 27, 2029: Kirk Boersma, Blackwell; Mike Mordy, Ardmore; Miles Pringle, Oklahoma City; and David Cummings, Ponca City.

Board of Editors – The board passed a motion to approve the reappointment of Melissa DeLacerda, Stillwater, as chairperson; term expires Dec. 31, 2023.

Clients' Security Fund – The board passed a motion to approve the reappointment of Micheal Salem, Norman, as chairperson and Peggy Stockwell, Norman, as vice chairperson; terms expire Dec. 31, 2023. The board passed a motion to approve the appointment of members Stephen R. Stephens, Stillwater; Bryan R. Lynch, Oklahoma City; and Peggy Stockwell, Norman; terms expire Dec. 31, 2025.

MCLE Commission – The board approved a motion to appoint Kimberly Hays, Tulsa, as chairperson; term expires Dec. 31, 2023.

Oklahoma Indian Legal Services Board of Directors – The board passed a motion to approve the reappointment of Christine Pappas, Ada; term expires Dec. 31, 2025.

### APPROVAL OF FINAL SALARY SCHEDULE

The board passed a motion to approve the 2023 salary schedule and final amendments to the budget.

#### UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the 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 December, 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 held Friday, Jan. 20, at the Oklahoma Bar Center in Oklahoma City.

# Looking for an OBJ article?

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### **BAR FOUNDATION NEWS**

# Meet 2023 OBF President Judge Deanna Hartley-Kelso



#### Deanna Hartley-Kelso

Law School:	Tulsa University College of Law		
Graduation Year:	1993		
Current Employer:	Chickasaw Nation district judge and assistant professor of business administration at East Central University		
Location:	Most days I can be found in Ada, either at the Chickasaw Courthouse or on campus at ECU. On a really good day, I can be found in Roger Mills County on our family farm.		

#### Why did you decide to be a lawyer?

Perry Mason and Harper Lee are primarily to blame. My father was also a strong influence. He worked as a labor contract negotiator in the automotive industry.

#### What is one thing you're glad you tried but would never do again? A huge, multistory waterslide.

#### Are there any social norms that completely baffle you?

Yes, there are probably many. I really like the line from *Ted Lasso*, where he's just about to win the dart game and proposes that people should be curious instead of judgmental.

#### What is your biggest pet peeve with modern technology?

I have made peace with most of my technology-related anxieties as a result of using Zoom during COVID for both the district court docket and classes at the university. However, the sense that one can never really escape constant electronic contact can be tiring. Also, I occasionally suffer from breaking news fatigue syndrome.

#### What is on your bucket list?

Probably like most people, I'd like to have more time for fun with family and friends. I'd like to travel more. I've also often thought it might be interesting to assemble the stories of female lawyers over a range of different generations (I've heard a lot of crazy stories over the years).

### Explain the leadership roles you hold in professional and/or community settings and why these responsibilities are important to you.

As a Chickasaw lawyer, I have been so blessed to have a front-row seat for much of the development of our tribal government and the growth of business operations over the last 20 years. It is important to me to be a part of an organization moving forward in pursuit of positive solutions to societal challenges.

As a university professor, I enjoy the teaching process and continue to be motivated by the positive impact it can create in the lives of others. Many of my students are first-generation college students – I was a first gen as well. I really enjoy that connection with my students.

### What would you tell current law students and young associates about the importance of professional and civic responsibility?

There is nothing more rewarding than using your education and training to help others. In helping others, you will embark on new adventures, make new friends and find purpose in your work.

#### What are your goals as 2023 OBF board president?

I plan to continue to facilitate growth for the OBF endowments, increase public awareness about our mission and increase our connections with underserved communities all over Oklahoma.

# PARTNER WITH THE OKLAHOMA BAR FOUNDATION

Make access to justice a priority in your charitable giving!

#### **Partners Advancing Justice**



Partners Advancing Justice Individual giving program – giving starts at

\$10/month or \$100/year.



Community Partners for Justice Group annual giving program – giving starts at \$1,000



#### Legacy Partners for Justice

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



## Give Now!

#### More Ways to Support the OBF



#### Cy Pres

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



#### Memorials & Tributes

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

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#### **Unclaimed Trust Funds**

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



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Exp. Date: Security Code:	and a second		Bank:
Signature:	Date:		d to OBF at: 53036, Oklahoma City, OK 73152

# A More Involved YLD Lays the Path for a Stronger Legal Community

By Caroline M. Shaffer Siex

**NEW YEAR OFFERS THE** opportunity to conquer new and old challenges, and I am elated that I am stepping into the New Year as YLD chair. Over the years of serving on the YLD Board of Directors, I have been rewarded with opportunities to help our community. The board has given me amazing experiences. From planning and organizing hospitality suites to assembling bar exam survival kits, my opportunities have

been plentiful. Now, I can lead and guide other YLD board members to help serve our bar and community.

The great journey of life can be unpredictable, and we have certainly felt some unpredictability together. In recent years, the pandemic certainly proved a barrier to in-person events. I have followed several YLD leaders who handled some of the hardest times to be in charge of a board. I am incredibly grateful to follow in their



OBA YLD members assemble bar exam survival kits.

footsteps. As the late David Bowie once said, "I don't know where I'm going from here, but I promise I won't bore you."

#### THERE WILL BE A FOCUS FOR THE YLD TO HOST IN-PERSON EVENTS

I am following my friend and longtime community service advocate, Dylan Erwin, in this leadership role. Dylan brought so much energy into the YLD to rally around community service. I will be looking to him as immediate past chair to collaborate on community service ideas and steal some wisdom. One of my goals as chair is to ensure we have a Wills for Heroes event in 2023. As the daughter of a combat veteran, this project is dear to my heart, and it's an amazing opportunity for the YLD to serve those who served our country.

Another goal is to have YLD events that involve members of the whole OBA coming together. The YLD has revived the new lawyer swearing-in happy hour. It would be great to involve more non-YLD members who can also welcome our new bar members. Joining the bar is an exciting time for these new lawyers; I hope we start coming together to truly celebrate in unison. Lastly, the YLD organizing a CLE has gone on the back burner. Another goal for this year is to put on a CLE directed at young lawyers and the changing dynamics facing them in the field. A CLE targeted to young lawyers can help anyone who may still feel like they are navigating the basics of the legal practice.

#### INVOLVEMENT WITH THE YLD IS NOT LIMITED TO BEING ON THE BOARD

If I had a dime for every time someone asked how to get more involved, I could buy a half tank of gas! (That's a lot these days.) Of course, serving on the board is a great way to be involved, but it's not the only way. Some people may not be able to do the consistent commitment as a board member. Maybe the lawyer is no longer a YLD member, but they love supporting the YLD. There are plenty of ways for you to get involved.

The YLD will always encourage additional hands at community service events. Collaborating on our projects to give guidance and support is another valuable way to support the YLD's mission. Regularly, we need sponsors to help with our events to make them successful. Every small contribution can make a difference in the YLD's success. Support for young lawyers keeps the integrity of our profession strong and builds colleagues who can likewise return their support to non-YLD lawyers.

Until the next article, stay open to hope and new opportunities.

Ms. Shaffer Siex practices in Tulsa and serves as the YLD chairperson. She may be contacted at cshaffer@gablawyers. com. Keep up with the YLD at www.facebook.com/obayld.

### FOR YOUR INFORMATION



#### NEW OBA BOARD OF GOVERNORS OFFICERS AND MEMBERS TO BE SWORN IN JAN. 20

Chief Justice M. John Kane IV will swear in Brian T. Hermanson of Ponca City as OBA president on Friday, Jan. 20 at the Oklahoma Bar Center. New officers to be administered their oaths of office will be President-Elect Miles T. Pringle of Oklahoma City, Vice President D. Kenyon Williams Jr. of Tulsa

and Past President James R. Hicks of Tulsa. New board members to be sworn in are John E. Barbush, Durant; Nicholas E. Thurman, Ada; Jana Lee Knott, El Reno; Timothy Lee Rogers, Tulsa; and Caroline M. Shaffer Siex, Tulsa.

#### OKLAHOMA SUPREME COURT ELECTS LEADERSHIP FOR 2023-2024





Justice Kane

Justice Rowe

elected M. John Kane IV to serve as chief justice for a two-year term that began Jan. 1. Dustin P. Rowe was elected to serve as vice chief justice for the same biennium. Justice Kane was appointed to the

The Oklahoma Supreme Court has

state's highest court in 2019 by Gov. Kevin Stitt. He has served as vice chief justice since January 2021 and previously served as district judge in Osage County beginning in 2005.

Justice Rowe was also appointed to the Oklahoma Supreme Court in November 2019. Prior to his appellate appointment, he had been in private practice since 2001 and had been serving as a judge with the Chickasaw Nation.

#### JOHN MORRIS WILLIAMS WAY

In honor of past **OBA** Executive Director John Morris Williams' nearly 20 years of service to the OBA, 18th Street in front of the bar center has been renamed John Morris Williams Way. We congratulate him on his retirement and are grateful for his dedication and leadership throughout the years!



#### **IMPORTANT UPCOMING DATES**

Don't forget, the Oklahoma Bar Center will be closed Monday, Jan. 16 in observance of Martin Luther King Jr. Day and Monday, Feb. 20 in observance of Presidents Day.

#### COURT OF CRIMINAL APPEALS JUDICIAL ASSIGNMENTS ANNOUNCED

The five judges of the Oklahoma Court of Criminal Appeals voted in conference to name Scott Rowland presiding judge and Robert Hudson vice presiding judge of the court for 2023 and 2024.

Judge Rowland has served as presiding judge since Aug. 1, 2021, finishing the term of Justice Dana Kuehn, who was appointed to the Oklahoma Supreme Court. He is from Oklahoma City and was appointed to the court in 2017.

Judge Hudson also currently serves as vice presiding judge, having been elected to that position by the court in January 2021. He is from Guthrie, was appointed to the court in 2017.

#### COURT OF CIVIL APPEALS ELECTS NEW LEADERSHIP

E. Bay Mitchell III of Oklahoma City will serve as chief judge, and Deborah B. Barnes of Tulsa will serve as vice chief judge. The following have been selected to serve as presiding judge for their respective divisions: Brian J. Goree, Oklahoma City, Division I; Jane P. Wiseman, Tulsa, Division II; Thomas E. Prince, Oklahoma City, Division III; Gregory C. Blackwell, Tulsa, Division IV. These positions are all a one-year term that began Jan. 1.



From left Bart West, legal assistant; Donna Rogers, office manager; Brad West, managing partner; Captain Stacey Connelly, Salvation Army of Shawnee; and Josh Chastain, Salvation Army volunteer.

#### **A TRADITION CONTINUES**

The West Law Firm, located in Shawnee, held its 14th annual coat donation program in December. Since 2009, the firm has purchased 3,435 new coats and related attire for distribution through the Salvation Army of Shawnee's Angel Tree Program. "We're so proud of our affiliation with the Salvation Army in this annual coat donation program," said Brad West, managing partner of the West Law Firm and a Salvation Army of Shawnee board member. "This program continues to be one of the firm's most important community service activities of the year."



#### LEGISLATIVE KICKOFF SET FOR 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 would like to attend.

#### DURANT LAWYER APPOINTED TO BOARD OF GOVERNORS



John E. Barbush has been appointed to serve a threeyear term on the OBA Board of Governors. His term begins Jan. 1.

He will represent Supreme Court Judicial District Two, which consists of Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, Marshall, McCurtain, McIntosh, Pittsburg, Pushmataha and Sequoyah counties.

Mr. Barbush is a solo, civil trial attorney who practices in the areas of torts, business litigation, securities and family law. He is also an approved provider for OAMIC, representing attorneys in legal malpractice cases. He is a trained mediator and has served as an arbitrator. Mr. Barbush graduated from Ambassador University, where he was a student-athlete and received a bachelor's degree in business administration before attending the OCU School of Law. He was part of the 2017-2018 OBA Leadership Academy class and has served as a delegate and an executive committee member of the Oklahoma County Bar Association Family Law Section.

He and his family moved to Durant so his wife, Judge Amy J. Pierce, could serve the Choctaw Nation of Oklahoma as chief district court judge. They have two children, Ella and Mac, who are also proud members of the Choctaw Nation. Mr. Barbush is the 2023 Law Day Chair for the Bryan County Bar Association.



#### LHL DISCUSSION GROUP HOSTS FEBRUARY MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Feb. 2 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Feb. 9 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.

#### THE BACK PAGE: YOUR TIME TO SHINE

We want to feature your work on "The Back Page!" Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry, photography and artwork are options too. Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen, lorir@okbar.org.

#### CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

in

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.



# SAVE THE DATE 2023 LEGISLATIVE KICKOFF

### JAN. 27, 2023 | 9 A.M. | OKLAHOMA BAR CENTER

- 90 Bills in 90 Minutes
- Cannabis Bills
- Criminal Law
- Elder Law and Estate Planning
- Government Law
- Civil Procedure and Courts
- Environmental and Natural Resources
- Education Law
- Native American Law
- Family Law
- Legislative Panel

#### **RSVP TO ALISHAD@OKBAR.ORG**

#### **ON THE MOVE**

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

Deric McClellan has rejoined Crowe & Dunlevy as an associate in the Tulsa office. A member of the firm's Litigation & Trial; Appellate; Energy, Environment & Natural Resources; and Real Estate practice groups, Mr. McClellan returned to the firm after serving as a career law clerk to Judge John E. Dowdell of the U.S. District Court for the Northern District of Oklahoma for the past two years. Previously, he served as a law clerk to Judge Stephanie K. Seymour on the 10th Circuit Court of Appeals.

Tiffany L. Landry has joined the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds as an associate. She graduated from the Southern University Law Center in 2016 and began her career in Baton Rouge, Louisiana. Ms. Landry practices primarily in the area of civil litigation, defending against claims of medical negligence, general liability and claims arising from motor vehicle collisions and insurance bad faith.

**Sohail Punjwani** has joined the Oklahoma City office of Ogletree Deakins as an associate. Before joining the firm, he served as in-house counsel for one of the largest human capital management companies. In that role, he counseled the company's human resources department and executives and managed litigation. Mr. Punjwani is SHRM-CP certified. He received his J.D. from the OCU School of Law.

Genni Ellis has joined McAfee & Taft as the newest attorney in its Intellectual Property Group. Her practice encompasses all areas of intellectual property law, including patents, trademarks, copyrights, trade secrets and related licensing and litigation. Her patent practice, which includes preparing and prosecuting domestic and international plant, design and utility patents, is focused on the technical areas of life sciences and chemistry. She is a member of the firm's Agriculture and Equine, Biotech, Cybersecurity and Privacy, and **Energy and Natural Resources** groups. She received her J.D. from the OU College of Law in 2017. Prior to entering law school, she worked for the Alaska Department of Health and the Alaska Department of Education & Early Development. While in law school, she served as an intellectual property legal intern for the U.S. Navy's Office of Counsel - Naval Surface Warfare Center, where she researched and drafted patent applications for submission to the U.S. Patent and Trademark Office on behalf of the U.S. armed forces.

#### 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 March issue must be received by Feb. 1.* 

#### **KUDOS**

**Judge Brett Morton**, a citizen of the Chickasaw Nation, was sworn in as a district judge of the Chickasaw Nation District Court April 1, 2022.

Matthew B. Wade has been named managing attorney of the Abel Law Firm. With more than 17 years of experience, Mr. Wade is an experienced trial lawyer representing Oklahomans in catastrophic injury cases involving trucking collisions, products liability, medical malpractice and insurance bad faith. He serves as board president of CASA Oklahoma, chairperson of the OBA Insurance Law Section and is a member of the OBA Civil Procedure and Evidence Code Committee. Along with teaching several classes at the OU College of Law Paralegal Program, Mr. Wade is a frequent guest speaker at the OU College of Law and the University of Central Oklahoma.

#### AT THE PODIUM \_

Mary Ellen Ternes spoke at OKC Beautiful's Sustainability Social Hour on Dec. 14 about the national and global status of plastic pollution law and policy and how it impacts Oklahoma. Ms. Ternes is an environmental attorney, partner at Earth & Water Law LLC and senior fellow for law and policy for the Global Council for Science and the Environment.

# MANDATORY CONTINUING LEGAL EDUCATION CHANGES

#### **OK MCLE RULE 7, REGULATION 3.6**

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

#### IN MEMORIAM

**Denis K. Abercrombie** of Georgetown, Texas, died May 10, 2022. He was born June 15, 1956, in Tulsa. After studying at Westminster College and Trinity University, Mr. Abercrombie earned his J.D. from the TU College of Law in 1982. He went on to have a long career as an attorney in the oil and gas industry. Memorial contributions may be made to the Texas Bar Foundation.

**Edward R. Adwon** of Norman Edied Nov. 18. He was born July 26, 1933, in Oklahoma City. Mr. Adwon served in the U.S. Army from 1953 to 1955 when he was honorably discharged. He graduated from OU with a Bachelor of **Business Administration in 1957** and received his J.D. from the OU College of Law in 1960, second in his class. He was a member of the Order of the Coif, Phi Alpha Delta Law Fraternity and Omicron Delta Kappa honor society. He was selected for the U.S. Attorney General's Honors Program and worked in the Department of Justice Antitrust Division from 1960 to 1962. After a brief stint in private practice, he worked for the Oklahoma Insurance Commission as general counsel and assistant commissioner and Conoco as attorney, general attorney and corporate counsel. After retiring in Norman, he operated the international pantry from 1998 to 2003. Mr. Adwon was president of the Firehouse Art Center, president and treasurer of the OU Theatre Guild and president of the Performing Arts Studio. He also served as chair of the Firehouse Art Center's Chocolate Festival and on the Norman Planning Commission as a member and

eventually chair. He was a founding member of Holy Ascension Orthodox Church in Norman, where he served as chairman of the Parish Council. Memorial contributions may be made to the Holy Ascension Orthodox Church.

ack Robert Anderson of Tulsa died Dec. 5. He was born Oct. 10, 1944, in Tulsa. Mr. Anderson attended Will Rogers High School, TU and received his J.D. from the TU College of Law in 1968. He served two years with the U.S. Army before beginning his law career with PepsiCo. After several years in private practice, he joined Riggs Abney law firm, where he retired after 27 years. He was a Bible teacher and served actively in his church, initially First Baptist Church of Tulsa and later South Tulsa Baptist Church and Liberty Church in Broken Arrow.

**F**red Wayne Barrowman of Bartlesville died Nov. 1. He was born April 18, 1946, in Nowata. After graduating from Nowata High School in 1964, Mr. Barrowman attended Northeastern State University in Tahlequah, where he obtained his bachelor's degree in economics and accounting. He was a Vietnamera U.S. Army veteran, serving from 1968 to 1970, and a corporate attorney for ONEOK for 34 years.

**J** oseph Francis Bufogle of Tulsa died Nov. 27. He was born July 1, 1953. Mr. Bufogle received his J.D. from the TU College of Law in 1983. He was a shareholder, director, operator and trial counsel at Bufogle & Associates PC. He served in numerous community associations, including on the boards of Heritage-West Art Inc. and the Center for Counseling and Education Inc. He also belonged to many professional associations and was a lifetime member of Alpha Phi Omega, a national service fraternity.

C haron J. Daniels of Basehor, J Kansas, died April 30, 2022. ■ She was born Jan. 3, 1944, in Ransom, Kansas. A 1962 graduate of Ness City High School, she was co-valedictorian of her class and a recipient of the John Philip Sousa Award. She studied piano and music education at Mount St. Scholastica College before transferring to Fort Hays State University. As a singer and piano accompanist, she participated in the Impromptus 1965 USO tour of the Pacific Command. Ms. Daniels earned a bachelor's degree in political science at FHSU and received her J.D. from the OU College of Law in 1976. After practicing as an oil and gas title attorney in Oklahoma City, she moved to Pittsburg, where she worked on coal property title. In 1985, she accepted a position as executive director of the Energy and Mineral Law Foundation and led the organization for more than 33 years, retiring in June 2018. During her tenure as EMLF director, the OU College of Law honored Ms. Daniels as an inaugural recipient of the Owen L. Anderson Distinguished ONE Award for her impact on the oil and gas and resources community. In 1996, she was also honored with the FHSU Alumni Achievement Award, a recognition of graduates who have made outstanding contributions to their community, state or nation.

William John Free of San Antonio died Nov. 6. He was born Dec. 9, 1943. Mr. Free studied economics at the University of Michigan, where he graduated in 1962. He received his J.D. from the OU College of Law in 1969. Following his graduation, Mr. Free started a long career with Southwestern Bell Telephone Co. In 1995, he retired and remained in San Antonio, where he enjoyed playing golf, driving fast cars and motorcycles and caring for the animals on his ranches in Dripping Springs, Texas, and Bandera, Texas. In 2022, Mr. Free and his wife moved to Mounds. Memorial contributions may be made to the Alzheimer's Association.

**R**ichard Lee Heath of Oklahoma City died Oct. 16. He was born Sept. 21, 1958, in Oklahoma City and grew up in Oklahoma City and Del City. He graduated from Del City High School in 1976 and received his bachelor's degree in business administration from OU in 1980. Mr. Heath obtained his J.D. from the OCU School of Law in 1990. He was employed for several years with Farmers Insurance Company Inc. before being admitted to practice law in 1991. He then opened his own law firm, Richard L. Heath PC, where he practiced until his death. In his spare time, he enjoyed tailgating, OU football, attending concerts and traveling.

**Joe C. Houk** of Fairview died Nov. 8. He was born Dec. 28, 1928, in Enid. Mr. Houk graduated from Fairview High School in 1947 and attended OU, where he was a member of The Pride of Oklahoma Marching Band and received his bachelor's degree. **In**  1951, he entered the U.S. Army as a lieutenant and served overseas in the Army Artillery from 1951 to 1953. He continued in the Army Reserve from 1953 until 1966. He was promoted to first lieutenant in 1953 and captain in 1958. Mr. Houk received his J.D. from the OU College of Law in 1955. He served as an attorney for the city of Fairview and the Fairview School System for many years. He enjoyed sports and refereed football and basketball. He was also a private pilot and owned several aircraft. He was an active member of the First United Methodist Church, the Fairview Chamber of Commerce and the Masonic Lodge. He participated in many fundraising projects for the Fairview school system and the Major County community.

William Hugh James of Yukon V died Oct. 31. He was born Feb. 2, 1946, in Oklahoma City. Mr. James graduated from Northwest Classen High School in 1964 and from OU in 1968 with a bachelor's degree in business administration. He received his J.D. from the OU College of Law in 1973. He then served our country in the U.S. Navy as a lieutenant junior grade. Mr. James spent his legal career as an assistant attorney general, public defender, assistant district attorney and in private practice in Yukon. He loved his family and enjoyed the sport of wrestling. Memorial contributions may be made to the American Cancer Society Cancer Action Network.

**Petra Lois DeLashmit Martin** of Oklahoma City died Sept. 19. She was born May 10, 1970, in Springfield, Missouri. Ms. Martin graduated from Fair Grove High School, Missouri State University and went on to complete an MBA and criminal justice master's degree in 2003 from Lindenwood University. She earned her J.D. from the OCU School of Law in 2012 and practiced law in Oklahoma City until her death. She donated many hours and dollars to rescuing and helping animals. Memorial contributions may be made to Bella SPCA.

uentin P. McColgin Jr. of Madison, Mississippi, died Oct. 6, 2020. Mr. McColgin was a 1962 graduate of OU. He received his J.D. from the OU College of Law in 1965 and started a career in law that spanned nearly five decades. After beginning his general practice in 1965, he was an attorney advisor and trial attorney with the Federal Trade Commission until 1979, after which he was appointed administrative law judge for the Occupational Safety and Health Administration until 1983. He served as administrative law judge for the Office of Administrative Law Judges, United States Department of Labor (Federal Workers' Compensation) until 1996. He then served as administrative law judge for the Social Security Administration until 2002, when he reentered private practice in Jackson, Mississippi, until his retirement in 2014. Mr. McColgin was a member of the Mississippi and Oklahoma bar associations and the National Organization of Social Security Claimants' Representatives.

**A uburn L. Mitchell** of Austin, Texas, died Nov. 22. He was born May 24, 1941. Mr. Mitchell earned his bachelor's degree from Oklahoma A&M and received his J.D. from the OU College of Law in 1967. During his career, he worked at the University of Texas at Austin.

**Rece B. Morrel Sr.** of Tulsa died Nov. 27. He was born March 20, 1940. Mr. Morrel received his J.D. from the TU College of Law in 1966 and worked for various organizations before establishing Reece Morrel & Associates Inc. in 1973 with a colleague. He practiced primarily in tax law, real estate and estate planning.

**T**udge William J. Musseman Sr. of Colorado Springs, Colorado, died July 10, 2022. He was born Nov. 7, 1944, in Norman. Judge Musseman grew up in Tulsa and graduated from Daniel Webster High School. He served his country in Vietnam and after returning home, served his community as a police officer in Tulsa. He received his J.D. from the TU College of Law in 1974 and worked as a prosecutor and judge. Judge Musseman later served as a special judge in Tulsa and as an administrative law judge in Michigan and Colorado. His judicial career spanned four decades and impacted thousands of people. Judge Musseman was a sports enthusiast and an outdoorsman, spending many hours at ballparks, soccer fields and sports complexes, rooting on his children and grandchildren. He was a lifelong St. Louis Cardinals, Oklahoma Sooners and Cleveland Browns fan. He was also an avid hunter and golfer, had a zest for life and was always excited for a new adventure. Memorial contributions may be made to the Wounded Warrior Project.

**TAT**illiam Wayne Nelson of ▼ The Woodlands, Texas, died Nov. 18. He was born Jan. 26, 1938, in Oklahoma City. Mr. Nelson was the valedictorian of his high school class, a multisport varsity athlete and an award-winning public speaker. He attended OU, where he graduated with bachelor's degrees in history, literature and philosophy. He was an active member of the Delta Tau Delta fraternity and a lifelong Sooner. He received his J.D. from the OU College of Law while participating in the Army ROTC and serving on the Oklahoma Law Review. Upon graduating from law school, he received his commission to the U.S. Army, where he entered the Judge Advocate General's Corps. While in the Army, he attained his LL.M. from the George Washington University Law School in Washington, D.C. Mr. Nelson had a long and successful career as a corporate attorney, primarily in the oil and gas industry. After positions with Exxon and Marathon, he retired in 1998 from Shell Oil in Houston. He was considered a biblical scholar and enjoyed serving The Woodlands Methodist Church for more than 20 years.

**Fichael L. Nemec of Tulsa** Mied Nov. 26. He was born Aug. 1, 1949, in Tulsa. Mr. Nemec was an Eagle Scout and a 1967 graduate of Central High School. He received a bachelor's degree in political science from TU and served two years in the Mennonite Voluntary Service as alternate service during the Vietnam era. In 1976, Mr. Nemec earned a J.D. from the TU College of Law and was in private practice for two years before joining the Oklahoma State University Foundation in 1978 as director of deferred giving. He worked in similar capacities for several other organizations until he returned to private practice. In

1989, he joined Hall, Estill, Gable, Golden & Nelson PC, where he became a shareholder in 1993. During his legal career, he received many awards and volunteered for several organizations. He served as a T-ball coach, cub master and was active in his church choir and the Tulsa Founders Chorus. He loved playing the piano, singing, fishing, hiking, playing chess and art. Memorial contributions may be made to Global Gardens in Tulsa.

inda G. Scoggins of Oklahoma LCity died Nov. 20. She was born Nov. 2, 1947, in Denison, Texas. Ms. Scoggins graduated from Durant High School in 1966, received a bachelor's degree in economics from OU in 1969 and a J.D. from the OU College of Law in 1981. She began her career as a marketing research analyst for several newspapers but found her true life's calling when she enrolled in law school and worked her way to editor-in-chief of the Oklahoma Law Review. Upon graduating, she embarked on a 42-year career where she served as partner in some of the most prestigious firms in Oklahoma City and earned recognition from many industry organizations, including receiving the Mona Salyer Lambird Spotlight Award in 2007 and the OBA Outstanding Service to the Public Award in 2013. She co-founded Scoggins & Cross, a healthcare law practice focused on the representation of physicians and other healthcare providers across the state. Ms. Scoggins was active in community philanthropic and university activities in Oklahoma City and Norman, and she served on the boards of Variety Care, Variety Care Foundation and Planned Parenthood of Central Oklahoma. Her volunteer work for Planned Parenthood spanned 30 years,

including 18 years on the board and four years as board president. Most recently, she became heavily involved with the OU Women's and Gender Studies Department, serving on their board of advocates.

**Tichael Chandler Stewart** of Edmond died Nov. 22. He was born Feb. 1, 1938, in Oklahoma City and graduated with the first graduating class of Northwest Classen High School in 1956. Mr. Stewart was an avid athlete and was even asked to try out for his favorite team, the St. Louis Cardinals, out of high school. He attended OU, was a member of the Kappa Sigma fraternity and graduated with a bachelor's degree in geology. He received his J.D. from the OU College of Law. Upon graduation, Mr. Stewart served in the military JAG Corps. He continued his legal career as an assistant U.S. district attorney, followed by 40 years of private practice, where he received several awards, including admittance into the American College of Trial Lawyers. He loved the Oklahoma Sooners, playing golf with his many River Oaks friends and was passionate about studying the Bible and Crossings Community Church, where he was an active member for more than 30 years. Memorial contributions may be made to Wings Special Needs Community.

**Carl W. Young** of Edmond died Nov. 9. He was born Dec. 23, 1930, on a farm near Ada. **A veteran of the Korean War**, **he served four years in the U.S. Navy on the USS Marshall.** After returning from the service, he worked for Southwestern Bell for 32 years. During his years with the phone company, he received his bachelor's degree in accounting and his J.D. from the OCU School of Law in 1973. He practiced primarily in estate planning and tax preparation after the phone company divestiture. Mr. Young was an active member of St. Luke's United Methodist Church, teaching Sunday school and serving on various boards and committees. He also was active in leadership with United Methodist Men and attended many local, regional and international conferences with the United Methodist Church as a lay delegate. Memorial contributions may be made to the United Methodist Men Foundation.

**D** ill **J**. Zimmerman of Westworth **D**Village, Texas, died July 27, 2022. He was born Aug. 13, 1932, in Coffeyville, Kansas. Mr. Zimmerman graduated in 1954 from Southern Methodist University with a Bachelor of Business Administration in accounting and finance and was a member of the school's Southwest Conference champion swimming team. He served in the U.S. Army from 1955 to 1957. He received his J.D., cum laude, from the University of Denver Sturm College of Law in 1964, where he served on the Law Alumni Council. After returning to north Texas, he served on several SMU alumni and advisory boards. Much of his legal career consisted of practicing before governmental agencies and at Congressional Committee hearings in Washington, D.C., antitrust litigation and handling negotiations and legal matters in South America, Europe and the Middle East. Mr. Zimmerman retired in 1996 as vice president and general counsel of Union Pacific Resources Co. (formerly Chamlin Petroleum). He was of counsel with Cantey & Hanger from 1996 until 2000. Memorial contributions may be made to SMU Athletics or the Humane Society of North Texas.

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

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#### ASSISTANT DISTRICT ATTORNEY

Location: Canadian and Garfield County Offices

Status: Full-Time, Immediate Opening

**Salary:** Commensurate with Experience and Qualifications

**Position Summary:** District Attorney Mike Fields seeks a prosecutor for DA District 4, which includes Canadian, Garfield, Kingfisher, Blaine and Grant Counties. All levels of experience will be considered. Primary assignment/office may be El Reno or Enid, but position will handle cases in both locations. Caseload assignments and responsibilities will depend upon successful applicant's skills, interests, and experience (if any). Compensation includes salary between \$50,000 and \$100,000 with full state benefits including retirement.

**To Apply:** Applicants should submit a cover letter, resume, and references by email to tommy.humphries@dac.state.ok.us.

#### Assistant District Attorney – District 5

Location: Comanche County, Lawton, Oklahoma

Status: Full-Time, Exempt, Immediate Opening

Closing: Open until filled

**Salary:** Commensurate with experience and qualifications (0-3 years: \$50,000-\$75,000) (3 or more years: \$75,000.00-\$95,000.00)

**Benefits:** Full State of Oklahoma benefits, including generous monthly allowance for health coverage, paid sick and vacation leave earned monthly. Paid holidays.

**Position Summary:** <u>District 5</u> is seeking an Assistant District Attorney for the Comanche County Office to perform a variety of professional duties, specifically: prosecution of criminal offenses, including misdemeanors and felonies; the ability to prosecute bench and jury trials. In addition, applicants must possess strong writing and research skills, and the ability to effectively communicate and work with law enforcement and other agencies.

Please submit resume with references, along with a letter to the Comanche County District Attorney's Office, 315 SW 5th Street, Room 502, Lawton, OK 73501 or via email to Kyle.Cabelka@dac.state.ok.us.

IN-HOUSE INSURANCE DEFENSE FIRM IS SEEKING A SENIOR ASSOCIATE with 10+ years of experience to join our well-established practice. Prior insurance defense experience required; jury trial experience is a must. The attorney in this position will be responsible for managing all aspects of litigation. Case work will include general liability defense to include premises liability, automobile accidents, etc. Some travel within the state will be required. Excellent Benefits Package available. Send Resume to attorneyposition2023@outlook.com.

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LASO will reimburse/cover costs of litigation, such as costs and fees AND hourly compensation. LASO will also provide training. LASO case types often involve family stability, housing stability, debt collections and earned benefits.

LASO clients can be seniors, veterans, survivors of domestic violence and single mothers with children. As a LASO contract attorney, you can recommend/limit the types of referrals received, and always decline.

#### **REQUIRED SKILLS:**

- Provide high-quality legal assistance to eligible clients on matters pertaining to their situations and civil matters.
- Strong interpersonal skills: able to work well with a wide range of people.
- Legal research skills.
- Ability to prepare for and present evidence at trial.
- Strong organizational and time management skills.
- Able and willing to continue professional development.
- Proficiency in PC applications.

#### **REQUIRED EXPERIENCE:**

Knowledge of and expertise of the law and legal system with regard to civil legal issues.

If you are interested, please contact or submit your resume to Michael Figgins at Michael.Figgins@LAOK.org.

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#### **POSITIONS AVAILABLE**

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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.

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The Ritchie Rock & Atwood Law Firm is seeking a General Civil Practice Attorney to join the firm's team in Shawnee, Oklahoma, and Pryor, Oklahoma.

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To apply please submit your resume by email to hgerhart@rrmalaw.com. You may also mail a resume to Ritchie, Rock & Atwood, P.O. Box 246, Pryor, OK 74362.

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**

THE MUSCOGEE (CREEK) NATION IS SEEKING AN ASSISTANT ATTORNEY GENERAL/PROSECUTOR. The Assistant Attorney General Prosecutor reports directly to the Attorney General and will assist in carrying out any function, duty, or responsibility delegated to them. They will assist in the prosecution of criminal, juvenile, elder, civil, or any other type of case or matter on behalf of the Muscogee (Creek) Nation. The Assistant Attorney General Prosecutor may be involved in all stages of taking a case from Inception to completion. This process includes, but is not limited to the following: Reviewing new in-custody arrest reports, out-of-custody reports and being able to set adequate bond recommendations to ensure the defendant's appearance at court. Able to assess which charges are appropriate for filing in the Muscogee (Creek) Nation District Court. Able to speak reasonably with victims of crimes, as well as law enforcement officers, to help ensure smooth continuity of case progression, and being able to bring the case to a successful completion that helps provide accountability for the offender, justice for the victim and both enhances and promotes the public safety and general welfare of the Muscogee (Creek) Nation. Must be able to communicate both respectively and effectively with outside agencies, and be adaptable to change, based on the needs of the Nation. MINIMUM REQUIREMENTS: Must be a graduate of an accredited law school, knowledgeable and/or have experience of Federal Indian law. Must have a valid Oklahoma Driver's License. PREFERRED REQUIREMENT: Knowledgeable and/or have experience of Federal Indian law. ADDITIONAL LICENSES: Must be licensed to practice law in any state and must be in good standing with that jurisdiction. Must be a member of the Muscogee (Creek) Nation Bar Association in good standing or be eligible to become a member. Visit our website for more information @ www.muscogeenation-nsn.gov.

DISTRICT ATTORNEY #24 IS SEEKING A FULL-TIME ASSISTANT DISTRICT ATTORNEY for the Creek County District Attorney's office in Sapulpa. Successful applicants must have the ability to prosecute misdemeanors/felonies from case screening through trial and possess strong writing, research and communication skills. This is a salaried position based on experience and qualifications, plus full state benefits. Please forward a résumé with references, if desired, to the District Attorney's Office, 222 E. Dewey Ave., Suite 302, Sapulpa, OK 74066 or call (918) 224-3921 for instructions on how to submit your résumé electronically.

#### **POSITIONS AVAILABLE**

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



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# Now Hiring DIRECTOR OF EDUCATIONAL PROGRAMS

The Oklahoma Bar Association, the leading provider of continuing legal education in the state of Oklahoma, seeks a director of educational programs. The position manages and directs the OBA's CLE Department and other educational events for the association. The OBA CLE Department offers comprehensive and unique live programming for Oklahoma lawyers and has an impressive list of online programs that are available to lawyers nationwide. The OBA is a mandatory bar association of 18,000 members with its headquarters in Oklahoma City.

#### **JOB SUMMARY**

The position is responsible for CLE development, advertising, planning and coordinating numerous continuing legal education programs annually, as well as planning and participating in organizational meetings, adult public education programs and the OBA Leadership Academy. CLE programs include live presentations and online learning opportunities. The director of educational programs is responsible for managing a staff of four employees, all pre- and post-program logistics, communication to program attendees and faculty members, administrative reporting, vendor and sponsorship coordination and providing on-site support to assigned programs. Salary commensurate with experience and excellent benefit package available to qualified candidates.

#### **JOB REQUIREMENTS**

- Five years of legal practice, CLE management and/or marketing experience
- Must be self-motivated, positive, dependable and creative
- Possess a high degree of integrity and work well with others to achieve common goals
- Highly organized and able to handle multiple projects and deadlines
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- Must be able to meet member needs in a fast-paced work environment
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- Strong oral, written and interpersonal communication skills and the ability to work effectively with a wide range of constituencies
- Ability to build relationships with faculty, participants and outside vendors
- Problem solver, quick thinker and idea generator
- Must be able to work within the limits of an inside office position plus haul and transport equipment or materials required to conduct a CLE seminar

#### **COMPUTER SKILLS**

- Must be able to function in a Windows desktop environment
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- Experience with online CLE presentations

Send cover letter and resume by Jan. 31, 2023, to janetj@okbar.org. All inquiries and applications will be kept confidential. The OBA is an equal opportunity employer.

#### THE BACK PAGE

# The Way of Man and Beast

By Rhonda McLean

#### FIRST, THE RUSTLING. THAT

noise. The noise that sounds, to me, like the omen of death. It's a noise I'd become slightly accustomed to, although I'll never be completely comfortable with it. Then the eyes. Small and beady. A look one way into soulless void, down a long instrument of destruction.

I began repeating to myself, "Breathe in. Breathe out. Relax your fingers. Relax your hands. Relax your neck and shoulders." I think of the platitude, "He's more afraid of you than you are of him." I realize whoever said that wasn't an ornithophobic who had 40 more minutes in a car with a loose Mississippi kite.

Cars pass us by, then slow to make sure they haven't hallucinated a large black bird looking out the back seat window of a car. The kite and I came to a mutual understanding. The back seat is his, the front is mine. As long as we both honor the understanding, everything will be just fine. We continue this detente for miles, each of us wary and untrusting of the other.

After what felt like an eternity, we arrived at our destination and laid down our collective arms. My retreat from the battlefield is immediate and swift. His is by a caring wildlife rehabilitator who is sure and fearless, ready to begin her examination of the soldier and determine the extent of whatever injury led him to this place.



Such is the way of man and beast. A never-ending tension of distrust and necessary respect for the other. A tension that too often results in harm to one side or the other. But if a raptor and an ornithophobic can share a 40-minute car ride in rush hour traffic, it gives one hope that we can all coexist.

Edmond lawyer Rhonda McLean is a volunteer transporter for WildCare Oklahoma, a wildlife rescue, rehabilitation and release facility in Noble.

#### obo Ie continuing legal education

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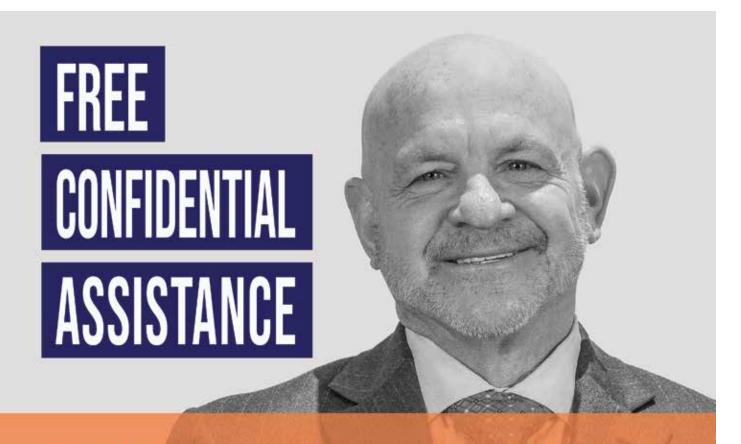
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