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THE OKLAHOMA BAR Journal

Volume 94 — No. 2 — February 2023

Appellate
Law

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APRIL 13 & 14, 2023

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BARRY AND JOHNNY ALBERT MEMORIAL MOCK TRIAL:

LEARNING FROM THE OKLAHOMA CRIMINAL JURY TRIAL MASTERS

Oklahoma County Case No CF-19-150 *State of Oklahoma v. Patrick Thao*

This program will provide a reenactment of the criminal jury trial of Oklahoma County Case No CF-19-150 *State of Oklahoma v. Patrick Thao*. The program offers a trial-like atmosphere in recreating the events and parties to the case of this criminal matter. Criminal trial experience is unnecessary as you learn from a panel of Oklahoma Criminal Jury Trial Masters. A complete copy of the court transcript is provided in electronic format only to registered guests.

Program Planner(s): David T. McKenzie and Shelley L. Levisay,

Faculty: David McKenzie; Shelley Levisay; Malcolm Savage; Kent Bridge; Tamela Bridge; David Autrey; Robert Don Gifford; Tony Coleman; Tommy Adler and Jarrod Stephenson

Ethics Advisor and Moderator: Former District Judge Kenny Adair

Prosecution Counsel: Robert Don Gifford and Shelley L. Levisay

Defense Counsel: David Autrey, Jarrod Stevenson and Kent Bridge

Judge: Pottawatomie County Special District Judge David Cawthon

Witnesses: Sheila Cunningham and Jim Levine

Bailliff: TBA

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The Joy of Practicing Law

By Brian Hermanson

IREMEMBER, AS A 9-YEAR-OLD, making my mind up to be a lawyer when I grew up. I can't tell you why I made that decision at that time, but I felt strongly it was what I wanted to become. As the years went by, I found myself doing things to prepare for that undertaking.

Even while finishing college, I held steadfastly to that desire. I thought it would be fun and a way to help people. I never thought I would get rich or famous, but I felt that I could accomplish good things as a lawyer.

Law school could not lessen my desire. I was even more sure of myself, and I felt the legal profession was the goal of all that education. I worked in the Oklahoma City Attorney's Office as a legal clerk for a year and spent another year interning at the Cleveland County District Attorney's Office. I loved every minute of it.

Did I find the practice of law fun? You bet I did. I found that attorneys were some of the best people I would meet. Many had a great sense of humor and joy for life. Even in the most difficult times, I enjoyed their company and their outlook on the future.

How can people who work at such a serious job, under such stress, enjoy their job? The answer is that most of

the attorneys I know realize they are helping people every day. They are helping the person charged with a crime defend their liberty, helping a victim of a crime regain their dignity and their hope for a better day. They help families in turmoil, people buying homes and starting families, help put the pieces together when a loved one passes and hundreds of other acts to restore order in this crazy world.

I can tell you, during some of the most stressful times in my life, you will find me telling a joke. I remember when my wife was in early labor with our first child. I was holding her hand, telling her jokes to distract from the terror going through my mind. She did not find out until later that while I was telling her those jokes, the baby's heart monitor before me was

flatlining. I learned afterward that meant the baby had just rolled over. My jokes might have been funnier if I had that bit of information.

Many lawyers I meet with have the same way of dealing with stress. They will crack jokes and make light of a serious situation. It is one way we can find joy in the most unusual places in our lives.

It is important for each of us to approach each challenge with the joy of knowing we are doing what we are trained to do. We should remember *why* we decided to become lawyers. Sure, life is stressful and sometimes unfair. Sometimes good doesn't win over evil. But we should realize that good had a much better chance at success because we, as lawyers, took the time to prepare for the battle.

The battle does not have to be in the courtroom. It could be in the boardroom, the library, at your desk or any other place you practice law. The fact that you make the effort, even though you knew the facts or the law were against you, shows you care enough to try to make things right for your client.

Should you feel joy in practicing law even when things are tough? Should you love the practice of law when you feel overworked or underloved? Should you feel a warmth in your heart for suffering with your profession? Of course, you should. People who say they have never lost a trial, or always win, obviously did not take on the hopeless matter no one else was willing to spend their time on. But if you find true joy in the practice of law, such a battle is not one to run from.

So don't be down on yourself because the day was hard. Take joy in the fact that you were willing to help. And don't look at the practice of law like it was a burden. Instead, consider it an opportunity to help, guide and teach others.

Take joy in your life as a lawyer. Smile at your successes and at the struggles you could not overcome. Laugh at the circumstances you find yourself in. Others have been there before, and others will follow. Love the law. Love your life. Know you are making a difference in this world. That is something to feel good about.



A handwritten signature in black ink, appearing to read 'B. Hermanson'.

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An Overview on Filing an Original Action With the Oklahoma Supreme Court

By Kyle Rogers

THE OKLAHOMA SUPREME COURT has both appellate jurisdiction and original jurisdiction flowing from Article VII, Section 4 of the Oklahoma Constitution.¹ The Supreme Court's original jurisdiction provides "general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law."² Outside of the appellate process, the Supreme Court's original jurisdiction allows the court to examine a broad swath of proceedings.

The Supreme Court often uses the term *original action* to refer to these proceedings, and original actions encompass filings seeking writs for *mandamus*, prohibition, *habeas corpus*, certiorari³ and *quo warranto*. The court also invokes its original jurisdiction for attorney discipline matters and where the Legislature has given the court exclusive original jurisdiction, like initiative and referendum petitions and bond and contract approval.⁴ For parties or attorneys filing original actions before the Supreme Court, this article lays out the more common grounds for original actions and examines the court's rules on original actions, providing a few tips to consider before filing.

ORIGINAL ACTIONS

The Supreme Court's original action jurisdiction is almost entirely discretionary, with some exceptions for statutory grants of exclusive original jurisdiction. In fact, the drafters of the Oklahoma

Constitution conceived of the Supreme Court's original jurisdiction, "when concurrent with that of the district court," to function as a "stand-by service" to be "exercised only when, from the exigencies of the case, great injury will be done by its refusal so to do."⁵ The majority of these proceedings involve petitions for writs of *mandamus* or prohibition, parties seeking to direct or stop some action in a district court. The Supreme Court has long referred to these writs as extraordinary and rare.⁶ For the court to assume original jurisdiction to issue a writ of *mandamus* or prohibition, a petitioner must first establish the elements for a writ of *mandamus*⁷ or prohibition.⁸ For both *mandamus* and prohibition, a petitioner must show they lack another adequate remedy; it is not enough that a petitioner simply needs a quick remedy.⁹ For a writ of *mandamus*, a petitioner must then establish they have a "clear legal right" to the desired relief, and the district

court "has a plain legal duty regarding" that relief that does not involve discretion, but then the district court has "refused to perform that duty."¹⁰ For a writ of prohibition, a petitioner must then set out that a court or agency is exercising quasi-judicial power and that "power is unauthorized by law."¹¹ And even if a petitioner sets out the elements for either *mandamus* or prohibition, the court may not issue a writ in its discretion.¹²

The Supreme Court treats original actions involving discovery orders differently from other original actions for *mandamus* or prohibition.¹³ The court applies a different standard to discovery orders, first examining whether the case is one of the rare occasions it should serve as a "pretrial reviewing panel for trial court orders adjudicating discovery matters."¹⁴ Or, as the court has recently explained, the discovery order must be "aberrant."¹⁵ Instead of applying the factors of a writ of *mandamus* or prohibition, the

court examines whether there was an abuse of discretion.¹⁶ If the court answers both questions affirmatively, it can issue a writ of *mandamus* or prohibition to the district court concerning the discovery order.¹⁷

The Supreme Court denies most applications for original action. For the party or attorney filing an original action already facing a difficult task, it is important to keep in mind reasons the court has enumerated to reject original actions. Obviously, where a party cannot satisfy either the elements for a writ of *mandamus* or prohibition, the court will deny the application to assume original jurisdiction.¹⁸ One of the elements that routinely trips parties up is whether there is another adequate remedy available. Where the complained-of order is appealable, neither prohibition nor *mandamus* is “a substitute for appeal.”¹⁹ However, determining an adequate remedy is within the court’s discretion. For a party complaining of an unappealable interlocutory order, waiting for the appeal can be an adequate remedy, and simply because a party must wait until the completion of the district court litigation to pursue the appeal will not make the remedy inadequate.²⁰ However, where jurisdiction is lacking or venue is incorrect, an appeal presents an inadequate remedy.²¹ And while *mandamus* can be used to correct a completed act, prohibition “is not available as a corrective remedy to undo a completed act already performed but is properly a preventive remedy.”²² Keep in mind cases where the court has explained why writs of *mandamus* or prohibition cannot be issued, and you will stand a slightly better chance at extraordinary relief in an original action.

FORMATTING YOUR ORIGINAL ACTION

Petitioners seeking to invoke the court’s original jurisdiction should consult Oklahoma Supreme Court Rules 1.190 to 1.194.²³ Rule 1.191 details the court’s requirements that a petitioner needs to file:

- 1) Application to assume original jurisdiction and petition for *mandamus* or prohibition, Rule 1.191(b);²⁴
- 2) Brief in support of the application, Rule 1.191(c);
- 3) Appendix, Rule 1.191(d);²⁵
- 4) Notice, Rule 1.191(e); and
- 5) Entry of appearance.

Additionally, if a petitioner seeks an emergency stay of the district court proceedings, the petitioner must file a separate motion for a stay.²⁶

The application and petition (as one document) should consist of three things: the reasons relief is sought with the Supreme Court; the specific remedy the petitioner seeks (*mandamus*, prohibition, etc.); and the underlying facts of the proceeding.²⁷ A petitioner should use the application and petition to set out the pertinent facts and procedural history along with the relief the petitioner is asking from the court. It is important to remember the court and its staff have no familiarity with the underlying case – fully but succinctly communicate that story to the court. The brief in support should be devoted to the petitioner’s legal argument for the writ of *mandamus* or prohibition. There is no need to repeat what was laid out in the petitioner’s application and petition as these documents are routinely all read together, and repeating the same facts or arguments simply wastes the court’s time. The brief cannot exceed 15 pages and must comply with

Rule 1.11.²⁸ Petitioners are not required to file a separate brief and application to assume original jurisdiction but can combine the two into one document if desired.

Along with the application and brief, a petitioner should file an appendix containing all supporting documentation.²⁹ Most importantly, in the appendix, the petitioner should include the pertinent order that precipitated the original action; the evidentiary material examined by the district court, including affidavits, exhibits and other materials; relevant portions of transcripts; and relevant district court filings.³⁰ Please only include relevant portions of exhibits and evidentiary material.³¹ A petitioner must include an index of the documents in the appendix, providing the document’s description, date, relevancy to the matter and synopsis.³² To assist the court in its review of an appendix, a petitioner should tab each document in the appendix. While Rule 1.191(d)(1)(a) notes that a petitioner may include copies of cases they rely upon in the brief, it is recommended that only cases or other legal authority that may prove difficult for the Supreme Court to locate be included. Including full copies of every case cited is not necessary.

If a petitioner desires to file part of the appendix under seal, consider two things. First, if the documents are already placed under seal in the district court and the petitioner plans to include those documents in the appendix, remove the documents from the appendix and place them in a separately sealed manila envelope with the district court order sealing the documents attached to the envelope. Second, if the documents are not currently under seal, the petitioner must first ask the Supreme Court to seal the documents. The petitioner should file

a separate motion requesting the court seal the sensitive documents, citing the appropriate statutory authority. A petitioner should not file any documents in an appendix they desire to keep sealed without first seeking leave of court. Any document placed in a filed appendix becomes part of the court record, available to the public if no order sealing the documents is on file with the Supreme Court.

Once a petitioner has filed the application and supporting documents, the court will set the briefing deadlines and the date for the oral presentation before an assigned referee.³³ The respondent in the original action is directed to respond to the petitioner's original action through the real party in interest. This typically means the party opposing the writ of *mandamus* or prohibition will respond on behalf of the respondent (normally, the district court judge). A response is limited to 15 pages, and the real party in interest may also file an appendix with any documents or authority they believe pertinent to the original action not included by the petitioner.

At the oral presentation, typically one of the court's four referees is assigned to hear the case and make a written recommendation to the Supreme Court. Referees are assigned original actions on a rotational basis. Oral presentations are not a matter of right, and the court will set them at its discretion.³⁴ The oral presentations take place in the Supreme Court's conference rooms on the second floor of the Oklahoma Judicial Center; it is an informal, conversational presentation. Remember, the referee does not make any decision about your case but writes a recommendation for the court to review when it takes up the original action in conference. The referees have reviewed all filings and the appendix, so

there is no need to set out the entire factual and procedural history. The petitioner and real party in interest should focus on important facts, procedure, precedent and legal authority to explain how the elements for a writ of prohibition or *mandamus* are met (or are not).

A final note of caution for petitioners seeking to invoke the court's original jurisdiction: The court will sanction petitioners for frivolous applications to assume original jurisdiction. Typically, those sanctions are an award of costs and attorney's fees to the real party in interest.³⁵ A frivolous proceeding may include one brought for the sole purpose of delaying or disrupting the proceedings in the court below or a proceeding so obviously without merit as to impute bad faith on the party bringing the action.³⁶ Historically, the court has not sanctioned petitioners in original proceedings; however, especially in judicial disqualification proceedings that are frivolous or seek to simply disrupt or delay the district court proceedings, the court has

sanctioned the filing party to deter these frivolous filings.³⁷

EMERGENCY RELIEF

The Supreme Court does not usually grant relief in fewer than 10 days. If a party is seeking to stop a trial, hearing or other matter in 10 days or less, the court will only consider the request if the party can show, "The asserted grounds for relief were not known, or could not reasonably have been discovered, prior to the ten-day period."³⁸ Remember, what you think to be an emergency will not necessarily be viewed by the court as an emergency. For context, the court normally sets a deadline for the respondent, through the real party in interest, to respond to an original action in about 20 days. The court then typically sets the original action for an oral presentation before one of the court's four referees about a week later. After the hearing, the assigned referee submits the filings and a written recommendation to the court to review in conference.

The Supreme Court does not usually grant relief in fewer than 10 days. If a party is seeking to stop a trial, hearing or other matter in 10 days or less, the court will only consider the request if the party can show, "The asserted grounds for relief were not known, or could not reasonably have been discovered, prior to the ten-day period."³⁸

If a situation arises where you need immediate extraordinary relief, it is best to consider filing an original action and including a motion for an emergency stay. Following Oklahoma Supreme Court Rule 1.15(c), the chief justice or the entire court can issue a stay of proceedings to the district court while the Supreme Court considers the original action. File a separate motion for an emergency stay, so it is apparent to the court when the original action is filed of the emergency nature of your request. In the motion, set out the reason as to why emergency relief was not sought sooner if asking the court to act in fewer than seven days. An emergency stay motion must also state that a stay or similar relief was first sought with the district court. As for the legal analysis in the motion, a petitioner should focus on four factors the chief justice or the court weighs when determining whether to grant a stay: the likelihood of success in the original action, the threat of irreparable harm to the moving party if relief is not granted, the potential harm to the opposing party and any risk of harm to the public interest.³⁹ The court's factors for emergency stays mirror the court's precedent on injunctions. And it holds true that where a party seeks a mandatory stay, essentially mandating some action by the district court, "the rules are more strictly construed."⁴⁰

A few practical notes to consider when filing a motion for an emergency stay: A referee will typically set an emergency hearing for all interested parties to present their cases for and against the stay.⁴¹ Depending on the time allotted by the parties between filing the original action and the potential injury sought to be stayed, that hearing may be set in person or telephonically. Additionally, the

court will always try to allow the other interested parties time to file a response. In the rare instance where a written response cannot be timely completed and filed, the parties' oral arguments at the hearing will serve. To best facilitate a quick process, serve opposing counsel with all filed materials immediately after filing the original action with the court, and be prepared to contact opposing counsel to agree on a time to appear before one of the court's referees for a hearing.

The Supreme Court's original jurisdiction is still a stand-by service only invoked by the court in rare instances. More often than not, the court will deny your application to assume original jurisdiction. The best advice is to comply with the court's rules, avoid the clear pitfalls where the court has said a writ will not issue, and present the rare or aberrant issue that requires extraordinary relief.

ABOUT THE AUTHOR



Kyle Rogers is a referee for the Oklahoma Supreme Court. He previously served as a staff attorney for Oklahoma Supreme

Court Justice Steven Taylor and practiced law with Rhodes Hieronymus Jones Tucker & Gable. Mr. Rogers is a graduate of the OCU School of Law.

ENDNOTES

1. Okla. Const. art. VII, §4.
2. *Id.*
3. While writs of certiorari are issued under the court's appellate jurisdiction and Article VII, §5, the court has set aside the 20-day filing requirement under its Article VII, §4 superintending authority. See *Ingram v. Oneok, Inc.*, 1989 OK 82, ¶10, 775 P.2d 810, 812.
4. See 73 O.S.2021, ch. 6, §350.1; *In re Application of the Okla. Capitol Improvement Auth.*, 2022 OK 31, 507 P.3d 1256; 63 O.S.2021, ch. 62, §3225(B)(3); *In re Petition of Univ. Hosps. Auth.*, 2017 OK 108, 410 P.3d 1014.
5. *Keating v. Johnson*, 1996 OK 61, ¶9, 918 P.2d 51, 56 (quoting *Kitchens v. McGowen*, 1972

- OK 140, ¶10, 503 P.2d 218 (syllabus by the court) (cleaned up).
6. *Umholtz v. City of Tulsa*, 1977 OK 98, ¶6, 565 P.2d 15, 18.
7. *Chandler (U.S.A.), Inc. v. Tyree*, 2004 OK 16, ¶24, 87 P.3d 598, 604.
8. *Umholtz*, 1977 OK 98, ¶6, 565 P.2d at 18.
9. *Chandler (U.S.A.)*, 2004 OK 16, ¶24, 87 P.3d at 604; *Umholtz*, 1977 OK 98, ¶6, 565 P.2d at 18.
10. *Chandler (U.S.A.)*, 2004 OK 16, ¶24, 87 P.3d at 604.
11. *Umholtz*, 1977 OK 98, ¶6, 565 P.2d at 18.
12. *Shadid v. City of Okla. City*, 2019 OK 65, ¶15, 451 P.3d 161, 164.
13. *Scott v. Peterson*, 2005 OK 84, ¶12, 126 P.3d 1232, 1236.
14. *Heffron v. Dist. Ct. of Okla. Cty.*, 2003 OK 75, ¶3, 77 P.3d 1069, 1073.
15. *McKesson Corp. v. Campbell*, 2022 OK 6, ¶16, 502 P.3d 1110, 1111.
16. *Id.* ¶3, 502 P.3d at 1112. "An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Christian v. Gray*, 2003 OK 10, ¶43, 65 P.3d 591, 608.
17. *McKesson Corp.*, 2022 OK 6, ¶4, 502 P.3d at 1112.
18. *Chandler (U.S.A.)*, 2004 OK 16, ¶24, 87 P.3d at 604; *Umholtz*, 1977 OK 98, ¶6, 565 P.2d at 18.
19. *Moses v. Hoebel*, 1982 OK 26, ¶4, 646 P.2d 601, 603, "He cannot have resort to extraordinary means of relief when ordinary and usual remedies were available." *Id.*
20. See *Silver Griddle Co. v. City of Okla. City*, 1977 OK 153, ¶16, 570 P.2d 619, 621-22. "A Writ of Mandamus may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. Mandamus is an extraordinary remedy to be resorted to where the usual mode of procedure cannot furnish the desired relief." *Id.*
21. *Powers v. Dist. Ct. of Tulsa Cty.*, 2009 OK 91, ¶10, 227 P.3d 1060, 1069-70; see *Transit Cas. Co. v. Bell*, 1971 OK 136, ¶13, 491 P.2d 771, 773.
22. *Sneed v. State ex rel. Dep't of Transp.*, 1983 OK 69, ¶11, 683 P.2d 525, 529.
23. Oklahoma Supreme Court Rule 1.190 to 1.194, 12 O.S.2021, ch. 15, app. 1, pt. VI.
24. Along with an original copy of the application and brief, the petitioner must file another 14 copies. Okla. Supreme Court Rule 1.191(c).
25. Two copies of the appendix (an original and a copy) also must be included in the filing.
26. Oklahoma Supreme Court Rule 1.15(c). See the final section of the article for a further discussion of motions for emergency stay.
27. Okla. Supreme Court Rule 1.191(b).
28. Okla. Supreme Court Rule 1.191(c).
29. Okla. Supreme Court Rule 1.191(d).
30. *Id.*
31. Okla. Supreme Court Rule 1.191(d)(2).
32. Okla. Supreme Court Rule 1.191(d)(3).
33. Okla. Supreme Court Rule 1.191(g).
34. *Id.*
35. Okla. Supreme Court Rule 1.191(j); see also 12 O.S., §995.
36. Okla. Supreme Court Rule 1.191(j).
37. See *Frazier v. Bruce*, 2021 OK 14, ¶12, 484 P.3d 285, 286. "A filing seeking to invoke this Court's original jurisdiction to disqualify a judge where the sole basis for disqualification has been routinely rejected by this Court amounts to a frivolous filing." *Id.*
38. Okla. Supreme Court Rule 1.191(i).
39. Okla. Supreme Court Rule 1.15(c)(2).
40. See *Owens v. Zumwalt*, 2022 OK 14, ¶18, 503 P.3d 1211, 1214.
41. Okla. Supreme Court Rule 1.15(c)(1).

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‘Of Public Right’: A Modern Look at the Age-Old Doctrine of *Publici Juris* and Its Discretionary Application in Appeals and Original Actions Involving the Public Interest

By Melanie Wilson Rughani

WE ALL KNOW THE ANSWER TO THE OLD RIDDLE, “Where does an 800-pound gorilla sit?” Unintended comparisons aside, much the same can be said for the Oklahoma Supreme Court. Under a well-established jurisprudential doctrine, the court can, and does, intervene in disputes effectively “anywhere it wants” – at least when the question presented is of sufficient public import.

Article III, Section 2 of the U.S. Constitution vests federal courts with the authority to resolve only certain “cases” and “controversies” – a clause that places important limitations on the jurisdiction of federal courts. Under Article III’s “case or controversy” requirement, federal courts are barred from issuing purely advisory opinions, and they generally may resolve disputes only where the parties asserting claims have standing to do so and an active controversy is presented.

While federal courts are thus considered courts of limited jurisdiction, state courts generally are not. The Oklahoma Constitution contains no “case or controversy” requirement. Rather, Article 7, Section 4 of the Oklahoma Constitution vests the Oklahoma

Supreme Court with appellate jurisdiction that extends “to all cases at law and in equity,” as well as a broad “original jurisdiction” that includes “a general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law,” various “remedial writs” and “such other and further jurisdiction as may be conferred by statute.” In Oklahoma courts, therefore, prohibitions on advisory opinions, standing requirements, ripeness and mootness doctrines, and various other justiciability doctrines are primarily *prudential*, and the Supreme Court has enormous discretion regarding the exercise of its original jurisdiction.

Although the various justiciability doctrines may not be *jurisdictional* in Oklahoma

courts, they are still established requirements that serve important purposes. As Justice Opala once put it, “Courts are not roving commissions assigned to pass judgment on the validity of the State’s laws.”¹ Doctrines such as standing, ripeness and mootness help ensure the court issues opinions only in cases where the facts are sufficiently developed and the parties are truly adverse, with an incentive to fully litigate the issues. Prohibitions on advisory opinions and adherence to the usual appellate procedures, moreover, help ensure the dockets are not overwhelmed, issues are fully considered, and the courts are not prematurely drawn into political disputes that risk upsetting the separation of powers.²



Sometimes, however, strict adherence to prudential requirements can do more harm than good. Where the issue is an important one that affects the public at large, or “*publici juris*,” the Oklahoma Supreme Court has time and time again agreed to dispense with the usual procedural niceties and exercise its original jurisdiction. This article analyzes the development and application of the *publici juris* doctrine in the modern Oklahoma Supreme Court.

WHAT IS PUBLICI JURIS?

“*Publici juris*” in Latin literally means “of public right.” The Oklahoma Supreme Court has said, for purposes of its *publici juris* doctrine, the word “public” means “pertaining to the people, or affecting the community at large,” and the word “right” means “a

well-founded claim; an interest; concern; advantage; benefit.”³ The term “*publici juris*” requires “more than a mere curiosity” of the public; rather, it is “something in which the public has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.”⁴ When a matter is truly *publici juris*, however, the court is far more likely to exercise its original jurisdiction and quickly resolve the dispute.

Although a *publici juris* matter is difficult to define, the court clearly “know[s] it when [it] see[s] it.”⁵ In the last few decades, the court has found matters as wide-ranging as public health measures,⁶ the powers of the grand jury,⁷ “[t]he funding of state programs,”⁸ the validity of Ethics Commission rules,⁹ the viability of public pension funds,¹⁰ the collection and use of court fees,¹¹ the application

of a credit to Oklahomans’ public utility bills,¹² the validity of the Judicial Nominating Commission,¹³ the eligibility of individuals for state office,¹⁴ the validity of appropriation bills¹⁵ and the propriety of the Oklahoma City MAPS ordinance¹⁶ to be *publici juris* and to warrant the exercise of its original jurisdiction.

The involvement of public rights in a dispute is neither necessary¹⁷ nor alone sufficient to warrant the exercise of original jurisdiction. The court recognizes that, presumably, “all litigants would like to step into this Court of last resort” in the first instance, “thereby avoiding the expense and delay incident to appeal.” But the court has made clear it will assume original jurisdiction under the *publici juris* doctrine only if the case is “affected with

the public interest” and there is “some urgency or pressing need for an early determination of the matter.”¹⁸ The court’s original jurisdiction “is intended primarily as a ‘stand by’ service,” not a first resort, and it will be exercised “only when, from the exigencies of the case, great injury will be done by [a] refusal so to do.”¹⁹ Even where the matter at hand is unquestionably important to the public, then, without a showing of “urgency or immediacy,” the court will not intervene.²⁰

The Supreme Court has also made clear that while it has the authority to assume original jurisdiction to address issues that are *publici juris*, it will elect to do so only “sparingly.”²¹ Indeed, in her 1996 dissent in *Keating*, Justice Kauger noted, “In the last 50 years[,] we have assumed original jurisdiction on the basis of *publici juris* only 44 times – less than once a year.”²² That rate has remained about the same since. In the 26 years between 1996 (when *Keating* was decided) and 2022 (when this article was published), the court has assumed original jurisdiction on the basis of *publici juris* only 20 times – again averaging less than once a year.²³

HISTORY OF THE *PUBLICI JURIS* DOCTRINE

Although many states have vested their highest courts with discretionary jurisdiction, Oklahoma is one of only a handful with a well-developed, modern “*publici juris*” doctrine. But Oklahoma did not invent the concept. Our *publici juris* doctrine was initially borrowed from early *publici juris* doctrines in Colorado, South Dakota and a few other states. These states’ constitutions, however, differed from ours in one important respect: In addition to original jurisdiction provisions

much like Oklahoma’s Article 7, Section 4, they also contained express “advisory opinion” provisions, whereby the Supreme Court was expressly empowered to offer opinions “upon important questions of law” on “solemn occasions” – with or without a traditional case and controversy.^{24 25}

The courts in those states were thus rightly concerned about an explosion of requests

for advisory opinions, which could congest the docket and produce ill-considered decisions based on insufficiently developed facts or law.²⁶ Accordingly, they developed a robust *publici juris* doctrine, whereby the Supreme Court would agree to exercise its express advisory authority *only* in matters of “exceptional public importance.”²⁷ In those states, the doctrine was (and continues to



be) used almost exclusively as a tool for *strictly limiting* the court's exercise of its advisory jurisdiction.

Unlike Colorado and South Dakota, Oklahoma does not have an express advisory opinion procedure. Because Oklahoma's Article 7, Section 4 is quite similar to the independent original jurisdiction provisions in the Colorado and South Dakota constitutions, however, in early cases interpreting its scope, the Oklahoma Supreme Court naturally looked to the opinions of the courts in these other states – and imported some of their concerns about advisory opinions in the process.²⁸

The Oklahoma Supreme Court first adopted the *publici juris* doctrine in 1909 in *Homesteaders v. McCombs*, 1909 OK 202. There, an insurance company filed an application for original jurisdiction, asking the court to direct the insurance commissioner to allow the company to do business in Oklahoma. Although such a case would ordinarily be brought in the district court, the company urged the Supreme Court to exercise its concurrent jurisdiction under Article 7, Section 4 to save time and expense. After surveying the decisions of Colorado and other courts, the court concluded it should exercise its original jurisdiction only when 1) the exigencies of the circumstances mean ordinary district court remedies would be inadequate or 2) the case involves urgent “questions *publici juris*” – questions where “the interest of the state at large is directly involved, where its sovereignty is violated, or the liberty of its citizens menaced, where the usurpation or the illegal use of its prerogatives or franchises is the principal, and not a collateral, question.”²⁹ And it found that assumption of original jurisdiction was inappropriate in that case, noting:

[I]t is important that the dockets of this court, if it is reasonably practicable, be not congested, in order that litigants appealing their cases here may have expeditious hearings and determinations. This is not reasonably possible if this tribunal is to be transformed into a trial court. ... In the case at bar the petitioning party is a foreign insurance corporation, seeking to do business in this state. Its object is of a private nature, to engage in business for gain and profit, and has none of the elements or features of *publici juris*. There is no good and sufficient reason shown why said action was not instituted in the proper district court of this state having jurisdiction thereof.³⁰

For several decades following *Homesteaders*, the Oklahoma Supreme Court, like the courts in other states, continued to treat the *publici juris* doctrine as a doctrine of strict limitation.³¹ Only in *very* rare circumstances did the court assume original jurisdiction on *publici juris* grounds.³²

MODERN APPLICATION OF THE *PUBLICI JURIS* DOCTRINE

In more recent decades, however, the Oklahoma Supreme Court has shifted somewhat in its application of the *publici juris* doctrine. While it was originally used primarily as a mechanism for the court to cabin its jurisdiction and limit the issuance of advisory opinions, the modern court has viewed *publici juris* as not just a doctrine of *limitation* but also as one of *expansion* in certain circumstances. And in doing so, the court has shown that sometimes its early judicial intervention in a dispute – even if theoretically only an

“advisory opinion” – can be beneficial to the public and the rule of law.

First, the Oklahoma Supreme Court has used the *publici juris* doctrine as a basis to exercise its original jurisdiction in a wider variety of cases over the years. The court has intervened in cases involving issues as mundane as the enforceability of a lease when the result could have serious public implications, like requiring the “relocation of the health department.”³³ It has ruled on purely legal issues facing public entities, even without a strong showing of emergency, but where timely resolution would allow state actors and the public to rely on the ruling and further the public good.³⁴ It has addressed the constitutionality of an act, even where multiple similar challenges were then pending in district court, when a single, timely resolution of the issue would promote judicial efficiency.³⁵ It has resolved challenges to the eligibility of public office holders, even where a district court could presumably have done the same thing, where a quick decision by the high court could further the public interest.³⁶ In short, the court appears to have broadened its view of “*publici juris*” in recent decades, intervening in cases when a quick resolution by the court (and not a single elected district judge) would promote the public good.

Further, the court has not only used the *publici juris* doctrine to determine *when* it should exercise its original jurisdiction, it has also used the doctrine to loosen the strictures on *how* it does so. Accordingly, while the court has traditionally limited its exercise of original jurisdiction to cases where the specific elements of a writ of *mandamus*, prohibition or other established remedial writ

are present, in recent years, the court has assumed original jurisdiction in cases where those elements are not present – solely to grant *declaratory relief*.³⁷

The court has also used the *publici juris* doctrine to relax traditional standing requirements, noting that it may “elect to confer standing” on private parties in order “to vindicate the public interest in cases presenting issues of great public importance.”³⁸ For example, the court allowed individual legislators to seek to compel the Corporation Commission to enforce a statute requiring public utilities to apply a credit to customers’ bills even though the legislators had alleged no injury or particularized interest in the matter.³⁹ And the court allowed various attorneys, on behalf of potential future clients, to challenge the constitutionality of the Impaired Driving Elimination Act because the statute would have burdened a large number of indeterminate individuals throughout the state and, “The adjective-law component to standing in an Oklahoma state court, while creating a barrier in a private-law original jurisdiction action, does not hinder this Court from giving adequate relief in a *publici juris* original jurisdiction proceeding.”^{40 41}

Similarly, the court has eschewed the justiciability doctrines of mootness and ripeness when the matter at issue was *publici juris*. In *Oliver v. Oklahoma Alcoholic Beverage Control Bd.*,⁴² the court assumed original jurisdiction and prohibited the board from enforcing an order fixing a minimum markup of retailer’s prices on alcoholic beverages, even though the order at issue had since expired. And in *In re Initiative Petition No. 347, State Question No. 639*,⁴³ the court noted it had often departed from basic ripeness requirements to consider the constitutionality of

measures proposed by initiative petitions before they became law, where doing so could prevent an unnecessary costly election.

Finally, the court has even effectively used its original jurisdiction in the course of exercising its separate *appellate* jurisdiction, dispensing with basic rules of appellate procedure where the question presented is *publici juris*. For example, although the court does not ordinarily address issues “left unadjudicated” by the district court, it has noted that if the claim “presents a *publici juris* issue and no additional facts are necessary for its adjudication, the Court possesses the judicial discretion to determine” the issue on appeal.⁴⁴ And the *publici juris* doctrine is a well-settled exception to the general rule that appellate courts will address only those issues adequately preserved below: It has long been established that, in a public-law controversy, the court is free to grant corrective relief on any applicable legal theory, even ones raised by the court *sua sponte*.⁴⁵

CONCLUSION

The *publici juris* doctrine is an important tool to help the court determine when and how to exercise its discretionary authority. Often, it is used to *limit* the exercise of original jurisdiction and ensure the Supreme Court does not become a court of first resort. As shown above, however, the doctrine has also been used in recent years to *expand* the circumstances in which the court will exercise its jurisdiction when early intervention will do substantial public good.

This is entirely proper. Unlike federal courts, which are bound by Article III, Oklahoma state courts are not courts of limited jurisdiction. While the strictures of the “case or controversy”

requirement are generally useful in ensuring an adversary process and preserving the separation of powers, sometimes early judicial intervention in a dispute – even if only as an “advisory opinion” – can be beneficial to the public and the rule of law. The *publici juris* doctrine, when properly applied, aids the court in determining when it is most appropriate to use its broad original jurisdiction to ensure questions of public right are quickly and properly resolved.

ABOUT THE AUTHOR



Melanie Wilson Rughani is a shareholder and director at Crowe & Dunlevy PC, where she serves as co-chair of the

Appellate and Initiative Petitions practice groups. She regularly handles appeals and original actions in the Oklahoma Supreme Court, including many involving matters found to be *publici juris*.

ENDNOTES

1. *Keating v. Johnson*, 1996 OK 61, 918 P.2d 51, 59–61 (Opala, J. concurring).
2. *See id.*
3. *State v. Lyon*, 1917 OK 229, 63 Okla. 285, 165 P. 419, 420.
4. *Id.*
5. *Jacobellis v. Ohio*, 378 U.S. 184 (1964) (Stewart, J. concurring) (attempting to “define what may be indefinable,” obscenity, by saying simply, “I know it when I see it.”).
6. *Ritter v. State*, 2022 OK 73, ___ P.3d ___.
7. *Russell v. Henderson*, 1979 OK 164, 603 P.2d 1132, 1134.
8. *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶11, 163 P.3d 512, 521.
9. *Ethics Comm’n v. Keating*, 1998 OK 36, ¶¶3–9, 958 P.2d 1250, 1252–54.
10. *State ex rel. York v. Turpen*, 1984 OK 26, 681 P.2d 763, 764–65.
11. *Fent v. State ex rel. Dep’t of Hum. Servs.*, 2010 OK 2, n.2, 236 P.3d 61, 63; *Naylor v. Petuskey*, 1992 OK 88, 834 P.2d 439, 440.
12. *State ex rel. Howard v. Okla. Corp. Comm’n*, 1980 OK 96, 614 P.2d 45, 51–52.
13. *Fent v. Henry*, 2011 OK 10, ¶10, 257 P.3d 984, 985.
14. *State ex rel. Stuart v. Rapp*, 1981 OK 87, 632 P.2d 388, 389; *Spencer v. Wyrick*, 2017 OK 19, ¶11, 392 P.3d 290, 291; *Nesbitt v. Apple*, 1995 OK 20, 891 P.2d 1235, 1239.
15. *Davis v. Thompson*, 1986 OK 38, 721 P.2d 789.
16. *Shadid v. City of Oklahoma City*, 2019 OK 65, ¶15, 451 P.3d 161, 164–65.

17. See, e.g., *Flandermeyer v. Bonner*, 2006 OK 87, ¶1, 152 P.3d 195, 197 (assuming original jurisdiction in divorce proceeding with no claim of *publici juris*).

18. *Keating v. Johnson*, 1996 OK 61, 918 P.2d 51, 55.

19. *Id.* (noting that a “different rule would so flood this court with original actions as to destroy its efficiency as an appellate court”).

20. *Id.*

21. *Keating v. Johnson*, 1996 OK 61, 918 P.2d 51, 62–63 (Kauger, J. dissenting).

22. *Id.* (collecting cases).

23. *Rocket Properties, LLC v. LaFortune*, 2022 OK 5, 502 P.3d 1112 (determining that inverse condemnation was not a “tort” governed by the Governmental Tort Claims Act); *Oklahoma State Med. Ass’n v. Corbett*, 2021 OK 30, ¶2, 489 P.3d 1005, 1006 (assuming original jurisdiction and issuing declaratory judgment that the Oklahoma Health Care Authority lacked authority to implement its “SoonerSelect” program); *Treat v. Stitt*, 2021 OK 3, ¶1, 481 P.3d 240, 241 (issuing declaratory judgment that new tribal gaming compacts between the state and certain tribes were invalid under Oklahoma law); *Kiesel v. Rogers*, 2020 OK 65, ¶5, 470 P.3d 294, 296 (assuming original jurisdiction but denying request to toll statutory initiative petition circulation deadline); *Treat v. Stitt*, 2020 OK 64, 473 P.3d 43, 44, as corrected (July 22, 2020), *reh’g denied* (Sept. 14, 2020) (issuing declaration that the governor lacked authority to enter into two tribal gaming compacts on behalf of the state, and the agreements do not bind the state); *Shadid v. City of Oklahoma City*, 2019 OK 65, ¶5, 451 P.3d 161, 165 (assuming original jurisdiction to determine whether the MAPS ordinance was unconstitutional as violating the single subject rule); *Hunsucker v. Fallin*, 2017 OK 100, 408 P.3d 599, as modified (Dec. 20, 2017) (assuming original jurisdiction and concluding that provisions of IDEA2 requiring seizure and destruction of driver’s license upon arrest violated due process and single subject rule); *Spencer v. Wyrick*, 2017 OK 19, ¶1, 392 P.3d 290, 291 (assuming original jurisdiction but denying request to declare Justice Patrick Wyrick ineligible to serve as Supreme Court justice); *In re Initiative Petition No. 397, State Question No. 767*, 2014 OK 23, 326 P.3d 496 (concluding issue regarding mandatory nature of five-day period for attorney general to file response to ballot title for initiative petition was *publici juris* and could be adjudicated by the Supreme Court); *Shadid v. Hammond*, 2013 OK 103, ¶4, 315 P.3d 1008, 1009, as corrected (Dec. 11, 2013) (assuming original jurisdiction to determine issues of first impression involving the application of the Oklahoma Open Records Act and a local sealing rule); *Fent v. Henry*, 2011 OK 10, ¶1, 257 P.3d 984, 986, as corrected (Feb. 15, 2011) (assuming original jurisdiction to consider the validity of State Question No. 752 Legislative Referendum No. 352); *State ex rel. Oklahoma Dep’t of Pub. Safety v. Gurich*, 2010 OK 56, ¶1, 238 P.3d 1 (assuming original jurisdiction “to resolve important issues of public safety involving injuries to bystanders in police pursuits”); *Coffee v. Henry*, 2010 OK 4, ¶1, 240 P.3d 1056, 1056–57 (assuming original jurisdiction to determine whether the governor has the authority to issue a “line item veto”); *Fent v. State ex rel. Dep’t of Hum. Servs.*, 2010 OK 2, 236 P.3d 61, 63 (assuming original jurisdiction to determine whether certain court fee requirements are unconstitutional, noting “the issue affects the funding of all of the courts in the state and affects all of those who file lawsuits in those courts” and was thus *publici juris*); *Fent v.*

Contingency Rev. Bd., 2007 OK 27, ¶1, 163 P.3d 512, 516 (assuming original jurisdiction to determine whether the mandatory participation by the legislative members of the Contingency Review Board in the process of approval of expenditures from appropriations to the Oklahoma Opportunity Fund are an impermissible intrusion upon the executive branch’s powers); *Barzellone v. Presley*, 2005 OK 86, 126 P.3d 588 (“The issue of jury fee collections is a matter of *publici juris*, warranting consideration by the Supreme Court.”); *Edmondson v. Pearce*, 2004 OK 23, ¶12, 91 P.3d 605, 614, as corrected (July 28, 2004) (“There appears little question the matter is *publici juris* in nature, dealing as it does with the constitutionality of an Act banning cockfighting and related activities that was recently passed through the initiative process by a statewide vote of Oklahoma’s electorate.”); *Grimes v. City of Oklahoma City*, 49 P.3d 719 (Okla. 2002), as corrected (July 8, 2002) (assuming original jurisdiction to resolve challenge to constitutionality of statute governing municipal support of public schools and two ordinances adopted in reliance on the statute); *Ethics Comm’n v. Keating*, 1998 OK 36, ¶10, 958 P.2d 1250, 1252 (assuming original jurisdiction to resolve dispute over enforceability of Ethics Commission Rule that prohibits the governor from using state-owned vehicles for transportation to and from political fundraisers); *Petition of Univ. Hosps. Auth.*, 1997 OK 162, ¶1, 953 P.2d 314, 315 (assuming original jurisdiction to approve lease of the university hospitals from the University Hospitals Trust to HCA Health Services of Oklahoma).

24. See Colo. Const. Art. 6, §3 (“The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decision of said court.”); S.D. Const. art. V, §5 (“The Governor has authority to require opinions of the Supreme Court upon important questions of law involved in the exercise of his executive power and upon solemn occasions.”).

25. See, e.g., *The Homesteaders v. McCombs*, 1909 OK 202, 103 P. 691, 691–94 (citing cases).

26. See, e.g., Jonathan D. Persky, “Ghosts That Slay”: A Contemporary Look at State Advisory Opinions,” 37 *Conn. L. Rev.* 1155, 1186–88 (2005).

27. See, e.g., *In re Senate Resolution Relating to Senate Bill No. 65*, 21 P. 478, 478 (Colo. 1889); *Wheeler v. N. Colo. Irrigation Co.*, 11 P. 103, 107 (Colo. 1886); *In re House Resol. No. 30*, 10 S.D. 249, 72 N.W. 892, 892 (1897).

28. Oklahoma was not the only state without an express advisory opinion provision to import Colorado and South Dakota’s *publici juris* doctrine. Wisconsin, too, borrowed heavily from these states’ *publici juris* doctrines, even though its constitution similarly lacked express advisory opinion authority. And Wisconsin’s *publici juris* opinions were quoted by the Oklahoma Supreme Court in *Homesteaders v. McCombs*, 1909 OK 202, 103 P. 691, 691–94 (citing *Attorney General v. City of Eau Claire et al.*, 37 Wis. 443; *State ex rel. Wood v. Baker et al.*, 38 Wis. 78; *State ex rel. Radl v. Shaughnessy*, 86 Wis. 646, 57 N. W. 1105; *State v. St. Croix Boom Corporation et al.*, 60 Wis. 565, 19 N. W. 396; *May et al. v. Keep*, 2 Pin. (Wis.) 301, 1 Chand. 285).

29. *Id.* (quoting, *inter alia*, *People ex rel. Kindel v. Clerk of the Dist. Ct. of Arapahoe Cty.*, 22 Colo. 282, 44 P. 507; *Wheeler v. N. Colo. Irrigation Co.*, 9 Colo. 248, 11 P. 103, 105).

30. *Homesteaders*, 1909 OK 202, ¶13.

31. See, e.g., *Smith v. Hall*, 1911 OK 109, 28 Okla. 435, 114 P. 608, 608; *State v. Crockett*, 1922 OK 157, 86 Okla. 124, 206 P. 816, 817; *State v.*

McCullough, 1917 OK 473, 67 Okla. 8, 168 P. 413, 415; *Darnell v. Higgins*, 1926 OK 683, 124 Okla. 201, 255 P. 678, 678–79.

32. See, e.g., *State v. Ross*, 1919 OK 257, 183 P. 918, 918 (assuming original jurisdiction where failure to do so would “work great delay in the opening of the public schools of the affected districts”).

33. *Halstead v. McHendry*, 1977 OK 131, 566 P.2d 134, 136.

34. See *Ethics Comm’n v. Keating*, 1998 OK 36, ¶¶3–9, 958 P.2d 1250, 1252–54 (addressing the validity of Ethics Commission rules); *Shadid v. City of Oklahoma City*, 2019 OK 65, ¶5, 451 P.3d 161, 164–65 (addressing the validity of a city ordinance); *Rocket Properties, LLC v. LaFortune*, 2022 OK 5, ¶¶1, 14–15, 502 P.3d 1112, 1115 (determining requirements for inverse condemnation proceedings).

35. See *Edmondson v. Pearce*, 2004 OK 23, ¶¶11–13, 91 P.3d 605, 613–14.

36. *State ex rel. Stuart v. Rapp*, 1981 OK 87, 632 P.2d 388, 389; *Spencer v. Wyrick*, 2017 OK 19, ¶1, 392 P.3d 290, 291; *Nesbitt v. Apple*, 1995 OK 20, 891 P.2d 1235, 1239.

37. See, e.g., *Ethics Comm’n of State of Okl. v. Cullison*, 1993 OK 37, 850 P.2d 1069, 1072; *Oklahoma State Med. Ass’n v. Corbett*, 2021 OK 30, ¶2, 489 P.3d 1005, 1006; see also *Barzellone v. Presley*, 2005 OK 86, n.16, 126 P.3d 588, 592 (noting that because of the breadth of the court’s original jurisdiction, “the question of whether we should grant declaratory relief is not a question of power or jurisdiction but the appropriateness of that particular procedure or remedy”).

38. *State ex rel. Howard v. Oklahoma Corp. Comm’n*, 1980 OK 96, 614 P.2d 45, 51–52.

39. *Id.*

40. *Hunsucker v. Fallin*, 2017 OK 100, 408 P.3d 599, as modified (Dec. 20, 2017).

41. The relaxation of traditional standing requirements is discretionary, and the fact that a matter would seem to be *publici juris* does not guarantee that the court will do so, particularly where the case originates in district court. See, e.g., *Indep. Sch. Dist. No. 5 of Tulsa Cnty. v. Spry*, 2012 OK 98, ¶¶0–5, 292 P.3d 19, (Mem) – 20 (refusing to allow the OEA or various school districts to assert injury to the rights of Oklahoma’s students, concluding the plaintiffs had not established standing to challenge the constitutionality of a voucher program for students with disabilities).

42. *Oliver v. Oklahoma Alcoholic Beverage Control Bd.*, 1961 OK 9, 359 P.2d 183, 190.

43. 1991 OK 55, 813 P.2d 1019, 1031.

44. *City of Enid v. Pub. Emps. Rel. Bd.*, 2006 OK 16, ¶30, 133 P.3d 281, 299–300.

45. See 5 Okla. Prac., Appellate Practice §15:33 (2022 ed.); see also *Ritter v. State*, 2022 OK 73, n.17, ___ P.3d __; *Schnedler v. Lee*, 2019 OK 52, ¶11 n.8, 445 P.3d 238; *Ashikian v. State ex rel. Okla. Horse Racing Comm’n*, 2008 OK 64, n.45, 188 P.3d 148; *Davis v. GHS Health Maint. Org., Inc.*, 2001 OK 3, ¶¶25–26, 22 P.3d 1204; *Schulte Oil Co. v. Okla. Tax Comm’n*, 1994 OK 103, n.8, 882 P.2d 65, 69; *First Fed. Savings & Loan Ass’n v. Nath*, 1992 OK 129, n. 35, 839 P.2d 1336, 1343.

A Courtside Seat: 20 Tips for Your Civil Appeal

By Bevan G. Stockdell

MOST OF THE JUSTICES AND JUDGES of the Supreme Court of Oklahoma and the Court of Civil Appeals have two law clerks – or staff attorneys, as the position is known in the state appellate courts.

Staff attorneys are not the superstars playing in the big game, but with courtside seats, we get an incredible view of the action. We appreciate well-executed appellate advocacy but also see some of the same fouls committed over and over again. This article offers simple suggestions for strengthening your appellate practice.

PRESERVE THE ISSUES FOR APPEAL

Waiver is the easiest way to dispose of an issue on appeal. The issue must first be raised in the trial court. Aside from jurisdictional inquiries and fundamental error, the appellate court generally “does not make first-instance determinations of disputed issues of either law or fact in the exercise of its appellate jurisdiction.”¹ Keep in mind that post-trial motions – such as a motion for new trial, motion to vacate or motion to reconsider – may affect what issues can be raised on appeal and the time to appeal.² Remain conscientious even after the petition in error is filed. “Issues raised in the Petition in Error but omitted from the brief may be deemed waived.”³

STYLE OF THE PETITION IN ERROR

The petition in error is your first opportunity to familiarize the court with your case, and it begins with the case caption and the party designations. When there are multiple parties, third-party claims, counter-claims, cross-claims, a counter-appeal and/or a cross-appeal, the case caption can get complicated. Accurate and complete information in the case caption helps the court quickly figure out who is suing who and what relief is being sought on appeal. The style and sequence of the parties on the petition in error should be the same as the style and sequence on the judgment or order being appealed.⁴ When there are multiple parties, do not use “*et al.*”⁵ Write out the names of every party to the proceeding below and on appeal, even if it takes multiple pages. This is true even when the judgment or order from which you are appealing uses “*et al.*” Use both the trial court and appellate court designations, such as plaintiff/appellant and defendant/appellee.⁶ If not all of the parties below are parties to the appeal,

indicate that by using “and” to separate those parties in the style and include only a trial court designation.⁷ Likewise, if someone is seeking appellate relief but was not included in the caption on the order being appealed, include only an appellate designation.

BINDING THE RECORD

For an appeal using the Oklahoma Supreme Court Rule 1.36 accelerated procedure, where you control how the record is prepared, bind the record in such a way that the pages lay flat (spiral binding or notebook), include index tabs and number every page in the lower right corner. Oklahoma Supreme Court Rule 1.36(d)(2) requires an “Index to Contents of Record” that uses numeric references that correspond to tabs for each of the documents or transcripts included in the record.

PARTY NAMES

Use a name or descriptor, such as “father” or “bank,” rather than the party designations – *e.g.*, plaintiff, defendant, appellant, appellee – in your briefs. Personalized descriptors help us remember

the cast of characters. This is particularly helpful in multi-party litigation or when there are parties with the same or similar names.

CITE TO THE RECORD

“Facts stated in the Summary of the Record must be supported by citation to the record where such facts occur.”⁸ The appellant bears full responsibility for producing a record that supports the errors alleged.⁹ The appellant must “affirmatively show the alleged error from the record on appeal.”¹⁰ Otherwise, the appellate court will presume no prejudicial error was committed by the trial court.¹¹ It is not the appellate court’s duty to search the record for error.¹² You should continue to cite to the record when making your argument. Along the same lines, if you are the appellee and fail to file an answer brief, the appellate court is under no duty to search the record for some theory to sustain the trial court’s judgment.¹³

STANDARD OF REVIEW

Do not gloss over the standard of review. The standard of review is the heartbeat of appellate decision-making. Before you copy and paste the standard of review into your brief, spend some time really thinking about it. Research it. Don’t just assume you know what



it is. All your arguments should be built around the proper standard of review.

HEADINGS

How you separate and phrase the propositions of error and the headings and subheadings in the brief are additional tools you have to achieve clarity and simplicity.¹⁴ Subheadings can make complicated issues more easily digestible. Also, use headings to separate alternative arguments (e.g., “Even if the court finds ...”). If you use poignant headings and subheadings, the subject index in the front of your brief alone should tell the court why the case should be decided in your favor.¹⁵

CITE TO AUTHORITY

Briefs are often submitted with sparse citations. You must cite authority to support each proposition of error.¹⁶ “Argument without supporting authority will not be considered.”¹⁷ Finally, if you have a first impression issue and there is no Oklahoma law on point, cite relevant case law from other jurisdictions. It may be persuasive.

MAKE YOUR ARGUMENT

You must make your argument.¹⁸ “[A] mere assertion, in general terms, that the ruling of the trial court is wrong will not be considered as having been made.”¹⁹ I often see bold, conclusory statements that the trial court erred or should be affirmed followed by a case citation and nothing more. Connect the dots. How should the proposition of law and/or facts of the case cited inform the court’s analysis in this case? Is it analogous? Misplaced? Can it be distinguished? If there is authority that directly cuts against your position, acknowledge it and argue with specificity why that case should not control in the present matter.

REPLY BRIEF

Filing a reply brief is optional.²⁰ If you choose to file a reply brief, respond directly to arguments made in the answer brief. New arguments should not be raised for the first time in a reply brief.²¹ At the same time, a reply brief rehashing arguments made in your brief in chief has little value.

PARALLEL CITATIONS FOR OKLAHOMA CASES

OSCN is the official publisher of Oklahoma appellate court decisions.²² The *Pacific Reporter* is the unofficial reporter. The Oklahoma Supreme Court Rules require parallel citations to both OSCN and the *Pacific Reporter*.²³ Cite to the specific paragraph number for the OSCN citation and the pinpoint page number for the *Pacific Reporter* if it is available to you.²⁴

OKLAHOMA STATUTES

Historically, the official Oklahoma Statutes have been published in hardbound volumes every 10 years and then updated annually with supplement volumes. However, the state is no longer authorized to purchase and distribute the hardbound volumes.²⁵ The navy blue 2011 decennial statutes and the 2020 supplement were the last volumes printed and widely distributed to judges, government offices and public libraries. Many practitioners reference other compilations of the statutes, e.g., OSCN, “green books” and Westlaw. This change should not affect your legal research methods, as these sources continue to be updated.

LEGAL WRITING

Through the years, I have developed some guidelines for writing clear, concise, well-reasoned proposed draft opinions. These guidelines may also assist the advocate:

- 1) If there are more than 20 words in a sentence, there better be a darned good reason.
- 2) Write the purpose of each paragraph in the margin to evaluate organization.
- 3) Read the opinion from the losing party’s perspective and ask yourself, “Even if I don’t agree, is it well reasoned?”
- 4) You are not finished until you have read it aloud.

JURISDICTIONAL SCREENING

The Supreme Court has a duty to inquire into its own appellate jurisdiction and the jurisdiction of the court below.²⁶ The Supreme Court and the Court of Civil Appeals may, and often do, issue show cause orders and *sua sponte* dismiss appeals for untimeliness, lack of appealable order and mootness.²⁷ The appellee may also seek to dismiss the appeal by motion or in the answer brief.²⁸

MOTIONS TO RETAIN

The Supreme Court may retain an appeal on the court’s own motion or pursuant to a motion to retain.²⁹ If you file a motion to retain, use the three pages to focus on whether:

- 1) The issues involve an area of law undecided in Oklahoma;
- 2) Different divisions or panels of the Court of Civil Appeals are not in accord on the issues raised on appeal; and
- 3) The issues raised on appeal concern matters that will affect public policy, and any decision is likely to have widespread impact.³⁰

ORAL ARGUMENTS

Oral argument is not a matter of right.³¹ “A party desiring to present oral argument shall file a motion setting forth the exceptional reason that oral argument is necessary and the issues sought to be presented.”³² You are allowed just two pages for your motion for oral argument.³³ With such limited space, I suggest you consider the following:

- 1) Is there a first impression or novel issue of law?
- 2) Every argument should have been made in the appellate briefs or record on appeal – what value will be added by oral presentation?
- 3) The amount in controversy and whether additional litigation expenses are justified
- 4) Judicial economy

The court may order oral argument on its own motion, but if you want oral advocacy in the appellate court (and your client agrees to the extra expense and possible delay in decision), you should file a motion.

HOW LONG WILL IT TAKE FOR YOUR APPEAL TO BE DECIDED?

Justices and judges have varying methods for managing their case assignments. However, all appeals involving deprived or allegedly deprived children, including the termination of parental rights, are prioritized.³⁴ Any party may request their appeal be placed on a fast-track docket.³⁵ Finally, keep in mind that Rule 1.36 “accelerated procedure” for appeals from summary judgments and certain dismissals refers to the expedited process for preparing the record and the fact there are no appellate briefs, not an expedited decision.

PETITION FOR REHEARING

Practitioners may wonder whether they should bother filing a petition for rehearing in the Court of Civil Appeals or go directly to filing a petition for writ of certiorari in the Supreme Court.³⁶ A party does not have to first seek rehearing in the Court of Civil Appeals prior to filing a petition for certiorari.³⁷ The Court of Civil Appeals grants rehearing only a few times a year. Rehearing is rarely granted because, most often, the petition just reargues the case.³⁸ If the opinion does not address an issue raised on appeal, definitely file a petition for rehearing.³⁹ It may simply have been overlooked.

APPEAL-RELATED ATTORNEY FEES

A party may seek appeal-related attorney fees if fees are authorized by statute or contract.⁴⁰ The Supreme Court recently reaffirmed “that a prevailing party who is entitled to attorney fees in the district court is also entitled to recover appellate attorney fees.”⁴¹ In *Friend v. Friend*, the Supreme Court clarified that where fees are mandatory in the district court, fees are also mandatory in the appellate court.⁴² However, if the trial court has discretion to award attorney fees, the appellate court’s decision on the request for appeal-related

attorney fees is also discretionary.⁴³ When entitlement to attorney fees depends on prevailing party status, bear in mind, “A prevailing party is one who prevails on the merits of the action or for whom final judgment is rendered.”⁴⁴ Prevailing party status may change during the course of the litigation and as a result of the appellate court’s decision. If the appellate court remands the case to the trial court for a new trial or further proceedings and a prevailing party cannot yet be determined, an application for appeal-related attorney fees shall be made to the trial court.⁴⁵

Requesting attorney fees in your appellate brief is no longer allowed. That rule changed in 2012. Now, “A motion for an appeal related attorney’s fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate.”⁴⁶ Appellate courts routinely deny requests tucked inside appellate briefs in violation of Okla.Sup.Ct.R. 1.14. Additionally, do not include evidentiary material as to the amount of fees with your motion.⁴⁷ If the appellate court grants the motion for appeal-related attorney fees, it will remand the case to the trial court for a determination of the amount.⁴⁸

A Court of Civil Appeals order granting or denying a motion for appeal-related attorney fees may be

Briefs are often submitted with sparse citations. You must cite authority to support each proposition of error.¹⁶

reviewed by the Supreme Court on certiorari. Whether a party has a statutory or contractual right to appellate attorney fees is a question of law subject to *de novo* review.⁴⁹ If the appellate attorney fees award is discretionary, the decision is reviewed for an abuse of discretion.⁵⁰

WEIGHT OF AUTHORITY

Opinions of the Court of Civil Appeals are either 1) unpublished, 2) published by order of the Court of Civil Appeals or 3) approved for publication by the Supreme Court. Most opinions issued by the Court of Civil Appeals are unpublished. The division issuing the opinion may vote to publish if it resolves novel or unusual issues.⁵¹

On average, the Court of Civil Appeals publishes 10-15% of its decisions. Generally, opinions of the Court of Civil Appeals are persuasive only. *Even when an opinion is released for publication by order of the Court of Civil Appeals, it is merely persuasive and has no precedential value.*⁵² Only if the Supreme Court orders a Court of Civil Appeals opinion approved for publication is it given precedential effect.⁵³ Such an opinion bears the notation “Approved for Publication by the Supreme Court.”⁵⁴ Only then may the Court of Civil Appeals case be cited as precedent.⁵⁵ In your briefs, use the parenthetical “(approved for publication by the Supreme Court)” to alert the judge and staff attorney reviewing your appeal that it is not merely a persuasive Court of Civil Appeals opinion. While it is extremely rare, sometimes the Supreme Court notation is not added to an OK CIV APP opinion on OSCN or Westlaw. If you find an OK CIV APP case that supports your position, double-check the appellate court docket on OSCN to see if the Supreme Court filed an order approving it for publication.

In 2022, the Supreme Court amended Rule 1.200(c) to permit parties to cite unpublished opinions of the Court of Civil Appeals in briefs and other materials presented to the court.⁵⁶ The rule requires that parties include either a hyperlink to the opinion or attach a copy of the opinion to the brief.⁵⁷ While this change does not give the unpublished opinion any weight, it may be useful when there is no binding precedent. Some judges and staff attorneys are interested in how other divisions have ruled on the same issue. Furthermore, a conflict between divisions of the Court of Civil Appeals could later be a reason for the Supreme Court to grant certiorari.⁵⁸



This rule change begs the question: When conducting legal research, where can you find unpublished opinions of the Court of Civil Appeals? Unpublished opinions are available in PDF format on the OSCN appellate court docket, but that is only helpful if you are already familiar with the case and know a case number or the names of the parties. The Oklahoma Public Legal Research System has a searchable database of unpublished Court of Civil Appeals opinions dating back to the court's establishment in 1968. The Oklahoma Public Legal Research System may be accessed by going to www.oklegal.onenet.net. You can also sign up for daily email notifications when unpublished opinions of the Court of Civil Appeals are filed by going to www.oscn.net and clicking on "Appellate Opinions Notification."

Author's Note: The views expressed in this article are those of the author and do not necessarily reflect those of the Supreme Court of Oklahoma, the Oklahoma Court of Civil Appeals, any justice, any judge, the marshal, any referee or any other judicial staff attorneys.

ABOUT THE AUTHOR



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ENDNOTES

1. *In re Guardianship of Stanfield*, 2012 OK 8, ¶27, 276 P.3d 989, 1001; see *Hall v. GEO Grp., Inc.*, 2014 OK 22, ¶12, 324 P.3d 399, 404, ("jurisdictional inquires may be made by the courts at any stage of the proceedings"); *Sullivan v. Forty-Second W. Corp.*, 1998 OK 48, ¶¶6-8, 961 P.2d 801, 802-03 (reviewing fundamental error even if not properly preserved for appeal).

2. See generally Bevan G. Stockdell and Kimberly W. Carlson, "Reconsider Your Motion to Reconsider: How Post-Trial Motions Affect Your Civil Appeal," *OBJ*, October 2019, at 12, available at <https://bit.ly/3CeDAnD>.

3. See Okla.Sup.Ct.R. 1.11(k)(1), 12 O.S.2022, ch. 15, app. 1.

4. See 20 O.S.2011 §3002; Okla.Sup.Ct.R. 1.25(b).

5. See Okla.Sup.Ct.R. 1.25(b).

6. *Id.*

7. *Id.*

8. Okla.Sup.Ct.R. 1.11(e)(1); see Okla.Sup.Ct.R. 1.11(j).

9. See *Ray v. Ray*, 2006 OK 30, ¶12, 136 P.3d 634, 637.

10. *Fleck v. Fleck*, 2004 OK 39, ¶12, 99 P.3d 238, 241.

11. See *id.*

12. See *Peters v. Golden Oil Co.*, 1979 OK 123, ¶3, 600 P.2d 330, 331.

13. See *Sneed v. Sneed*, 1978 OK 138, ¶10, 585 P.2d 1363, 1366.

14. See Okla.Sup.Ct.R. 1.11(f).

15. See Okla.Sup.Ct.R. 1.11(d).

16. See Okla.Sup.Ct.R. 1.11(f).

17. Okla.Sup.Ct.R. 1.11(k)(1); see *Peters*, 1979 OK 123, ¶3, 600 P.2d at 331.

18. See Okla.Sup.Ct.R. 1.11(f).

19. *Peters*, 1979 OK 123, ¶3, 600 P.2d at 331; see *Cox Okla. Telecom, LLC, v. State ex rel. Okla. Corp. Comm'n*, 2007 OK 55, ¶33, 164 P.3d 150, 162.

20. See Okla.Sup.Ct.R. 1.10(a).

21. See *Cox*, 2007 OK 55, ¶33, 164 P.3d at 162-63.

22. See *In re Official Publication of Decisions*, 2013 OK 109; Okla.Sup.Ct.R. 1.200(a).

23. See Okla.Sup.Ct.R. 1.200(f)(1).

24. The Oklahoma Supreme Court Rules require citations to the specific paragraph number on OSCN, but the pinpoint page number for the *Pacific Reporter* is optional. *Id.*

25. As of Nov. 1, 2020, the secretary of state is only authorized to provide for the electronic publication of the Oklahoma Statutes and session laws. See 75 O.S.2022 §13. The Oklahoma Statutes, session laws and Oklahoma Constitution are available on the secretary of state's website at <https://govt.westlaw.com/okjc>.

26. See *Hall*, 2014 OK 22, ¶12, 324 P.3d at 404.

27. What constitutes an appealable order or event is beyond the scope of this article. A helpful discussion of appealable orders is available at Ann Hadrava, "Appealable Orders: Asking the Key Questions," *OBJ*, October 2019, at 18, available at <https://bit.ly/3Vy3x8E>.

28. See Okla.Sup.Ct.R. 1.6(c).

29. See Okla.Sup.Ct.R. 1.24(a).

30. See Okla.Sup.Ct.R. 1.24(b)-(c).

31. See Okla.Sup.Ct.R. 1.9; Okla.Sup.Ct.R. 1.176.

32. Okla.Sup.Ct.R. 1.9.

33. See *id.*

34. 10A O.S.2022 §1-5-103(C).

35. See Okla.Sup.Ct.R. 1.17(III).

36. See Okla.Sup.Ct.R. 1.777 (petition for rehearing); Okla.Sup.Ct.R. 1.178 (petition for writ of certiorari).

37. See Okla.Sup.Ct.R. 1.178(b)(1).

38. Rehearing is not for rearguing a question that has been previously presented and fully considered by this court. *Tomahawk Res., Inc. v. Craven*, 2005 OK 82, supp. op. ¶1, 130 P.3d 222, 224-25. Likewise, it is not for presenting points the losing party overlooked, misapprehended or failed to fully address. *Id.* ¶1, at 225.

39. Generally, rehearing is granted: 1) to correct an error or omission, 2) to address an unresolved jurisdictional issue or 3) to clarify the opinion. *Id.* ¶1, at 224-25.

40. See 12 O.S.Supp.2012 §696.4(C); *Patel v. Tulsa Pain Consultants, Inc., P.C.*, 2022 OK 56, ¶6, 511 P.3d 1059, 1061; Okla.Sup.Ct.R. 1.14(B).

41. *Friend v. Friend*, 2022 OK 29, ¶1, 506 P.3d 1092, 1093.

42. See *id.* ¶¶5-8, at 1094-95.

43. *Id.* ¶¶9-11, at 1095.

44. *Comanche Nation of Okla. ex rel. Comanche Nation Tourism Ctr. v. Coffey*, 2020 OK 90, ¶25, 480 P.3d 271, 279.

45. See 12 O.S. §696.4(D).

46. Okla.Sup.Ct.R. 1.14(B); see 12 O.S. §696.4(C).

47. See 12 O.S. §696.4(C).

48. *Id.*

49. See *Patel*, 2022 OK 56, ¶6, 511 P.3d at 1061.

50. See *Friend*, 2022 OK 29, ¶4, 506 P.3d at 1094.

51. See Okla.Sup.Ct.R. 1.200(d)(2); see also 20 O.S.2011 §30.5, "Opinions of the Court of Civil Appeals which apply settled precedent and do not settle new questions of law shall not be released for publication in the official reporter."

52. See *Skinner v. John Deere Ins. Co.*, 2000 OK 18, ¶19, 998 P.2d 1219, 1223-24; Okla.Sup.Ct.R. 1.200(d)(2).

53. *Id.*

54. Okla.Sup.Ct.R. 1.200(d)(2).

55. See 20 O.S. §30.5.

56. See Okla.Sup.Ct.R. 1.200(c)(6) (as amended by order of the Supreme Court, 2022 OK 70, eff. July 1, 2022).

57. *Id.*

58. See Okla.Sup.Ct.R. 1.178(a)(3).

Recent Changes to the Oklahoma Supreme Court Rules: What Practitioners Need to Know

By Jana L. Knott



BEFORE 2019, the Oklahoma Supreme Court Rules had not been amended since 2014. Between 2019 and 2022, the court amended *eight* of its rules and added two new rules. This article provides a summary of those rule changes.

RULE 1.4(C)

Rule 1.4(c) provides that a “petition in error, petition for review, or petition for certiorari may be filed either by delivery to the Clerk of the Supreme Court, or by deposit with the United States Postal Service, or by delivery with a third party commercial carrier.”¹ When mailing petitions in error, petitions for review or petitions for certiorari to the Oklahoma Supreme Court for filing using the United States Postal Service or a third-party commercial carrier, practitioners must be cognizant of the court’s rules regarding when such documents are considered timely filed.²

Rule 1.4(c) was amended by the court on May 3, 2021, to clarify that when a filer uses a third-party commercial carrier to mail a petition in error, petition for review or petition for certiorari, the filer must also ensure that either the cost deposit or a properly executed pauper’s affidavit “has also been mailed or received by the commercial carrier, conforming to the same requirements for mailing or receipt

by the commercial carrier.”³ If the filer fails to include the filing fee or pauper’s affidavit with the mailing, the filer must ensure “such cost deposit or affidavit is actually delivered to the Court Clerk within the time period for perfecting the appellate procedure.”⁴ If not, “The petition in error will not be considered timely filed.”⁵

However, the court also amended Rule 1.4(c) to clarify, “The determination of whether or not a petition in error is timely will be made by the Supreme Court.”⁶ This amendment, in practice, simply means the clerk’s office will file the petition regardless of whether the cost deposit or pauper’s affidavit is included. If the cost deposit or pauper’s affidavit is not received or not *timely* received, the case will be sent to the conference for a determination as to whether the petition must be dismissed for untimeliness.

RULE 1.5

Rule 1.5 was amended by the court on June 27, 2022, to mandate that “corporate entities including corporations and limited liability companies that are parties to actions in the Supreme Court or Court of Civil Appeals” can only proceed “if represented by counsel licensed to practice law.”⁷ The rule change also clarifies that an “unlicensed individual” cannot “enter an appearance or represent any corporate entity in a case before the Supreme Court or the Court of Civil Appeals.”⁸ Failure to follow this rule “will result in dismissal of the case or a bar to participate in the proceeding, including striking filings from the record.”⁹

Although the rule change on its face seems obvious, two recent cases – neither of which resulted in any published orders or opinions – may be the catalyst behind the court’s amendment to the rule. In case number 120,303, “Nina J’s Dispensary, LLC, Pitts, Antonio W. d/b/a Antonio W. Pitts” filed a petition in error, seeking review

of a dismissal order in the district court.¹⁰ “Antonio W. d/b/a Antonio W. Pitts” was not a party to the underlying proceeding involving Nina J’s Dispensary LLC.¹¹

The court entered an order noting the “petition in error, paupers affidavit, and entry of appearance are signed by Antonio W. Pitts pro se, but that the plaintiff appellant is Nina J’s Dispensary LLC.”¹² The court also noted, citing *Massongill v. McDevitt*,¹³ “A non-lawyer individual may represent himself or herself pro se in any proceeding where that individual is a party, but the individual appearing pro se may only represent himself or herself. An individual who is not an attorney may not appear as legal counsel on behalf of another party or entity.”¹⁴ The appeal was eventually dismissed for Nina J’s failure to obtain “an attorney licensed to practice law in Oklahoma enter an appearance in this Cause” and for Nina J’s failure to “respond or otherwise comply with the Court’s other orders.”¹⁵

In case number 119,160, a petition in error was filed by “Dr. Elias Quintana, Pro Se” on behalf of the appellant “TransNational Bus & Coach, LLC.”¹⁶ The court, again citing *Massongill*, entered an order directing TransNational Bus & Coach LLC to file an entry of appearance “by an attorney licensed to practice in this state” and advising TransNational that “any future filings on behalf of TransNational Bus & Coach, LLC that are not signed by an attorney for Transnational Bus & Coach will not be considered.”¹⁷ TransNational Bus & Coach eventually complied with the court’s order and obtained an attorney to represent it in the appeal. The case proceeded, and the Court of Civil Appeals issued a decision on June 24, 2022.

RULE 1.18

Rule 1.18 is a new rule adopted on May 20, 2019, by the Oklahoma Supreme Court. The rule addresses prisoner filings, mirroring 57 O.S. §566.2(A). Section 566.2 allows the court administrator of the Oklahoma courts to maintain a registry of those prisoners who have had any cases “dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted.”¹⁸ Rule 1.18 directs that when a prisoner who appears on the registry three or more times “initiates an original action or an appeal filed with the Supreme Court without prepayment of all fees required by law, the Clerk shall file and docket the original action or appeal and forward the filings to the Chief Justice for review.”¹⁹

Of note, Rule 1.18 provides the Supreme Court “will direct the prisoner to show cause why the matter should be allowed to proceed without prepayment of all fees as required by law.”²⁰ The rule then allows the chief justice to summarily dismiss the proceeding “[i]f the prisoner fails to show adequate cause.”²¹ In practice, this rule allows the chief justice to deal with these matters without having to send the case to the conference for a summary dismissal.

RULE 1.19

Rule 1.19 is also a new rule adopted by the court on June 24, 2019, and addresses the use of credit cards, debit cards and other electronic payments to the appellate court clerk.²² Before the adoption of this rule, the Supreme Court Clerk’s Office did not accept credit or debit cards for payment of any type of filing fee or cost. Rule 1.19 now allows for payment to be made “for any fee, fine, forfeiture, cost, penalty assessment or other charge or collection” by “a nationally recognized credit or debit card.”²³ The

rule specifically states the court now accepts “Visa, MasterCard, Discover and American Express,” and debit cards “will be processed as a credit card without the use of a PIN number.”²⁴

Also included in Subsection (c) of Rule 1.19 are instructions for those filers who want to file pleadings by mail but also want to pay the associated fees by credit or debit card.²⁵ Practitioners should note the court created a new form, Form No. 4A, that must be included with the initial pleadings when filed.²⁶ The “form 4A affidavit” must be received on or before the due date to ensure the initial pleadings in the case are considered timely filed.²⁷

RULE 1.21(A)

Rule 1.21 addresses the computation of time for the commencement of an appeal. Subsection (a) governs appeals from the district court. The court amended Subsection (a) to address confusion about what constitutes a final “judgment, decree, or appealable order” under 12 O.S. §§696.2-696.3 for purposes of triggering appellate filing deadlines. The amendment to Rule 1.21(a) came shortly after the court’s 2021 decision in *Moore v. Haley*.²⁸ In *Moore*, Mother filed a motion to resume visitation in a family law matter in the district court of McClain County. The trial court granted the motion. Father filed a motion to vacate. The trial court denied the motion to vacate, and Father appealed. Attached to Father’s petition in error was a handwritten summary order.

Mother filed a motion to dismiss the petition in error with the Oklahoma Supreme Court, arguing, among other grounds, that the summary order attached to the petition in error did not meet the statutory requirements for a final, appealable order. The summary

Rule 1.19 is also a new rule adopted by the court on June 24, 2019, and addresses the use of credit cards, debit cards and other electronic payments to the appellate court clerk.²² Before the adoption of this rule, the Supreme Court clerk’s office did not accept credit or debit cards for payment of any type of filing fee or cost.

order attached to the petition in error did not contain the full caption of the case, the full names of the parties or counsel appearing or the full name of the assigned judge. Although the court over-ruled Mother’s motion to dismiss the appeal to allow Father an opportunity to secure a statutorily compliant final journal entry of judgment, the court made clear its disdain for summary orders:

Many times, Summary Orders are illegible and may be followed with a formal, typed Journal Entry of Judgment. This creates uncertainty for litigants and the appellate courts about the finality of the Summary Order, and the computation of appeal time. Sometimes Summary Orders may include language indicating a subsequent order should follow and other times they do not. The Summary Orders typically do not contain evidence of service on the parties. The title of the document “Summary Order” denotes that this is an

abbreviated account of the ruling of the court conducted without legal formalities.²⁹

The court concluded by giving lawyers and parties notice that summary orders will no longer be recognized as a final, appealable order: “The use of the Summary Order form has long created problems and confusion for the appellate courts and a hardship on the parties attempting to appeal from a final order. ... *Prospectively, we will not recognize a filed Summary Order as a final judgment under 12 O.S. 2011 § 696.3.*”³⁰

The court subsequently amended Rule 1.21(a) to make clear what is *not* considered an appealable order:

An appeal from the district court may be commenced by filing a petition in error with the Clerk of the Supreme Court within thirty days from the date the judgment, decree, or appealable order prepared in conformance with 12 O.S. § 696.3 was filed with the clerk of the district court.³¹

The following shall not constitute a judgment, decree or appealable order: minute orders or minute entries; docket entries or docket minutes; a verdict; an informal statement of the proceedings and relief awarded, including, but not limited to, summary orders or summary minutes, or a letter or other writing to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.^{32 33}

Following the amendment to Rule 1.21(a), the court in *Laubach v. Laubach*³⁴ put what appears to be the final nail in the coffin for “minutes” and “minute orders” – at least with regard to whether such entries are appealable. After Mother and Father divorced, Mother sought approval from the trial court to move across the state with the couple’s children. Father objected, and among numerous orders issued by the trial court in the case was a “minute” dated and filed in the case on April 17, 2018. Father attached the minute



to his petition in error (filed nearly 10 months after the minute was filed), along with two other orders issued by the trial court. The case was assigned to the Court of Civil Appeals.

The Court of Civil Appeals dismissed that portion of Father's appeal related to the minute as untimely. The court concluded that the minute was "intended as

a final determination of Father's April 6, 2018 motion to modify and Mother's May 15, 2017 request to relocate with the children," and the trial court did *not* direct the parties to prepare a final journal entry of judgment.³⁵ Because the minute was an appealable order, the Court of Civil Appeals concluded that Father's appeal of that order was untimely. Father petitioned

for certiorari review, and the Oklahoma Supreme Court granted certiorari for the limited purpose of addressing the appealability of such court minutes, minute orders, minutes and summary orders.

The court "again definitively pronounce[d]" that "written instruments titled 'court minute,' 'minute order,' 'minute,' or 'summary order' cannot meet the definition of an order which triggers the procedural time limits for appeal, regardless of their substance, content, for length."³⁶ The court found that the Court of Civil Appeals erred when it determined the April 17, 2018, minute order was an appealable order for purposes of triggering the procedural time limits for appeal.³⁷ The court remanded the matter to the Court of Civil Appeals to consider the subsequent "orders and the merits of the father's appeals."³⁸

RULE 1.23

Rule 1.23 addresses what a party must do to commence an appeal from a final judgment of the district court. On May 3, 2021, the court amended Rule 1.23. Subsection (a)(2) was amended to clarify and allow "cost deposits" to be paid by check or "a nationally recognized credit or debit card or other electronic payment method pursuant to Rule 1.19."³⁹ A new Subsection (a)(3) was also added to address parties who seek to proceed in *forma pauperis*:

(3) A party who was permitted to proceed in *forma pauperis* before the lower court or other tribunal may proceed on appeal in *forma pauperis*, so long as a file-stamped copy of the order approving in *forma pauperis* status granted by the lower court or other tribunal is attached to the petition in error. If the party first seeks to proceed in *forma pauperis* in

the appellate court, the affidavit in forma pauperis shall be filed with the petition in error, and shall be in substantial compliance with the form prescribed by Rule 1.301, Form No. 4.⁴⁰

Finally, Rule 1.23(b) was amended to require the court clerk to file *all* petitions in error “upon receipt.”⁴¹ In practice, the court clerk must now file a petition in error even if the cost deposit or pauper’s affidavit is not included. If the cost deposit or pauper’s affidavit is not timely received, the case will be sent to the conference to determine whether the petition in error was timely.⁴²

RULE 1.27(A)

Rule 1.27(a) was amended Oct. 21, 2019, and provides that a cross-appeal or counter-appeal must now be filed within *30 days* “from the date the petition in error is filed by the Appellant in the same case.”⁴³ Practitioners should note that this amendment is a significant change from the prior rule. Previously, a cross- or counter-appeal had to be filed within 40 days of the *date the judgment was filed in the district court*. With this amendment, the triggering event to file a cross- or counter-appeal is now *the filing of the appellant’s petition in error*:

(a) Cross-Appeal or Counter-Appeal. If a petition in error has been timely filed to commence an appeal from an appealable decision, then a party aggrieved by the same decision may file a cross or counter petition in error within thirty (30) days from the date the petition in error is filed by the Appellant in the same case. Failure to file within the time allowed will result in the dismissal of the cross or counter appeal.⁴⁴

ADDITIONAL RECENT AMENDMENTS

Rule 1.11 – Form and Content of Briefs (Amended effective Nov. 14, 2022)

Rule 1.11 was amended to specify font size and spacing for footnotes in briefs: “Footnotes shall also be in clear type not less than 11-point font and may be single spaced lines. Briefs will be stricken or footnotes will be disregarded where a footnote raises a substantive argument or where a party’s use of footnotes is abusive or an attempt to circumvent the 30-page length requirement.”

Rule 1.21 – Computation of Time for Commencement of Appeal (Amended effective Dec. 1, 2022)

Subsection (f) of Rule 1.21(f) was also amended to address appeals from the termination of parental rights. The following subsections were added to address timeliness of petitions in error filed in a parental termination appeal:

(2) A party who wishes to challenge the termination of parental rights is entitled to the effective assistance of counsel at trial, as well as in perfecting any appeal. 10A O.S. § 1-4-306(A); *Matter of J.L.O.*, 2018 OK 77, ¶35, 428 P.3d 881; Supreme Court Rules 1.4, 1.23(a)-(d); Oklahoma Rules of Professional Conduct, 5 O.S., Ch. 1, App. 3--A; *cf. Abels v. Kaiser*, 913 F.2d 821 (10th Cir. 1990).

(3) If, through no fault of the appealing party, the Petition in Error is not timely filed, the party may file a motion with the trial court seeking an order recommending a late appeal. The motion shall detail why the party believes their inability to timely file an appeal was through no fault of their own. A copy of the motion shall be served on all other parties, who may respond to the request.

(4) The trial court may hold a hearing on the matter if necessary. The trial court shall issue, and file with the district court clerk, an order containing findings of fact and a conclusion as to whether a late appeal should or should not be granted by this Court. A file-stamped copy of that order shall be served on all parties.

(5) Within thirty days after the filing of that order, the party seeking a late appeal shall file a Petition in Error in this Court including a file-stamped copy of the order. Whether or not a late appeal is granted will be determined by this Court.

RULE 1.60

Rule 1.60 of the Oklahoma Supreme Court Rules defines “interlocutory orders appealable by right.”⁴⁵ Interlocutory orders appealable by right are those orders that, although not final, are statutorily defined as orders that may be appealed before the final order is entered in the case. A few examples, although not exhaustive, include certain orders issued in a probate proceeding, orders certifying or refusing to certify a class action and orders appointing or refusing to appoint a receiver.⁴⁶

Rule 1.60 was amended Oct. 8, 2019, to add a new Subsection (j) so “[t]emporary orders of protection made in proceedings pursuant to the Protection From Domestic Abuse Act, 22 O.S. §§ 60 et seq” are now interlocutory orders immediately appealable by right.⁴⁷ No other changes were made to Rule 1.60, and the expedited timeframe for completing the record and the shortened briefing cycle remain in place.⁴⁸

RULE 1.200(C)

Rule 1.200 addresses the manner and form of opinions in the Oklahoma Supreme Court and Court of Civil Appeals.⁴⁹ On June 27, 2022, the court made several amendments to Subsection (c) of Rule 1.200.⁵⁰ The first amendment was to 1.200(c)(2), which deals with motions to publish memorandum opinions and unpublished opinions. The court amended the rule to limit the time to file a motion to publish to “not later than 20 days after the issuance of mandate” in the case.⁵¹ The court also amended Rule 1.200(c) to include a new Subsection (3), which requires a petition for certiorari to be timely filed before a motion to publish can be filed:

(3) No party or other interested person may request the publication of any Court of Civil Appeals opinion unless certiorari review was first timely sought by a party, pursuant to Rule 1.179, prior to the request for publication. Motions to withdraw

an opinion from publication are subject to the same limitations set forth in (c) (2) & (3).⁵²

And finally, the court amended Rule 1.200(c) to now allow practitioners to cite unpublished opinions from the Court of Civil Appeals in briefs and “other material presented” to a court.⁵³ Although the rule makes clear that unpublished opinions still have no precedential effect, this amendment is significant for practitioners, as the majority of opinions issued by the Court of Civil Appeals are unpublished. Practitioners can now cite those unpublished opinions as persuasive authority without fear of violating the court’s rules.

It should be noted, however, that the amendment requires practitioners to provide a copy of the opinion or a hyperlink as those unpublished opinions are not currently collected on any official court database: “Any brief or other material presented to any court which includes a reference or citation to an unpublished opinion, shall also include a copy or hyperlink to the unpublished opinion.”⁵⁴

CONCLUSION

The recent uptick in amendments to the court’s rules indicates the court may be in the process of modernizing its rules. Because the court’s rules can often be difficult to navigate, even for a seasoned practitioner, the bench and bar will want to keep a close eye on changes to the court’s rules in the coming years.

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ABOUT THE AUTHOR



Jana L. Knott joined Bass Law in 2018, where her practice focuses primarily on appellate litigation, advocacy and consultation. She also provides district court level brief-writing and complex motion-writing to other lawyers and firms in all areas of the law, including trust and estate disputes, business disputes, oil and gas litigation, municipal law and real property disputes.

ENDNOTES

1. Okla. Sup. Ct. R. 1.4(c).
2. Rule 1.4 has several nuances that often trip up practitioners. For example, Rule 1.4(c) provides, "When a petition is mailed through the United States Postal Service, a postmark date from a *privately owned postage meter or commercial postage meter label* will not suffice as proof of the date of mailing." Okla. Supt. Ct. R. 1.4(c) (emphasis added). If the party cannot provide "other proof of date of mailing from the United States Postal Service, a document bearing only such a postmark will be deemed filed upon date of delivery to the Clerk." *Id.*
3. *In re Amendment of Rules 1.4 and 1.23 of Okla. Sup. Ct. Rules*, 2021 OK 23, Ex. A.
4. *Id.*
5. *Id.*
6. *Id.*
7. *In re Amendment of Rules 1.5 and 1.200 of Okla. Sup. Ct. Rules*, 2022 OK 70, Ex. A.
8. *Id.*
9. *Id.*
10. *Nina J's Dispensary, LLC v. Raja Ijaz, LLC, Raja Ahmed*, Case No. 120,303, Pet. in Error (Apr. 1, 2022).
11. *Id.*
12. *Id.*, Order (April 11, 2022).
13. 1989 OK CIV APP 82, 828 P.2d 438.
14. *Id.*
15. *Id.*, Order (June 13, 2022).
16. *America's Car Mart, Inc., v. Transnational Bus & Coach, LLC*, Case No. 119,160, Pet. in Error (Nov. 2, 2020).
17. *Id.*, Order (Nov. 3, 2020).
18. 57 O.S. §566.2(8).
19. *In re Creation of Rule 1.18 of Okla. Sup. Ct. Rules*, 2019 OK 38, Ex. A.
20. *Id.*
21. *Id.*
22. *In re Establishment of Rule 1.19 of Okla. Sup. Ct. Rules*, 2019 OK 51, Ex. A.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*, Ex. B.
27. *Id.*, Ex. A.
28. 2021 OK 37, 505 P.3d 918.
29. *Moore*, 2021 OK 37, ¶13, 505 P.3d at 919.
30. *Id.*, ¶14, *Id.* at 919.
31. 12 O.S. §990A.
32. 12 O.S. §696.2.

33. The underlined portion reflects what was added to the rule by the court. See *In re Amendment of Rule 1.21 of Okla. Sup. Ct. Rules*, 2021 OK 41, Ex. B.
34. 2022 OK 78, ___P.3d___.
35. *Laubach v. Laubach*, Case No. 117,545 at 14 (Oct. 18, 2021) (unpublished) (vacated).
36. *Laubach*, 2022 OK 78, ¶14 (emphasis added).
37. *Id.*, ¶15.
38. *Id.*
39. *In re Amendment of Rules 1.4 and 1.23 of Okla. Sup. Ct. Rules*, 2021 OK 23, Ex. A.
40. *Id.*
41. *Id.*
42. Rule 1.23(b) now reads as follows:
Timely Costs Mandatory. All petitions in error shall be filed upon receipt. When a petition in error is received by the Clerk of the Supreme Court, the entire cost deposit, or a properly executed pauper's affidavit is due at the time of filing with the Clerk of the Supreme Court. The cost deposit or pauper's affidavit must be received by the Clerk of the Supreme Court within the same thirty-day period for filing the petition in error (12 O.S. § 990A(A)) for the tendered petition in error to be considered as timely filed to commence an appeal. The determination of whether or not a petition in error is timely will be made by the Supreme Court. In an appeal brought by the State of Oklahoma, or by direction of any department of the State, cost deposit shall not be paid with the filing of the petition in error. 12 O.S. § 66.
43. *In re Amendment of Rule 1.27(a) of Okla. Sup. Ct. Rules*, 2019 OK 67, Ex. A.
44. *Id.*
45. Okla. Sup. Ct. R. 1.60.
46. See *id.*
47. *In re: Amendment to Oklahoma Sup. Ct. R. 1.60*, Ex. A.
48. See *id.*
49. Okla. Sup. Ct. R. 1.200.
50. *In re Amendment of Rules 1.5 and 1.200 of Okla. Sup. Ct. Rules*, Ex. B.
51. *Id.* Rule 1.200(c)(2) now reads:
2) A party or other interested person who believes that an opinion of either the Supreme Court or Court of Civil Appeals which has not been designated by the Court for publication has substantial precedential value may file a motion in the Supreme Court. The motion asking that it be published shall be filed not later than 20 days after the issuance of the mandate in that case. The filing of the motion shall not affect the issuance of the mandate. The motion shall state the grounds for such belief, shall be accompanied by a copy of the opinion, and shall comply with Rule 1.6.
52. *Id.*
53. *Id.*
54. *Id.*

Legislative Monitoring Committee Prepares for New Session

By Shanda McKenney

AS IN YEARS PAST, THE Legislative Monitoring Committee is working hard to gather and summarize information for the OBA membership regarding matters expected to come up in the 2023 legislative session. Hopefully, you were able to attend our annual Legislative Kickoff event on Friday, Jan. 27. For those who missed this valuable networking opportunity, a replay of pertinent portions is available on the OBA website.

A special thank you to all the presenters at Legislative Kickoff – the event is not possible without their willing participation! There is no substitute for having subject-matter experts speak on legislation directly impacting their respective areas of practice, and their time and dedication to this project are highly valued. If you would like to be a presenter for next year's event, please reach out to Alisha Davidson at alishad@okbar.org.

ISSUES OF INTEREST FOR 2023

Because 2023 is the first year of a new term, no bills were carried over from 2022. As a result, there will likely be fewer bills up for consideration than there were last year; although certain topics may be revisited with a new title and number. A substantial number of bills have been introduced dealing with the funding, curriculum and



administration of public schools, as well as several addressing water rights and other natural resources.

Several pieces of legislation seek to regulate pharmaceuticals, insurance and other health-related issues. There are bills that address the use and privacy of electronic data and still others that seek to extend the sunset dates for various licensing boards. There is more than one proposed increase of the minimum wage, and there are a variety of suggestions for dealing with daylight saving time.

IMPORTANT LEGISLATIVE DATES

For a complete list of all bills, dates and deadlines, agendas, a map identifying your personal representative and senator and more, please take some time to review all the resources available at www.okhouse.gov. You can also review the text of all introduced legislation and set up an alert feature to notify you of actions taken on bills of particular interest to you.

- Jan. 19: Deadline for introduction of bills, 4 p.m.
- Feb. 6: Session begins, noon
- March 2: Deadline for House bills and House joint resolutions to come out of committee
- March 23: Deadline for passing bills in chamber of origin
- April 27: Deadline for passing bills in opposite chamber
- May 26: *Sine die* adjournment, 5 p.m.

Author's Note: The views expressed therein are those of the author individually and are not the views of State Farm.

ABOUT THE AUTHOR



Shanda McKenney practices in Oklahoma City. She chairs the OBA Legislative Monitoring Committee.

The image shows the Oklahoma State Capitol building, a grand neoclassical structure with a prominent dome. The entire image is overlaid with a red color. The dome is topped with a statue of a Native American on horseback. The building features a portico with columns and a series of windows. The text is positioned in the upper left corner.

Oklahoma Bar Association
**DAY AT THE
CAPITOL**
Tuesday, March 21

Visit www.okbar.org/dayatthecapitol for more information.

Applicants for February 2023 Oklahoma Bar Exam

THE OKLAHOMA RULES OF Professional Conduct impose on each member of the bar the duty to aid in guarding against the admission of candidates unfit or unqualified because of deficiency in either moral character or education. To aid in that duty, the following is a list of applicants for the *bar examination* to be given Feb. 21-22, 2023.

The Board of Bar Examiners requests that members examine this list and bring to the board's attention in a signed letter any information that might influence the board in considering the moral character and fitness to practice of any applicant for admission. Send correspondence to Cary Pirrong, Administrative Director, Oklahoma Board of Bar Examiners, P.O. Box 53036, Oklahoma City, OK 73152.

EDMOND

Rehma Kamal Amil
Kyle Lee Ashpole
Helenmarie Glory Edem
Duane Keith Jones
Jennifer NC Ly
Hope Riley McKnight
Ryan Andrew Phipps
Tanner Reed Schroeder
Zachary James Scott
Tyler James Stara
Jennafyer Renee Tong
Cole Vaughn Wasemiller

NORMAN

Dalton Benjamin Burlie
Garison Dakota Carrell

Joshua Itzaeh Castro
Cameron Jaci Claytor
Isabella Marie Eldridge
Alexander Brian Keith Hatton
Howard Michael Hennessey
Leslie Cherrelle Hughes
Haylie Lyrie Humble
Phillip Han Kim
Amos Teah Kofa
Morgan Anne Lininger
Taylor Renae Norman
Randall Douglas Polk
Johnathan Asberry Preston
Robert Mathew Standridge

OKLAHOMA CITY

Kennedy Brooke Baker
Blake Cary Blanchard
Britnee Ashley Branch
Meredith Shaw Bryant
Christopher Jace Capraro
Madeline Grace Craig
Alicia Quenette Currin-Moore
Kelli Marie Donley
Raymond Thomas Doud
Keaton Burgess Esselstrom
Sina Nickdel Farzaneh
Mark Conner Harris
Joshua Darnell Hillard
MariKate Hok'te Hulbutta
Jordan Gale Kimball
Carly Dodge Kirkland
Samantha Twiggy Lemke
Lisa Leigh Lopez
Siobhan Ann Mahnken
Perry Thomas Marrs III
McKenna Riley Merrell Murphy
Logan Bradley Moulds
Isaac Fredrick Onalapo
Sarah Elizabeth Ramsey

Erin Lynn Reynolds
Bradi Leann Ryan
Sara Rhiannon Sharp
John Vincent Sicola
John Allee Switzer
Brittany Marie Weaver
Mark Henry White
Rachel Proby Wright

TULSA

Nicholas Abenzoza
Anthony Michael Agostino
Leland Dwayne Ashley Jr.
Caitlin Brianne Barrett
Tosha Wonte Birmingham
Bria Renee Brehm
Lauren Elizabeth Dutton
Trevion Tyree Freeman
Genevieve June Hickman
Hailey Nicole Huber
Stephen Mark Jacks
Rebecca J. Jones
Benjamin Joel LaCourse
Ashley Lee Ann Langston-Ailey
Brant Joseph Larsen
Paige Elizabeth LoVoi
Mackenzie Janene Medders
Adam Grant Miller
Saralyn Grace Olson
Allie Lynn Palmer
Brett Lael Palmer
McKenna Kathleen Rhodes
Garrett Alan Russell
Madelynn Claire Sharp
Christopher Andrew Shrock
Sarah Christine Sparks
Zachary James Sinclair Stegman
Hannah Genean Stidman
Ariel Elizabeth Subourne
Iciss Rose Tillis

Jacob Osten Vanderslice
Maci Lynne Wallace
Jacob William Weideman
Morgan Marshaun Williams
Matthew James Woolslayer
Ronald Joseph Zitzman

**OTHER OKLAHOMA CITIES
AND TOWNS**

Jeffrey Dale Anglemeyer, Owasso
Megan Alexandria Baker,
Nichols Hills
Evan Daniel Barrett, Moore
Taylor Nicole Barrett, Council Hill
Shondra Beth Brumbelow-Neal,
Moore
Patti Diane Buhl, Tahlequah
Brett Lassetter Clark, Stillwater
Kourtlyn Margaret Connor, Moore
Haley Renee Cook, Durant
Joshua David Cooper, The Village
Weston Sean Cox, Broken Arrow
Lucy Amber Marie Dawson, Claremore
Trey Allen Dumler, Blanchard
Matthew Jordan Dunn, Stillwater
Bailey Meghan Fillmore, Newcastle
Drew Eldon Gardner, Owasso
Glenn Austin Gipson-Black, Texola
Robert Randall Gipson-Black, Texola
Arianne Janelle Goddard,
Nichols Hills
Matthew Salvatore Greco-Lucchina,
Sapulpa
Kay Victoria Green, Durant
Tessa Lorraine Gullett, Meridian
Justin Adam Hairston, Moore
Lisbeth Hazel Hernandez, Tuttle
Mary Beth Heskett, Pauls Valley
Tanner Ronald Hilton, The Village
Jlyn Helena Jorgenson, Shawnee

Christopher Brian Lewis,
Claremore
Yovana Lopez Medina, Moore
Garret Arlo Maxey, Claremore
Lara Michelle Medlock, The Village
Seyed Zacharia Mortazavi, Sapulpa
Parker Reid Olmstead, Laverne
Shawn Wayne Paine, Luther
Alan Thomas Pate, Moore
Lauren Elizabeth Peterson, Owasso
Brandon Dean Pierson, Midwest City
Eric Dale Ranney, Piedmont
Ryan Scott Riddle, Glenpool
Sicily Bel Shannon Orth, Guthrie
Rylee Slade Simon, Tahlequah
Karla Renee Snell, Owasso
Andrew David Stephens, Anadarko
Amy Rene Sullivan, Noble
Andie Jane Sweeden, Pawhuska
Sindia Luz Tellado, Fort Sill
Quinton Reed Tews, Yukon
Brittany Morgan Trent, Durant
John Wessley Watson, Claremore
Logan Reed Wickersham, Yukon
Megan Leslie Willingham, Ardmore
Jennesa Kaylee Wilson, Woodward
Samantha Danielle Wolf, Idabel
Marisa Kae Wrape, Walters

OUT OF STATE

Emily Bree Bahn, Amarillo, TX
Jonathan Kingsley Butts, Boston, MA
Minho Choi, Fairfax Station, VA
Leah Paige Cuesta, San Tan Valley, AZ
Suraj Singh Dhillon, Fort Worth, TX
Hannah Caitlyn Frosch,
Pottsboro, TX
Diego Alberto Garcia, Dallas, TX
Jennifer Lynne Goodman,
Boulder, CO

Alyssa BreAnn Gordy,
Grandview, TX
Rodney Lee Hall, Houston, TX
Beverlee Lorraine Harbuck,
Aledo, TX
Ariyiana Monique Haynes,
Atlanta, GA
Jasmine Alexis Majesty House,
Dallas, TX
Michael Bernard Hunter,
Meridian, MS
Rosekate Ibe, Richmond, TX
Ashton Anna Jackson, Midland, VT
Lorna Lavonne Kennedy,
Clayton, NC
Sarah Francis Knop, Houston, TX
Michelle Kruse, Rowlett, TX
Ariel Nicole Lira, Richardson, TX
Lawrence Jacob Mason,
Little Rock, AR
Myong Kung McClintock,
Colorado Springs, CO
Kelsey Lauren McLaughlin,
Paris, TX
Vanessa S. Murra-Kapon, Fort
Worth, TX
Valerie Onyinyechi Ndubuike,
Missouri City, TX
Brenner Charles Orendorff,
Bentonville, AR
Nathaniel Paul Parkey, Plano, TX
Nicolas Cipriano Rodriguez,
Richland, WA
Anam Sohail, Conway, AR
Stephanie Elizabeth Tadjewski,
Arcata, CA
Alma Jasmine Vasquez, Dallas, TX
Nina Alise Zamora, Fort Worth, TX

2023 OBA Officers and New Board Members Take Oaths

ON FRIDAY, JAN. 20, THE NEW OBA officers and board members took their oaths of office. The swearing-in was held in the Oklahoma Supreme Court Ceremonial Courtroom at the state Capitol. Administering the oath of office was Oklahoma Supreme Court Chief Justice M. John Kane.

During the ceremony, President Hermanson addressed those in attendance, honoring association leadership and expressing his hope and enthusiasm for the upcoming year.

“I have had the opportunity over the last 40-plus years to serve many OBA presidents,” President

Hermanson said. “The tradition of leadership these presidents have shown has been incredible. I am humbled to start my service as OBA president. With the officers and governors we have, I don’t see how we can fail. With the help of our outstanding membership, the future looks very bright indeed.”

Officers sworn in were:

- President Brian T. Hermanson, Ponca City
- President-Elect Miles T. Pringle, Oklahoma City
- Vice President D. Kenyon Williams Jr., Tulsa
- Immediate Past President James R. Hicks, Tulsa

New members of the OBA Board of Governors who also took oaths were:

- John E. Barbush, Durant, District Two (three-year term)
- Nicholas E. Thurman, Ada, District Eight (three-year term)
- Jana L. Knott, El Reno, District Nine (three-year term)
- Timothy L. Rogers, Tulsa, member at large (three-year term)
- Caroline M. Shaffer Siex, Tulsa, Young Lawyers Division chairperson (one-year term)

OBA leadership roles are voluntary positions in which lawyers serve while continuing to practice law.



2023 officers take oaths of office. Top left President Brian Hermanson; top right President-Elect Miles Pringle; right photo from left Immediate Past President James R. Hicks and Vice President D. Kenyon Williams Jr.





President Hermanson's daughters, Brianna and Charlcy, and wife, Ruslyn, place his presidential lapel pin.

Top: From left Jana L. Knott, John E. Barbush, President-Elect Miles T. Pringle, Immediate Past President James R. Hicks, President Brian T. Hermanson, Vice President D. Kenyon Williams Jr., YLD Chair Caroline M. Shaffer Siex, Timothy L. Rogers and Nicholas E. Thurman.



Left: New members of the OBA Board of Governors take oaths of office. From left Nicholas E. Thurman, Jana L. Knott, Caroline M. Shaffer Siex, Timothy L. Rogers and John E. Barbush.



Oklahoma Supreme Court justices preside over the swearing-in ceremony.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE OKLAHOMA INDIGENT DEFENSE SYSTEM BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract (“Offers”) to provide non-capital trial level defense representation during **Fiscal Year 2024** pursuant to 22 O.S. 2001, '1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2024 (July 1, 2023 through June 30, 2024) in the following counties: **100% of the Oklahoma Indigent Defense System caseloads in THE FOLLOWING COUNTIES:**

**ATOKA / BRYAN / CANADIAN / COAL / COTTON / CRAIG / JEFFERSON / GRADY /
HUGHES / KAY / LINCOLN / NOBLE / NOWATA / OTTAWA / PONTOTOC /
POTTAWATOMIE / ROGERS / SEMINOLE / WAGONER / WASHINGTON**

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board’s consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor, traffic, youthful offender and wildlife cases in the above counties during FY-2024 (July 1, 2023 through June 30, 2024). Offers may be submitted for complete coverage (100%) of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m.

The deadline for submitting sealed Offers is 5:00 PM, Thursday, March 16, 2023.

Each Offer must be submitted separately in a sealed envelope or box containing one (1) complete original Offer and two (2) complete copies. The sealed envelope or box must be clearly marked as follows:

FY-2024 OFFER TO CONTRACT
_____ **COUNTY / COUNTIES**

TIME RECEIVED:
DATE RECEIVED:

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to OIDS, FY-2024 OFFER TO CONTRACT, P.O. Box 926, Norman, OK 73070-0926. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at 111 North Peters, Suite 500, Norman, OK 73069. **Please note that the Peters Avenue address is NOT a mailing address; it is a parcel delivery address only.** Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 PM, THURSDAY, March 16, 2023 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 17, 2023, beginning at 9:30 AM, and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Non-conforming Offers will be rejected on Friday, March 17, 2023, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 24th, 2023**, at *a place to be announced*.

With each Offer, the attorney must include a résumé and affirm under oath his or her compliance with the following statutory qualifications: presently a member in good standing of the Oklahoma Bar Association; the existence of, or eligibility for, professional liability insurance during the term of the contract; and affirmation of the accuracy of the information provided regarding other factors to be considered by the Board. These factors, as addressed in the provided forms, will include an agreement to maintain or obtain professional liability insurance coverage; level of prior representation experience, including experience in criminal and juvenile delinquency proceedings; location of offices; staff size; number of independent and affiliated attorneys involved in the Offer; professional affiliations; familiarity with substantive and procedural law; willingness to pursue continuing legal education focused on criminal defense representation, including any training required by OIDS or state statute; willingness to place such restrictions on one's law practice outside the contract as are reasonable and necessary to perform the required contract services, and other relevant information provided by attorney in the Offer.

The Board may accept or reject any or all Offers submitted, make counter-offers, and/or provide for representation in any manner permitted by the Indigent Defense Act to meet the State's obligation to indigent criminal defendants entitled to the appointment of competent counsel.

FY-2024 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2019, FY-2020, FY-2021, FY-2022 and FY-2023 together with a 5-year contract history for each county listed above. The request form below may be mailed to **OIDS OFFER-TO-CONTRACT PACKET REQUEST, P.O. Box 926, Norman, OK 73070-0926**, or hand delivered to OIDS at 111 North Peters, Suite 500, Norman, OK 73069 or submitted by facsimile to OIDS at (405) 801-2655.

REQUEST FOR OIDS FY-2024 OFFER-TO-CONTRACT PACKET

Name _____ OBA # _____

Street Address _____ Phone _____

City, State, Zip _____ Fax _____

County / Counties of Interest _____

The Rules of Law and Rules in Life

By Janet Johnson

AS YOU HAVE SEEN IN this appellate-law-themed *Oklahoma Bar Journal*, there are rules, case law and more rules to follow with appellate procedure. This month's theme, coupled with a new year and my new role as executive director, made me think more about creating my own rules to follow – in both my personal and professional life. Something more than just New Year's resolutions, more than a mantra about the power of presence. Something more related to growth and effectiveness.

Thus, I am challenging myself in 2023 with some of Stephen Covey's¹ principles in mind: I want to create rules that will become healthy habits. After much thought, I think I have a decent start; I thought if I shared with the masses, it would add some accountability. So here it goes!

First, I embrace that I am in a state of transition. I am entering a new role on the heels of John Morris Williams, who successfully led the OBA for nearly 20 years. In furtherance of this, I will focus on my circle of influence – my coworkers, peers and colleagues. Together, we will focus on and brainstorm how to increase member engagement and awareness of all the Oklahoma Bar Association has to offer.

Next, I am personally going to write down my visions and desired outcomes in my personal and professional life. Maybe I will surprise myself and create my own personal mission statement. The possibilities here are endless. I know we are all different, but I find many lawyers work well with a defined plan, *i.e.*, an envisioned goal and desired outcome (read: complete that final brief draft well in advance of a filing deadline).

Third, I will strive to consciously prioritize. Many of us get pulled in so many different directions due to someone else's emergency. My goal is to recognize the difference between urgency and importance. To aid in that, I want to make it a habit to plan my week ahead on Sundays rather than just taking a day-by-day view. Perhaps it can become part of my process – a habit – just like meal prepping. My hope is that seeing everything on a Sunday-through-Friday schedule will increase my effectiveness, and that is a habit I would love to have.

Finally, I have a hybrid habit I want to achieve: empathetic listening and synergy. I think these habits pair well, like wine and cheese. I want those who work with me and talk to me, in any capacity, to feel heard and understood. I think that feeling heard and understood lends itself to successful synergy.

Healthy discussions come from listening, feeling heard and mutual understanding. When these pieces fall in place, we create a safe space to brainstorm and come up with something better than either of us had in mind. Thus, effective brainstorming equals a tremendous effect.

This list leaves me with much to do – and I know it is all possible. These should feel no different than any other goals, taking them one day at a time – or in my case, Sunday through Friday. I can only hope that my brain quickly establishes some muscle memory, so these desired habits soon become the rules by which I lead my life.



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

ENDNOTE

1. Stephen Covey is the author of *The 7 Habits of Highly Effective People*.

Sweet.



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The Trouble With Timesheets

By Jim Calloway

WHEN LAWYERS LEAVE private practice to take an in-house counsel or government position, they are often asked about the differences in their new roles. Many of them say they are pleased not to have to complete timesheets anymore – it is a relief not to have to look at the day in six-minute increments. As most of you know, I've long been a proponent of employing flat fees or task-based billing when possible, particularly when representing consumers. But hourly billing is still used for many types of representation.

Before we get to timesheets, let's discuss artificial intelligence. Over the last several weeks, an AI drafting program called ChatGPT from OpenAI¹ has been garnering a lot of attention. It offers a conversational interface, so you can have the AI create something for you without understanding anything about how it works. It accepts conversational input and then applies its massive data collection to complete the assignment. OBA Practice Management Advisor Julie Bays asked it to write a short story about law practice management software.

The results were amusing and amazing; the story is included in the sidebar. Other generative AI tools include DALL-E/Stable Diffusion for image creation and VALL-E for mimicking voice. VALL-E can apparently mimic any voice after hearing a short sample. The implications of that are concerning.

ChatGPT represents a significant step forward for innovation in applying data. But it is a step, not a destination. One lawyer posted on social media that a case cited by ChatGPT in a legal memo apparently did not exist. So this

Request: ChatGPT, write a short story about law practice management software.

ChatGPT: Sure! Here is a story about practice management software for lawyers:

Once upon a time, in a busy law firm, there was a group of lawyers who were struggling to keep track of their cases, deadlines, and clients. They were constantly missing important dates, losing documents, and feeling overwhelmed by the sheer volume of work they had to manage.

One day, the senior partner of the firm decided that enough

was enough. He knew that there had to be a better way to handle the many tasks that lawyers deal with on a daily basis. After some research, he discovered practice management software specifically designed for law firms.

The senior partner quickly implemented the software into the firm's workflow, and the lawyers were amazed at how much easier their job became. With the software, they were able to easily track their cases and deadlines, store and access important documents, and communicate with clients more efficiently.

The software also helped the firm save time and money by automating many of the tedious and time-consuming tasks that lawyers often have to deal with. The lawyers were able to focus more on the actual work of practicing law and less on administrative tasks.

As a result, the law firm became more productive and successful, and the lawyers were able to provide better service to their clients. The senior partner was grateful for the practice management software and knew that it had been a crucial investment for the firm's future.



tool should be considered a tool for first drafts rather than final drafts at this point. Developments will continue.

This demonstrates the power of using data. If client information in our law firms only exists on paper, it cannot be a part of any automation – until someone enters the information into a computer.

For lawyers, one area of data use is related to automatic document assembly. Many law firms are dealing with how to better capture and use their data. In the early days of computers in law offices, we first reused data by the process of copying and pasting. You won't misspell the client's difficult name when you copy from a document with it correctly spelled. And once someone has properly designed a case style in a litigation matter, everyone will be copying and pasting the style into their

pleadings rather than recreating it. But one can make errors using copy and paste.

There are two traditional ways to use automated document assembly. One is the interview method, where the document drafter responds to questions and those answers are used to complete the document. Another method is to have your form set up to import data from a client information database to assemble the document. We are moving closer to the day when the first drafts of many legal documents will be generated by combining client data from the client file with forms and clauses selected by the attorney. Even tools using the interview method ask if you want to save the answers to the questions so that when you get ready to create the next document on the same matter, you won't have to reenter that data.

What does that have to do with timesheets and hourly billing? First, greater use of document assembly will save lawyers a great deal of time. But given the investment of upgrades, skill and programming invested to accomplish this result as well as the potential liability all lawyers assume to properly represent their clients, hourly billing may not be the best method to charge for those highly automated tasks.

Today, hourly billing is still the standard in many law firms. It is objective. Business clients are accustomed to it. In larger firms, it provides one objective measure of associate attorneys' progress and value to the firm. Firms have the infrastructure in place to do hourly billing every month. So let's examine making hourly billing more efficient.

TIME CAPTURE

The primary functions in legal billing are time capture, expense capture and invoicing. It has long been a “truism” of law practice management that lawyers who contemporaneously record their time spent on client matters make more money than those who do not. But is that actually true, or could it be related to other aspects of their behavior? Maybe lawyers who contemporaneously record their time are more disciplined? Of course, many successful contingency fee lawyers never keep time records. But what is certainly true is that any lawyer who has tried to reconstruct their timekeeping records after a busy week when they “didn’t have time” knows there is a significant likelihood they will omit to capture part of their time.

So the first simple step is to record time contemporaneously, and then at the end of the day check to make certain you have recorded your time before you leave work. It will just take a few moments. Certainly events will sometimes keep you from doing that. Then you either catch up on billing entries the next morning, or you can use a mobile app.

There are apps that allow one to capture time on a mobile device.

The second and most important step is to only do digital time capture. Time capture and invoicing are a primary feature of all practice management software solutions and often a primary motivation for subscribing to such a solution.

Handwritten billing sheets are a long-standing tradition in law firms. But in today’s world, this practice limits efficiency. As noted, handwritten billing sheets for time capture are not data but represent paper documents that must be processed to create useful data, *i.e.*, billing entries to be included in an invoice. But this data-conversion process is hobbled by the fact that handwriting, particularly hurried handwriting of busy professionals like doctors and lawyers, can sometimes be hard to interpret. So it is necessary to have the timekeeper review all entries after they are included in the invoice to catch any errors. That causes a delay. If that lawyer has a trial or personal emergency at the wrong time, many invoices could be delayed waiting on the lawyer’s proofreading (and if the lawyer does find a correction or edit, the process is restarted for the billing to be edited).

If you want your firm to streamline the billing and invoicing process, it is time to stop using handwritten timesheets.² The more quickly bookkeeping receives the time capture in digital format, the more efficient the process will become. So it is best just to begin with timesheets completed digitally. Today, you do not even have to be a great typist to accomplish this. There are several paths to success:

- 1) Capture your time in your practice management solution’s time capture feature. This is the most efficient way, as you are likely already working in the practice management solution when you finish a task, and the feature locates the data where the invoices will ultimately be prepared. If you quickly want to review all billing entries on a single client file, this can be easily done. You should also do some research to determine what app or other tools your solution provides to do a proper billing entry through your smartphone when you are out of the office and not returning that day.
- 2) Invest in a stand-alone time capture and billing tool to do this. I generally caution against this approach because a subscription to these tools is not much cheaper than a subscription to practice management software, which includes these tools and much, much more. But it may be right for some smaller firms.
- 3) Build some simple digital timesheets. These can be either Word documents with tables included that look like a paper, carbonless billing sheet or in Excel. Make

It has long been a “truism” of law practice management that lawyers who contemporaneously record their time spent on client matters make more money than those who do not.

sure your computer has a quality microphone. Save the billing sheet template on the timekeeper's desktop and make the document read only.³ That way, every time the timesheet template is opened, the user will be forced to save it with a name like "[date] timesheet from JAC." Then even a non-typing lawyer can use the built-in dictation features of Word or Excel to quickly dictate their time entries. It is probably also useful to note that Windows Key + H provides speech recognition dictation in other Windows data entry locations.⁴ At the end of each billing day, the document should be forwarded to the billing department.

This may not sound like a game changer, but taking the handwritten entries out of the billing process will save time and reduce errors.

CONCLUSION

Thinking of your billing entries as data and determining how to get rid of almost all handwritten timesheets shouldn't be a major project. (Of course, I'm not the one who has to convince the senior partner to change.) But it will pay dividends in the months ahead.

With the speech recognition tools included in Microsoft Word and Windows, even a non-typing lawyer can contemporaneously record their time into a document to send to the billing department. Less time spent deciphering handwriting is a win for everyone.

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. <https://openai.com/blog/chatgpt>.
2. Yes, there may have to be a few exceptions. But if you read that sentence and started thinking of enough "exceptions" so you do not have to comply with the rule, perhaps you should consider whether you are a part of the problem.
3. <https://bit.ly/3Gz0BTF>.
4. See "A Keystroke to Memorize. Windows Key Plus H," <https://bit.ly/3ZwVFas>.

A lot has changed in the last two years. How we provide for our clients, our firms, and even for ourselves, looks very different. But the constant through it all has been you and the legal tech community that we've been building these past 37 years. More than ever, the need to stay connected to your peers and keep up with the latest technology is paramount. Together we are stronger, better connected, and we are shaping the future of this industry.

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Conflicts: Duties to Prospective Clients, Imputations, Etc.

By Richard Stevens

A LAWYER MAY SOMETIMES find themselves in a situation where one party to a case comes into their office to talk about hiring the lawyer for, let's say, a divorce. The lawyer quotes the potential client a fee, and the potential client leaves – never to return. In two or three months, the lawyer sees another potential client seeking a divorce. After speaking to this potential client, the lawyer realizes that this potential client is on the other side of the divorce proposed by the first potential client. Can the lawyer represent the second potential client in the proposed divorce? May any member of the lawyer's firm represent the second potential client?

ORPC 1.8 provides guidance to the lawyer faced with this situation. This rule defines a prospective client and the lawyer's duties and obligations to the prospective client.

DUTIES TO A PROSPECTIVE CLIENT

A person who consults with a lawyer about the possibility of forming an attorney-client relationship with respect to a matter is a prospective client, according to ORPC 1.18(a). ORPC 1.18(b) provides that, even when no attorney-client relationship is formed, a lawyer may not use or reveal information learned from a prospective client except as permitted under Rule 1.9.

Not all who communicate with a lawyer are prospective clients. Whether communications – both written and oral, both to and from the lawyer – constitute a consultation is a fact-specific determination. ORPC 1.18 Comment [2] indicates that an advertisement that invites or requests the submission of information about a potential representation may constitute a consultation if adequate warnings or cautions that limit the lawyer's obligations are not included. In contrast, information provided in response to an advertisement that merely describes the lawyer's education, experience, areas of practice and

contact information would not ordinarily constitute a consultation. A person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a prospective client.

ORPC 1.18(c) prohibits a lawyer from representing a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if that lawyer received information from the prospective client that could be significantly harmful to the prospective client in that matter. 1.18(c) also imputes that disqualification to any lawyer associated with the disqualified lawyer.

Lawyers should also be aware of who is a prospective client and what disqualifies the lawyer and associated lawyers from representation of parties adverse to the prospective client. Lawyers should know how those disqualifications may be avoided or cured.

Subsection (d) of 1.18 provides a screening process to avoid the imputation of a disqualification. When a lawyer has received disqualifying information, representation is permissible if:

- (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
- (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (ii) written notice is promptly given to the prospective client.

Prospective clients receive some, but not all, of the protections afforded to current or former clients. ORPC 1.9 prohibits a representation adverse to a former client if there “is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” ORPC 1.9 Comment [3]. A lawyer is not

prohibited from representing a client with interests adverse to those of a prospective client unless the lawyer has actually received information that could be significantly harmful in the matter. Also, no screening procedure comparable to that found in ORPC 1.18(d) is available to former clients.

IMPUTATION OF CONFLICTS

The general rule of imputations of conflict of interest contained in ORPC 1.10 is that lawyers associated in a firm may not represent a client when any one of them would be prohibited from doing so under 1.7 or 1.9. When a lawyer has terminated an association with a firm, the firm is not prohibited from representing a person with interests materially adverse to a client represented by the formerly associated lawyer and not currently represented by the firm, unless the matter is the same or substantially related to the matter in which the formerly associated lawyer represented the client or any lawyer remaining with the firm has confidential information material to the matter.

Disqualifications under Rule 1.10 may be waived in writing by the affected client or clients on the conditions stated in Rule 1.7. Informed consent is defined in ORPC 1.0(e) and further clarified

in 1.7 Comments [18] and [19]. Informed consent may not cure all disqualifications. It may be impossible to obtain informed consent if the lawyer is unable to make the necessary disclosure(s).

ETC.

The disqualification of lawyers associated in a firm with former or current government lawyers is governed by specific rules contained in ORPC 1.11.

ORPC 6.5 also contains a special conflict rule for short-term limited legal services provided by a nonprofit or court-annexed legal service program.

Lawyers should be aware of their duties to prospective clients. Lawyers should also be aware of who is a prospective client and what disqualifies the lawyer and associated lawyers from representation of parties adverse to the prospective client. Lawyers should know how those disqualifications may be avoided or cured.

Mr. Stevens is OBA ethics counsel. Have an ethics question? It’s a member benefit, and all inquiries are confidential. Contact him at richards@okbar.org or 405-416-7055. Ethics information is also online at www.okbar.org/ec.

Meeting Summary

The Oklahoma Bar Association Board of Governors met Dec. 9, 2022.

REPORT OF THE PRESIDENT

President Hicks reported he attended several Annual Meeting events, including the Annual Luncheon and House of Delegates. He also moderated a panel discussion between tribal court justices, presided over the Delegates Breakfast where he awarded the OBA Medal of Valor to Dwight Birdwell, presided over the General Assembly, coordinated the retirement luncheon for Executive Director John Morris Williams and hosted the presidential hospitality suite. Additionally, he conducted a search for and coordinated the nomination of John Barbush from Durant to fill the vacancy in District No. 2, met with Kevinn Matthews to present his OBA President's Award, addressed the members of the TCBA Leadership Academy at a tour of the Greenwood Rising Museum and participated in year-end planning matters. He assisted Vice President Pringle in the coordination of a special recognition for retiring Executive Director Williams by the city of Oklahoma City and thanked Mr. Williams for attending 236 consecutive Board of Governors meetings during his nearly 20 years of service.

REPORT OF THE VICE PRESIDENT

Vice President Pringle reported he attended numerous events held in conjunction with the Annual Meeting. He also attended the OBA budget hearing before the Supreme Court and the Legislative Monitoring Committee Meeting. He moderated a three-hour panel on Native American law, submitted the Legislative Monitoring Committee's annual report, worked on appointments and coordinated with the city of Oklahoma City to place an honorary street sign to recognize retiring Executive Director Williams. He also participated in two meetings of the Digital Assets Task Force for the Independent Community Bankers of America.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hermanson reported he attended a meeting with the Supreme Court related to the OBA's budget, which received unanimous approval. During the Annual Meeting, he attended the OU College of Law luncheon, Legislative Monitoring Committee meeting, President's Reception, Family Law seminar, Credentials Committee meeting, Rules and Bylaws Committee meeting, Resolutions Committee meeting, OBA Annual Luncheon, Oklahoma Bar Foundation Board of Trustees meeting, Oklahoma Bar Foundation Reception, Diversity Awards Dinner, Delegates Breakfast, General Assembly, House of Delegates and the retirement

luncheon honoring Executive Director Williams. He also attended the District Attorneys Council/Oklahoma District Attorneys Association Fall Conference, attended and presided at the Justice Assistance Grant board meeting and attended and presented at Ponca Politics. He virtually attended meetings of the OBA Criminal Law Section, District Attorneys Council Board of Directors and Oklahoma District Attorneys Association Board of Directors. He also met with Executive Director Williams, Administration Director Brumit, Educational Programs Director Johnson and Vice President Pringle on budget presentation and spent significant time working on appointments.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended numerous Annual Meeting events, including but not limited to the President's Reception, Membership Engagement Committee meeting, Legislative Monitoring Committee meeting, Credentials Committee meeting, Rules and Bylaws Committee meeting, Resolutions Committee meeting, OBA Annual Luncheon, Oklahoma Bar Foundation Reception, Diversity Awards Dinner, Delegates Breakfast, General Assembly and the House of Delegates. He also coordinated the monthly staff celebration, presentation of the OBA's budget to the Oklahoma Supreme Court and the Board of Governors holiday event.

REPORT OF THE PAST PRESIDENT

Past President Mordy reported he attended numerous events in conjunction with the Annual Meeting, including the OCU School of Law luncheon, Lawyers Helping Lawyers CLE, General Assembly, House of Delegates and the retirement luncheon honoring Executive Director Williams.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended numerous events during the Annual Meeting, including the OU College of Law luncheon where she presented the Outstanding Senior Law Student Award to OU student Devraat Awasthi, the House of Delegates where she served as a delegate for Oklahoma County, the Diversity Awards Dinner and the Annual Luncheon. She also attended the Legislative Monitoring Committee meeting and will be speaking during the Jan. 27 Legislative Kickoff. **Governor Bracken** reported he attended numerous events in conjunction with the Annual Meeting, including the Legislative Monitoring Committee meeting, OCU School of Law luncheon, the General Assembly and House of Delegates, Diversity Awards Dinner, President's Reception, OBF and Young Lawyer's Divisions receptions, Delegates Breakfast and the retirement luncheon honoring Executive Director Williams. **Governor Conner** reported by email he attended

numerous events in conjunction with the Annual Meeting, including the President's Reception, Annual Luncheon, Oklahoma Bar Foundation Reception, Diversity Awards Dinner, Delegates Breakfast, General Assembly and House of Delegates. He also attended the Garfield County Bar Association Christmas party and awards meeting. **Governor Davis** reported he attended the Bryan County Bar Association monthly meeting and the National Association of College and University Attorneys annual meeting. **Governor Dow** reported she attended numerous events in conjunction with the Annual Meeting, including the Delegates Breakfast, General Assembly and House of Delegates. She also attended the Family Law Section meeting and the Legislative Monitoring Committee December meeting. **Governor Edwards** reported he attended numerous events in conjunction with the Annual Meeting, including the General Assembly and House of Delegates, Delegates Breakfast, President's Reception, Plenary Session, Annual Luncheon, Lawyers Helping Lawyers CLE and the Oklahoma Bar Foundation Reception. He also attended the Seminole County Bar Association Las Vegas CLE and Clients' Security Fund meeting. **Governor Garrett** reported she attended events in conjunction with the Annual Meeting, including the Lawyers Helping Lawyers CLE, Diversity Awards Dinner, General Assembly

and House of Delegates Meetings and Executive Director Williams' retirement luncheon. She also attended the working group meeting of the ABA Cannabis Law and Policy Committee, which is planning its first CLE for the ABA, presented the OBA CLE Cannabis Law Year-End Review and chaired the November and December OBA Cannabis Law Committee meetings. **Governor Hilfiger** reported by email he attended the Muskogee County Bar Association monthly meeting and is involved in coordinating its annual banquet in September. **Governor Rochelle** reported by email he attended events during the Annual Meeting, including the Diversity Awards Dinner and the House of Delegates meeting. **Governor Smith** reported she attended several events in conjunction with the Annual Meeting, including the President's Reception, OBF Reception and the luncheon honoring retiring Executive Director Williams. During the Diversity Awards Dinner, she presented Ada Lois Sipuel Fisher Diversity Awards in the attorney and judiciary categories, and she also presented the OBA Outstanding Senior Law Student award during the OCU School of Law luncheon. **Governor Vanderburg** reported he attended the meetings of the Legislative Monitoring Committee and the Rules and Bylaws Committee. He also attended the Oklahoma Association of Municipal Attorneys Board of Directors meeting and

an Oklahoma Cost Administration Implementation Committee meeting as well as a meeting of its drafting subcommittee. **Governor White** reported he attended the Annual Meeting. He also attended a Tulsa County Bar Association board meeting, where he presented the Professionalism Moment. He has also authored an article on professionalism that will be published in *The Tulsa Lawyer* January issue.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Erwin reported he attended numerous events in conjunction with the Annual Meeting, including the Annual Luncheon, General Assembly and House of Delegates, the retirement luncheon honoring Executive Director Williams and the Young Lawyers Division meeting.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported from Nov. 1 to Nov. 30, the Office of the General Counsel received 13 formal grievances and 56 informal grievances. These numbers compare with 10 formal grievances and 71 informal grievances respectively for the same time

period last year. As of Nov. 30, there were five disciplinary cases awaiting decisions from the Oklahoma Supreme Court. Between Nov. 1 and Nov. 30, 2022, the Supreme Court issued one confidential order, one order of immediate interim suspension, one order approving resignation pending disciplinary proceedings and one order approving reinstatement. As of Nov. 30, there were 169 grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission. In addition to the pending investigations, there is one grievance awaiting a private reprimand, one grievance awaiting a letter of admonition and nine grievances to be filed as formal charges with the Oklahoma Supreme Court. Furthermore, upon the successful completion of the Attorney Diversion Program, participating attorneys are to receive private reprimands involving 13 grievances and letters of admonition involving 19 grievances. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Erwin reported the **Access to Justice Committee** had a very successful summit with more than 212 attendees. The committee's post-event survey demonstrated attendees liked the event's virtual format, and it will likely be continued. Governor Edwards said the **Clients' Security Fund Committee** has recently met, and chairperson Micheal Salem is prepared to deliver the committee's report to leadership. He also said the **Professionalism Committee** is searching for a new chair in the wake of the recent death of its chair, Linda Scoggins. President-Elect Hermanson said the **Membership Engagement Committee** met during the Annual Meeting and discussed an upcoming survey related to the development of a mobile app as a member benefit. Governor Garrett said the **Lawyers Helping Lawyers Assistance Program Committee** is meeting monthly and continues its discussions of the need to expand monthly discussion groups to nonmetro areas. She also said the committee's Wellness Matters CLE held in conjunction with the Annual Meeting was well attended. She also reported the **Cannabis Law Committee** met during the Annual Meeting and is planning a CLE to be held soon. She said the committee is serving as a resource for the ABA Cannabis Law Committee, which will begin meeting in 2023. Vice President Pringle reported the **Legislative Monitoring Committee** is planning its Legislative Kickoff event to be held Jan. 27; the agenda and speakers are being determined.

BOARD OF GOVERNORS VACANCY

The board passed a motion to approve the appointment of John E. Barbush, Durant, to fill the Board of Governors District 2 vacancy with a term expiring in 2025.

President-Elect Hermanson said the Membership Engagement Committee met during the Annual Meeting and discussed an upcoming survey related to the development of a mobile app as a member benefit.

CLIENTS' SECURITY FUND REPORT

Chairperson Micheal Salem reported the committee considered 45 claims and recommended approval of 31. The board passed a motion to approve claims totaling \$115,899.58 to be disbursed this year out of approximately \$176,000 in available funds, returning nearly \$60,000 in excess 2022 funds to the permanent fund to ensure the additional funds are available for anticipated disbursement of claims in 2023. The board also approved a motion to distribute a press release for the purpose of publicizing the 2022 disbursement.

PRESIDENT-ELECT HERMANSON'S APPOINTMENTS

The board passed a motion to approve the following appointments:

Professional Responsibility Tribunal – Richard D. White, Tulsa, to complete the unexpired term of Linda G. Scoggins; term expires June 30, 2025.

Board of Editors – Associate Editors Melanie Wilson Rughani, Oklahoma City (District 3), and Sheila A. Southard, Ada (District 8); terms expire Dec. 31, 2025; and Roy D. Tucker (reappointment), Muskogee (District 7); term expires Dec. 31, 2025.

Clients' Security Fund – Jeffrey C. Smith, Poteau; term expires Dec. 31, 2025.

Clients' Security Fund Lay Person – Michelle S. Chilton (reappointment), Oklahoma City; term expires Dec. 31, 2025.

Legal Aid Services of Oklahoma (LASO) Board of Directors – S. Shea Bracken; term expires Dec. 31, 2025.

MCLE Commission – Denise Eaton Cramer (reappointment), Oklahoma City; term expires Dec. 31, 2025; Michael J. Davis, Durant, and Joshua A. Edwards, Ada; terms expire Dec. 31, 2025.

Professional Responsibility Commission – Mike Mordy (reappointment), Ardmore; term expires Dec. 31, 2025.

REVOLVING FUND FOR CHILLER FOR WEST SIDE OF OKLAHOMA BAR CENTER

Executive Director Williams requested funds approved for expenditure in 2022 go into a revolving fund for work completion. The board passed a motion to approve the requested distribution of revolving funds.

APPOINTMENT OF OBA STANDING COMMITTEE CHAIRS, VICE CHAIRS AND BOARD OF GOVERNORS LIAISONS

President-Elect Hermanson made the following appointments:

Audit Committee – President-Elect Hermanson appoints Angela Ailles Bahm, Oklahoma City, as chairperson; term expires Dec. 31, 2023. President-Elect Hermanson appoints members Angela Ailles Bahm, Oklahoma City; Dustin E. Conner, Enid; S. Shea Bracken, Edmond; Allyson E. Dow, Norman; terms expire Dec. 31, 2024; and Tim Rogers, Tulsa; term expires Dec. 31, 2025.

Board of Medicolegal Investigations – President-Elect Hermanson appoints Angela C. Marsee, Arapaho, to a one-year term expiring Dec. 31, 2023.

Securities Commission – President-Elect Hermanson proposes to submit five names to the governor for consideration and one appointment to a term expiring July 1, 2029: Kirk R. Boersma, Blackwell; Michael C. Mordy, Ardmore; David S. Cummings, Ponca City; D. Benham Kirk Jr., Oklahoma City; and Miles T. Pringle, Oklahoma City.

Investment Committee – President-Elect Hermanson reappoints M. Joe Crosthwait Jr., Midwest City, as chairperson and reappoints Kendra M. Robben, Oklahoma City, as vice chairperson; terms expire Dec. 31, 2023. President-Elect Hermanson reappoints members William R. Grimm, Tulsa; Claire C. Bailey, Norman; Emily E. Crain, Oklahoma City; M. Joe Crosthwait Jr., Midwest City; and Kendra M. Robben, Oklahoma City; terms expire Dec. 31, 2025.

Legal Ethics Advisory Panel – President-Elect Hermanson reappoints Steven Kent Balman, Tulsa, as panel coordinator; term expires Dec. 31, 2023. *Oklahoma City Panel:* President-Elect Hermanson appoints Brian Keith Morton, Oklahoma City; William Ladd Oldfield, Ponca City; and Bryon Jay Will, Oklahoma City; terms expire Dec. 31, 2025. *Tulsa Panel:* President-Elect Hermanson appoints Steven Kent Balman, Tulsa; Jon Lee Prather, Tulsa; and David Charles Butler, Enid; terms expire Dec. 31, 2025.

Strategic Planning Committee – 2023 President-Elect Pringle appoints Mark McDaniel, Oklahoma City; Jeffery Trevillion, Oklahoma City; James A. Roth, Oklahoma City; Monica Ybarra Weedn, Oklahoma City; Lane R. Neal, Oklahoma City; Susan Stocker Shields, Oklahoma City; and Emily M. Virgin, Norman, to the Strategic Planning Committee. He appoints Mark McDaniel, Oklahoma City; Lane R. Neal, Oklahoma City; and Susan Stocker Shields, Oklahoma City, to the Financial Planning Subcommittee; terms expire Dec. 31, 2025.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hicks reviewed upcoming bar-related events, including the 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 January, 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, Feb. 17, at the Oklahoma Bar Center in Oklahoma City.

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Memorials & Tributes

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



Unclaimed Trust Funds

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



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Oklahoma Bar Foundation Award Recipients

ROGER SCOTT MEMORIAL AWARD RECIPIENT

The Oklahoma Bar Foundation is excited to announce that Bob Burke is the 2022 Roger Scott Memorial Award recipient. This award is named after Roger Scott for his service as an OBF Trustee from 2003 until 2009 and his leadership as chair of the Development Committee.

Like Roger Scott, Bob Burke's name is synonymous with outstanding professionalism, congeniality and the highest regard for

ethics. Mr. Burke serves on the OBF Board of Trustees and Development Committee and is a Partner for Justice donor.

Mr. Burke was instrumental in the success of the OBF's 75th anniversary event, Diamonds & Disco. He helped raise sponsorship funds, made a large contribution himself and was the emcee during the program portion of the event.

He is also co-writing a book with OBF Executive Director Renee DeMoss in honor of the foundation's 75th anniversary. This

book shares interesting facts about the history of the foundation, plus a collection of stories from OBF Grantee clients whose lives have been impacted by access to legal representation.

Thank you, Bob, for making the OBF's 75th anniversary special by capturing the OBF story in a book that will be cherished for years to come.

KLEIN/BROWN PRESIDENTS AWARD RECIPIENT

The OBF is also proud to recognize Brian Hermanson as the 2022 Klein/Brown Presidents Award recipient. This award is named after two OBF past presidents for their visionary leadership. First, Gerald Klein, while serving as OBA president in 1946, created the foundation as the charitable arm of the association. Mr. Klein then served as OBF president in 1957. Second, Jack L. Brown served as OBF president in 2016 and is responsible for modernizing the administration and management of assets. His leadership as president created a new level of effectiveness and awareness about the OBF's impact on legal services in Oklahoma.

Like Mr. Klein and Mr. Brown, Mr. Hermanson, throughout his career, has made significant contributions to the OBF. He became involved with the foundation in the 1980s and chaired the IOLTA Committee in 1989. In the early 1990s, he served as vice president, president-elect and president of



OBF President Valerie Couch awards Bob Burke the 2022 Roger Scott Memorial Award at the OBA Annual Meeting.



Ms. Couch awards Brian Hermanson the 2022 Klein/Brown Presidents Award at the OBA Annual Meeting.

the OBF during the tumultuous time that IOLTA shifted from a voluntary program to a mandatory one. As past president, he worked to expand the OBF's Fellows Program (now called the Partners Program), which encourages all lawyers in Oklahoma to donate annually to the foundation.

Recently, Mr. Hermanson has returned to the OBF's Board of Trustees and worked effectively on the team that achieved a great

breakthrough for IOLTA – a rule change that ensures interest rate comparability for IOLTA bank accounts. This change will make a tremendous difference in the foundation's capacity to provide legal representation and aid to Oklahomans in need.

Thank you, Brian, for your past and continued leadership and guidance with IOLTA. Your vital contributions empower legal services programs in Oklahoma.

Make the OBA Your Valentine

By *Caroline M. Shaffer Siex*

FEBRUARY: OUR SHORT AND sweet month. Also, literally sweet. I can already see the images of chocolates, fruit bouquets and sweet-smelling flowers filling offices. Although considered to be a romantic holiday, we probably all had the common Valentine's Day tradition of sending little cards to fellow classmates since learning to tie our shoes. Valentine's Day is not just for romance but also to show care and compassion. Why not make the OBA your valentine by engaging as a member?

I think a handful (or more) of young lawyers do not know how to become more engaged. I know in law school, I thought of the OBA as CLE requirements and the ethics counsel. The OBA also has committees and sections with involvement opportunities. Joining a committee or section offers the ability to engage in issues affecting both our clients and members within our association. For example, the Access to Justice Committee is a wonderful committee for any lawyer who wants to learn about critical problems currently facing clients. Likewise, discussions abound regarding how lawyers may better serve those limited in their abilities to retain services. For example, in the past, the Access to Justice Committee focused on the ability for limited-scope practice to occur for those with limited resources to retain an attorney.



YLD leaders attend OBA Day at the Capitol 2018. From left Caroline Shaffer Siex, Dylan Erwin, Nathan Richter and Brandi Nowakowski

Another committee, the Lawyers Helping Lawyers Assistance Program (LHL), directly helps our membership community. LHL could potentially assist any member of the bar. The committee's goal is to help members who may suffer from alcohol abuse, drug abuse or other mental health issues. I, myself, did not understand all that LHL accomplished until recently. LHL offers mental health assistance to members, and it relies on having a statewide coordinated network.

Sections offer a network within substantive law practice areas. You may want to get involved in

an area of law but need to build a network for help. You may also be like many young lawyers I know who decided to go out on their own. If you work in a particular area of law, a section can broaden your network within that area. Often, sections also offer CLE specific to a lawyer's practice area.

I want to encourage any young lawyer seeking a network or desiring to use their skills beyond just the practice of law to join a committee or section. If you are not within the Oklahoma City area, there are multiple virtual opportunities to engage. All committees and sections

are listed on the OBA website at www.okbar.org/committees and www.okbar.org/sections. You may also reach out to any YLD liaison to ask more questions about involvement for any particular committee.

Make a plan to participate in an upcoming OBA event. March 21, 2023, for example, the OBA will be hosting Day at the Capitol. I enjoyed participating in this event a few years ago, and it is a way to stay informed of legislative issues and represent the legal community to our state representatives. You can view more upcoming events at www.okbar.org/events.

We hope to see more young lawyers engage with the OBA. If you ever find yourself unsure of what to do or how to participate in events, the YLD board is here to answer your questions. Please find your district or at-large director on the OBA YLD website for contact information.

Ms. Shaffer Siex practices in Tulsa and serves as the YLD chair. She may be contacted at cshaffer@gablawyers.com.

I want to encourage any young lawyer seeking a network or desiring to use their skills beyond just the practice of law to join a committee or section.



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SHARE THE LOVE

Volunteer

This year, give back to your bar association, fellow lawyers and community by becoming involved in OBA Young Lawyers Division committees and projects.

AWARDS COMMITTEE

The Awards Committee recognizes outstanding efforts and contributions to the YLD Board of Directors. The committee is also responsible for naming Friends of the YLD and Fellows of the YLD.

COMMUNITY SERVICE COMMITTEE

The Community Service Committee plans YLD programs and services that benefit Oklahoma's communities. This committee is charged with any community service events that may occur throughout the year.

CONTINUING LEGAL EDUCATION COMMITTEE

The Continuing Legal Education Committee works with the OBACLE Department to plan and promote educational seminars that are useful and of particular interest to young lawyers.

DIVERSITY COMMITTEE

The Diversity Committee encourages diverse representation and participation in the YLD as well as plan and promote programs and resources that enhance knowledge and encourage understanding of diversity.

HOSPITALITY COMMITTEE

The Hospitality Committee plans the suites and other social events for the YLD and all OBA members to participate in and enjoy during the Solo & Small Firm Conference and Annual Meeting. The committee will also plan lunches for after monthly board meetings.

KICK IT FORWARD COMMITTEE

The Kick It Forward Committee plans and promotes programs that will encourage donations to the Kick It Forward program. The committee also reviews all applications received on an annual basis.

MEMBERSHIP COMMITTEE

The Membership Committee encourages all young lawyers to participate and become active members of the YLD and the bar association as a whole. The committee will help plan and promote statewide activities for young lawyers.

NEW LAWYER ORIENTATION COMMITTEE

The New Attorney Orientation Committee hosts a reception at each swearing-in ceremony to introduce new admittees to the YLD and encourage young lawyers to actively participate in OBA activities. This committee also guides and organizes the preparation of the bar exam survival kits.

WILLS FOR HEROES PROGRAM

The Wills for Heroes program is designed to provide free wills to emergency personnel in Oklahoma. The YLD oversees the program in Oklahoma.

To join a YLD committee or program, contact chairperson Caroline Shaffer Siex at cshaffer@gablawyers.com.





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!



FOR YOUR INFORMATION



OCBA YLD DONATES \$20,000 TO REGIONAL FOOD BANK

The Oklahoma County Bar Association Young Lawyers Division recently donated \$20,000 to the Regional Food Bank of Oklahoma for the food bank's Holiday Match campaign. The OCBA YLD is a longtime supporter of the Regional Food Bank.

From left Regional Food Bank Development Officer Deven Vernon and 2022 YLD Harvest Food Drive Committee Chair Nicole Jones. Photo courtesy of Regional Food Bank of Oklahoma.

LHL DISCUSSION GROUP HOSTS MARCH MEETINGS IN OKC AND TULSA

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



IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Monday, Feb. 20, in observance of Presidents Day.

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

Are you following the OBA on social media? Keep up to date on future CLE, upcoming events and the latest information about the Oklahoma legal community. Connect with us on LinkedIn, Twitter, Facebook and Instagram.





DAY AT THE CAPITOL

Save the date! At 9:30 a.m. on Tuesday, March 21, join us for this year's Day at the Capitol. The morning will kick off with speakers covering bills of interest, how to talk to legislators, legislative updates and more. Attendees will then have the opportunity to visit with legislators. RSVP to alishad@okbar.org.

FEB. 15 MCLE DEADLINE

The deadline to earn your required credit for 2022 was Dec. 31. The deadline to report your earned credit or a qualified exemption for 2022 is Feb. 15. Unless you are reporting an exemption, the minimum annual requirement is 10 general credits and two ethics credits, for a total of 12 credits. All credit must be OK MCLE approved. Please let us know how we can help you. Visit www.okmcle.org for more information.

OBA DUES ARE DUE

The deadline to pay your OBA 2023 membership dues without a late fee is Wednesday, Feb. 15. Paper statements were mailed to those who had not yet paid. Please help the OBA by making your dues payment today! Visit MyOKBar to remit dues online.



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SOLO & SMALL FIRM CONFERENCE

The 2023 OBA Solo & Small Firm Conference is coming to Tulsa! This year's conference will be held at the Osage Casino Hotel in Tulsa on June 22-24. Plan on joining us for excellent CLE, networking opportunities and more! Conference registration and hotel rooms open later this month, so be on the lookout for more information in *Courts & More* and on social media.

ON THE MOVE

R. Kevin Redwine has been elected as the first managing partner of Conner & Winters. Mr. Redwine brings significant financial acumen and business experience to the managing partner role. He previously served on the firm's executive committee as chief financial officer from 2014 to 2017, among several other leadership roles. For over 30 years, he has practiced out of the Tulsa office in the Corporate & Securities and Energy Law practice groups. He has been lead corporate counsel in more than \$2 billion of transactions for oil, gas and manufacturing companies, many of which are listed in the Fortune 500.

Nathan L. Cook has been named a partner at the Oklahoma City law firm of Doerner, Saunders, Daniel & Anderson LLP. A member of the firm since 2018, he practices in the area of transactional law and has experience in commercial real estate, real estate development, oil and gas, renewable energy, creditor's rights and general business law.

Natalie Sears has been elected a shareholder of the Tulsa office of Hall Estill. Ms. Sears, who joined the firm in 2020, practices in the areas of family law and trust and estate litigation. She was named Tulsa County Bar Association's Young Lawyer of the Year in 2017 and received the Tulsa County Bar Association President's Award in 2019 and 2021.

Telisa Webb Schelin has joined Extenet in Frisco, Texas, as the senior vice president, general counsel and corporate secretary.

Ms. Schelin will handle all legal, regulatory and corporate governance matters for the company. She received her J.D. with highest honors from the TU College of Law in 1998.

Kathryn Davis has been named of counsel at the Houston office of McGlinchey Stafford. She practices in the area of financial services litigation, primarily defending against consumer claims. She also has experience representing lending institutions in bankruptcy and complex commercial litigation matters. Ms. Davis joined the firm in 2021 as an associate in the Financial Services Litigation Practice Group.

Carrie McNeer has been named a shareholder at the law firm of GableGotwals. Ms. McNeer's practice focuses on defending corporate and individual clients in a variety of complex litigation in state and federal courts. Her experience includes representing insurance companies in a wide range of claims, including bad faith and medical malpractice defense. She currently serves on the Board of Directors for the Oklahoma Association of Defense Counsel.

Brooks A. Richardson has joined the Oklahoma City office of GableGotwals. He practices in the area of complex business litigation, including class actions, oil and gas royalty disputes, securities litigation, indemnity and insurance coverage disputes, insurance bad faith, environmental litigation and public contract challenges. He also provides general counsel on regulatory compliance, contract and

vendor management, records and information governance, privacy and cybersecurity, crisis response and business continuity planning, employment law and enterprise risk management. Previously, Mr. Richardson served as vice president and deputy general counsel of Continental Resources Inc.

Raymond Purdom has been named a partner at the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds. Mr. Purdom practices in the area of civil litigation with an emphasis on insurance bad faith and general torts. He received his J.D. from the TU College of Law in 2018.

Emily K. Wilson has been elected a partner of the Tulsa law firm of Best & Sharp. She joined the firm in 2020 and brought an extensive background in civil litigation, civil rights litigation, employment law, administrative law and municipal and governmental liability litigation. Ms. Wilson is also licensed to practice in Kansas, and she holds an inactive license in Colorado.

Glen D. Johnson Jr. has joined the Oklahoma City office of Crowe & Dunlevy as a director. Mr. Johnson served as chancellor of the Oklahoma State System of Higher Education from 2007 to 2021, where he led a state system of 25 state colleges and universities and 10 constituent agencies. The State Regents named him chancellor emeritus in September 2021. Prior to that, he served as president of Southeastern Oklahoma State University from 1997 to 2006. He was inducted into the Oklahoma Hall of Fame

in 2006, the Oklahoma Higher Education Hall of Fame in 2016 and the Oklahoma Association of Community Colleges Hall of Fame in 2021. He has also been named a life fellow of The Fellows of the American Bar Foundation.

Erica Halley Blackstock, Jennifer K. Christian and Hilary Hudson Clifton have been elected directors of Phillips Murrah by the firm's shareholders. Ms. Blackstock, a member of the firm's Transactional Practice Group, represents individuals and businesses in a wide range of business matters, including mergers and acquisitions, real estate transactions and entity formation and organization. Ms. Christian concentrates her practice on all aspects of commercial law. Ms. Clifton is a litigation attorney who represents individuals and both privately held and public companies in a wide range of civil litigation matters.

Kaitlyn Schrick Chaney, Katie Gant Crane, Alex Duncan, William J. Holland, Christian S. Huckaby, Dru A. Prosser, Jeffrey L. Vogt and Chase C. Webb have been elected shareholders of McAfee & Taft. Ms. Chaney, a transactional attorney, advises corporate and financial institution clients. Ms. Crane is a trial lawyer whose commercial litigation practice encompasses complex business disputes, class actions, securities litigations, internal and government investigations and white-collar criminal defense. Mr. Duncan, a trial lawyer, focuses on civil litigation,

including complex commercial litigation. Mr. Holland focuses on the resolution of complex business disputes. Mr. Huckaby is a trial lawyer who tries nonjury and jury trials in state and federal courts. Mr. Prosser is a trial lawyer whose state and federal litigation practice includes a broad range of complex business litigation. Mr. Vogt is a transactional attorney whose practice encompasses a wide range of complex business and commercial matters. Mr. Webb, a registered patent attorney, focuses on intellectual property counseling and transactional matters involving patents, trademarks, copyrights, licensing agreements and trade secrets.

Allen J. Litchfield was named the first assistant United States attorney for the Northern District of Oklahoma. He will also serve as the criminal chief for the district. Mr. Litchfield, who has served in the Department of Justice since 1991, has had various responsibilities with the U.S. Attorney's Office, including prosecuting violent crimes, Organized Crime Drug Enforcement Task Force investigations and as a member of the Joint Terrorism Task Force. He previously served as an assistant district attorney in Tulsa County, where he prosecuted violent felonies and led the District 14 Drug Task Force.

Zach Neighbors has joined the Oklahoma City office of McAfee & Taft as a member of the firm's Litigation Group. Mr. Neighbors is a trial lawyer whose state and federal

litigation practice is focused on the resolution of a broad range of civil disputes, including those involving claims of breach of contract, personal injury, professional negligence and other torts. A significant portion of his practice is devoted to defending national insurance companies against a variety of claims and coverage disputes.

Peter K. Wright has joined the law firm of Phillips Murrah as an associate attorney focused on issues involving business, clean energy, public utilities and regulatory law. Mr. Wright received his J.D. from the OCU School of Law and was awarded the 2022 Judge Alfred P. Murrah Sr. Award for Outstanding Academic Performance.

David G. Graves, Jeffrey L. Wilson, Parker H. Foster and Teak Hull have joined the Tulsa office of Hall Estill. Mr. Graves joins the firm as a shareholder after more than 30 years assisting clients in the areas of medical malpractice, insurance defense and business litigation. Mr. Wilson, special counsel, practices in the areas of health care and medical malpractice. Mr. Foster, special counsel, focuses on medical malpractice defense, civil litigation and labor and employment matters. Mr. Hull, special counsel, practices in the areas of civil litigation and medical malpractice matters.

Leah Farish's podcast, *Conversation Balloons*, has been rated by Spotify as among the top 25% most followed and the top 25% most shared globally. The show is an interview-with-experts format concerning social and legal issues, such as marijuana use among kids, multi-generational workplaces, sports gambling, abortion and end-of-life topics.

J. Christopher Davis has been inducted into the Oklahoma Chapter of the National Academy of Distinguished Neutrals. NADN is America's foremost professional organization for experienced mediators and arbitrators practicing in the field of civil and commercial conflict resolution. Membership is by invitation only and requires a minimum of 200 successful mediations. A shareholder and director in the Tulsa office of Crowe & Dunlevy, Mr. Davis represents clients as a member of the firm's Alternative Dispute Resolution, Insurance, Intellectual Property, Litigation & Trial, and Product Liability practice groups. He is Oklahoma's only active paraplegic trial attorney.

Tanya S. Bryant hosted the Oklahoma City Human Resources Society's annual legal update, "2023 Employment Law Forecast: Will Employers Face a Frigid Winter or a Winter Wonderland?" on Jan. 26. Attorneys from Crowe & Dunlevy's Labor & Employment Practice Group discussed timely topics, including combatting religious and national origin discrimination, workplace accommodations for neurodiverse individuals and avoiding the pitfalls of politics in the workplace. Ms. Bryant is a shareholder and director at Crowe & Dunlevy and general counsel for OCHRS.

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 April issue must be received by March 1.

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IN MEMORIAM

Jerry Ray Babbitt of Medicine Park died Sept. 28. He was born May 14, 1941. Mr. Babbitt received his J.D. from the TU College of Law in 1968.

Steven Wayne Ballard of Spring, Texas, died Oct. 26. He was born Feb. 9, 1969. Mr. Ballard received his J.D. from the OCU School of Law in 1995.

Carol Ann Browne of Houston died March 29, 2022. She was born Dec. 5, 1956. After receiving her J.D. from the OCU School of Law in 1982, Ms. Browne moved to Texas, where she practiced law for more than 10 years. She taught and mentored students through trial and justice-based courses she created, wrote several books and volunteered for numerous organizations and nonprofits. Memorial contributions may be made to *Desiring God*, Lone Star Boxer Rescue or Passion Conferences.

Mark Edward Burget of Norman died Dec. 31. He was born Feb. 11, 1954, in Wiesbaden, Germany. Mr. Burget attended OU, where he walked onto the football team and earned his bachelor's degree in accounting. He received his J.D. from the OU College of Law in 1979 and his LL.M. in taxation from the New York University School of Law in 1982. Mr. Burget joined the law firm of McAfee & Taft, where he served clients across an array of practice areas for more than 22 years and was named the firm's first managing director in 1998. He worked in that role for three years before joining Search Ministries. In 2018, he was asked to serve as Gov. Stitt's general counsel but transitioned back to Search Ministries

full time in 2021. Memorial contributions may be made to Young Life of South Central Oklahoma or Search Ministries Oklahoma City.

John Russell Couch Jr. of Stillwater died June 15, 2022. He was born Aug. 18, 1942. Mr. Couch received his J.D. from the OU College of Law in 1970.

Mark H. Ford of Oklahoma City died Dec. 18. He was born July 1, 1941, and grew up in Granite and Tulsa. Mr. Ford earned his bachelor's degree from Southern Methodist University, where he was a member of the Sigma Chi fraternity. He received his J.D. from the SMU Dedman School of Law in 1967. He was also licensed in real estate, taught continuing legal education classes and published books on human behavior that were beneficial to trial lawyers, real estate professionals and salespeople. Memorial contributions may be made to the Oklahoma Conference of the United Methodist Church.

M. Jean Holmes of Tulsa died Oct. 14. She was born Feb. 12, 1943. Ms. Holmes received her J.D. from the New York University School of Law in 1972 and began her legal career as an administrative law judge, holding hearings for the Kentucky Department of Transportation. She moved to Tulsa in 1981 to teach at Oral Roberts University O. W. Coburn School of Law. In 1988, she went to work for the law firm of Winters and King as an appellate practitioner. After retiring in 2012, Ms. Holmes was an active retreat leader with Hope Renewal and Stillwater Ministries for 18 years.

Glen Douglas Huff of Oklahoma City died Nov. 11. He was born Oct. 16, 1949. Mr. Huff received his J.D. from the OU College of Law.

Markham P. Johnson Jr. of Tulsa died Dec. 29. He was born March 8, 1929, in Mobile, Alabama. Mr. Johnson worked in the Kennedy Building in Tulsa with Markham P. Johnson and Associates, and he served as vice president of Willis Inspace in Washington, D.C. He was a long-time Boy Scout leader and helped run the U.S. Senate campaign for an old law school friend. Memorial contributions may be made to The Nature Conservancy.

Lance L. Larey of Tulsa died Dec. 10. He was born July 8, 1939, in Texarkana, Arkansas. Mr. Larey received his J.D. from the TU College of Law in 1969. In addition to practicing law, he was a professor at the TU College of Law and a real estate appraiser. He was also a member of the Boston Avenue United Methodist Church and the National Society of the Sons of the American Revolution.

James Bradley Morelli of Oklahoma City died Dec. 9. He was born Oct. 15, 1956. Mr. Morelli graduated from Guthrie High School before earning a bachelor's degree in political science from the University of Central Oklahoma. He received his J.D. from the OCU School of Law in 1980 and practiced in Guthrie. He later became senior legal counsel of UCO, where he served until his retirement. He also enjoyed teaching classes at UCO, particularly criminal law and procedure.

Nancy J. Nesser of Oklahoma City died Dec. 6. She was born Jan. 26, 1962, in Hollis. After earning her bachelor's degree in biology-chemistry from Oklahoma Christian University, she graduated from the OU College of Pharmacy in 1987 and worked as a full-time pharmacist in Oklahoma City. She received her J.D. from the OCU School of Law in 1995. In 2001, she became the pharmacy director at the Oklahoma Health Care Authority, where she worked with state legislators and designed, implemented and maintained the Medicaid pharmacy programs. She also taught the pharmacy law and ethics course for third-year pharmacy students at the OU College of Pharmacy. In 2005, she earned a doctor of pharmacy. Ms. Nesser also worked as a pharmacist at Manos Juntas and Lighthouse Medical Clinic for over 10 years, providing free medical care to Oklahoma City residents in need.

Bruce Raymond Parrott of Newport, North Carolina, died Nov. 17. He was born Oct. 4, 1948, in Oklahoma City. Mr. Parrott served with the Oklahoma City Police Department for eight years before receiving his J.D. from the OCU School of Law in 1977. He practiced in the area of oil and gas and later became a guardian *ad litem* to help children in his community. Memorial contributions may be made to St. Jude Children's Research Hospital in Memphis, Tennessee.

Marjorie Patmon of Oklahoma City died Dec. 8. She was born Feb. 2, 1943, in Crescent. Ms. Patmon earned her bachelor's degree and master's degree in chemistry from Central State University. She worked as a chemist for the U.S. Geological Survey in Oklahoma City and Denver and was an inventory management specialist at Tinker Air Force Base while attending law school. She received her J.D. from the OU College of Law in 1971 and her LL.M. in taxation from the Emory University School of Law in 1975 – she was the program's first Black graduate. She was the first woman to be appointed general counsel of the Oklahoma Tax Commission in 1977, where she established the position of administration judge, drafted the first procedural rules and established the expanded sales tax code for the state. Ms. Patmon worked with the Legislature and Gov. Boren, Gov. Nigh and Gov. Walters in the interest of tax reform, women's rights, the disabled and job opportunities for young, disadvantaged people.

Eric Taylor Poston of Oklahoma City died Dec. 8. He was born Feb. 16, 1964, at K. I. Sawyer Air Force Base in Michigan. Upon graduating from John Marshall High School, he earned a Bachelor of Business Administration from OU. Mr. Poston received his J.D. from the OU College of Law in 1991. He practiced in the areas of employment law and discrimination, and in 2003, he moved into the car business as a finance manager. He finished his career working in men's health at West Coast Men's Clinic. Memorial contributions may be made to the American Heart Association.

David W. Sandell of Grove died March 12, 2022. He was born Aug. 21, 1940, in Seattle. Mr. Sandell received his J.D. from the University of Washington School of Law in 1963 and his LL.M. in taxation from the New York University School of Law. He began his legal career at Garvin, Ashley & Foster (later Foster, Pepper & Riviera) in 1964. He was a senior partner and a member of the firm's Executive Committee. After more than 22 years, he left the firm and established a private practice, where he worked for 20 years. He then joined Cairncross & Hempelmann and practiced for another decade. Mr. Sandell was an avid Seattle Seahawks fan and served on behalf of a group of the team's founders while negotiating with the NFL commissioner to establish the franchise. He was also a member of the American Pilots Association. Memorial contributions may be made to Grove's First Baptist Church.

Gary L. Shores of Newcastle died Dec. 20. He was born June 8, 1931, in Potwin, Kansas. Mr. Shores was an ROTC member while attending OU, where he majored in political science. **Upon graduation, he joined the U.S. Army as a commissioned officer and served in the Artillery Division in Germany.** He received his J.D. from the OU College of Law in 1960 and established his practice, Gary Shores Attorney at Law, in Oklahoma City. He eventually moved his office to Newcastle and retired in 2020. Mr. Shores served as an elder, lay minister and choir member and taught Sunday school at the Newcastle Christian Church.

Byron Dana Todd of Tulsa died Dec. 8. He was born Jan. 8, 1930, in Tulsa. While at Will Rogers High School, he won three consecutive state wrestling championships. Mr. Todd then became a three-time All-American wrestler at Oklahoma A&M, earning a place in the National Wrestling Hall of Fame. **He entered the U.S. Army through ROTC as a second lieutenant during the Korean War and was named outstanding wrestler at the 1953 Fourth Army Wrestling Tournament.** He received his J.D. from the TU College of Law in 1959 and practiced in Tulsa for 60 years.

Joe A. Williams of Sand Springs died May 2, 2022. He was born May 16, 1936, in Enid. Mr. Williams graduated from Guymon High School, where he played basketball for the Guymon Tigers, was president of the sophomore class and was active in the Oklahoma DeMolay Association. **While attending law school, he joined the U.S. Navy and served in the JAG Corps.** He received his J.D. from the OU College of Law in 1961. Mr. Williams was appointed to the Sand Springs Home Board of Trustees in 1965 and served until his death. He also served as a past president of the Sand Springs Oil & Gas Co., past secretary of the Sand

Springs Railway Co., past chairman of the Sand Springs State Bank and BOK Sand Springs Advisory Board from 1965 until 2011. He was the past president of the Lions Club, Sand Springs Chamber of Commerce, Sand Springs Education Foundation, Salvation Army Board Sand Springs Command and past director of the Herbal Affair & Festival and Rotary Club. Memorial contributions may be made to the Oklahoma DeMolay Association.

Jeffrey S. Wolfe of Tulsa died Dec. 14. He was born Dec. 22, 1951. Mr. Wolfe received his J.D. from the California Western School of Law in 1976.

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Use of Artificial Intelligence in the Legal Profession

ARTIFICIAL INTELLIGENCE (AI) has the potential to revolutionize the legal industry by providing more efficient and accurate legal opinions and advice. However, there are also significant risks associated with using AI in this way, and it is important to carefully consider these risks before relying on AI to provide legal opinions or advice.

One of the main arguments in favor of using AI in the legal field is that it can help to reduce the amount of time and labor required to complete certain tasks. For example, AI algorithms can be used to quickly and accurately analyze large amounts of data and documents, potentially saving hours of work for lawyers and other legal professionals.

By leveraging the power of AI, lawyers and legal professionals can quickly identify relevant case law and legal precedents, allowing them to provide more thorough and accurate legal opinions or advice. Additionally, the use of AI can help reduce the potential for human error, leading to more accurate legal opinions or advice.

In the legal field, machine learning algorithms could be used to predict the outcome of a case based on factors such as the type of case, the parties involved, and the location of the court. For example, a machine learning algorithm could be trained on a dataset of previous court decisions. The algorithm

would then be able to predict the likely outcome of the case, based on the patterns it has identified in the training data.

However, there are also a number of challenges and ethical considerations associated with using AI to provide legal opinions or advice. For example, there is the potential for AI algorithms to make mistakes or errors in their legal analysis. While AI may be able to analyze large amounts of legal data and identify patterns, it may not be able to fully comprehend the subtleties of legal arguments and the implications of different legal precedents. This can lead to incorrect legal opinions or advice, which can have serious consequences for individuals and organizations involved in legal proceedings.

Furthermore, using AI to provide legal advice raises ethical concerns. For example, AI is not capable of understanding the nuances of a client's situation and providing tailored advice that takes into account the client's unique needs and goals. This can lead to clients receiving advice



that is not in their best interests, which is a serious ethical concern.

Overall, while AI has the potential to play a role in providing legal advice, it is important to recognize its limitations and to ensure that it is used in a way that is ethical and fair. It is unlikely that AI will ever be able to fully replace human lawyers, but it could still play a valuable role in supporting and enhancing the legal profession. It is important for lawyers to carefully consider the limitations of AI and use it in a way that does not compromise the quality of legal services.

Author's note: Spencer C. Pittman, an attorney with Winters & King Inc., designed and engineered the AI prompts/inputs used to generate this article. This article was generated entirely by AI software (OpenAI ChatGPT).



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