

ALSO INSIDE: Annual Meeting Highlights • 2024 Committee Sign Up

THE OKLAHOMA BAR
Journal

Volume 94 — No. 10 — December 2023

Bankruptcy



THURSDAY & FRIDAY,
DEC. 14 & 15, 2023

9 a.m. - 3:40 p.m.
Oklahoma Bar Center, OKC

Live Webcast Available

MCLE 6/1 - DAY ONE
MCLE 6/1 - DAY TWO

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38TH ANNUAL ADVANCED BANKRUPTCY SEMINAR

Co-sponsored by the OBA Bankruptcy and Reorganization Section

DAY ONE:

Ethical Considerations and Best Practices

UST Panel: *Ilene Lashinsky, U.S. Trustee Region 20, Karen Walsh, AUST/NDO&EDO, MJ Creasey, AUST/WDO *also possibly Director Tara Twomey*

The Intersection of Federal Energy Policy and the Bankruptcy Code

Robin Russell, Hunton Andrews Kurth, Houston, TX

Health Care Issues

January Bailey, Prella Ern & Bailey, PA, Wichita, KS; Patricia Hamilton, Topeka, KS

Bitcoin ATM and other related Debtor issues in Chapter 11

Brett A. Axelrod, Fox Rothschild, Las Vegas, NV

McGirt and Bankruptcy

Mark Craige & Michael McBride, Crowe & Dunlevy, Tulsa, OK

TBD

Professor Jack Williams, Georgia State University, Atlanta, GA

DAY TWO:

Case Update aka the Chuck and Brandon Show

Charles Greenough, McAfee Taft, Tulsa; Brandon Bickle, Gable Gotwals, Tulsa

Business Bankruptcy Issues

Salene Mazur-Kraemer, Pittsburg, PA

TBD

Hon. Terrence L. Michael, Chief Judge, NDO

Chapter 13 Issues

Mary Beth Ausbrooks, Nashville, TN

Consumer Bankruptcy Issues

Panel: Jerry Brown, OKC; Cliff Gooding, OKC; Titus Hillis, Tulsa

Bankruptcy Court Panel

Blaine Schwabe, Gable Gotwals, Moderator; The Honorable Paul R. Thomas, USBC Eastern; The Honorable Terrence L. Michael, USBC, Northern; The Honorable Sarah Hall, USBC Western; The Honorable Janice D. Loyd, USBC Western

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THE OKLAHOMA BAR Journal

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Thank You!

By Brian Hermanson

THE YEAR 2023 IS COMING TO A CLOSE, AND with it is the end of my term as OBA president. The time has flown by so fast, and this is my last president's article for the *Oklahoma Bar Journal*. This is a good time to look back over the year and see all that has happened during my term as president.

There were several goals that I set forth at the beginning of this year. First and foremost, I wanted to emphasize the need for professionalism and civility in all things we do as attorneys. Our ethical standards demand that each of us meet high standards of professionalism in everything we do. With the help of the OBA

Professionalism Committee under the outstanding leadership of OBA Vice President Ken Williams, the message of how important professionalism is in our daily activity has been shared with each of you. Not only has the committee shared lessons on professionalism, but they traveled the state speaking on the topic. They presented a CLE at the OBA Annual Meeting and kept the idea at the forefront of our thoughts.

We have also had presentations on the topic from the likes of retired Justice Steven W. Taylor, who presented an outstanding keynote speech during the recent OBA Annual Luncheon. During every Board of Governors meeting, we took time to have a presentation on professionalism, and I have also tried to spread the news in my president's articles throughout the year.

Another goal was to have the OBA travel throughout the state and meet with local bar associations. We met with the Tri-County Bar

Association in south-east Oklahoma as well as with the local associations in Cleveland, Kay, Muskogee and Oklahoma counties. We met with district attorneys from across the state as well as attended events in Bryan, Garfield, Pittsburg and Tulsa counties, along with many other locations across Oklahoma.

We tried to make access to the OBA easier by addressing the difficulty of persons with disabilities entering the building. Meetings were held, a plan has been developed, and we are hopeful that in 2024, there will be a new and improved access for everyone wanting to go to the Oklahoma Bar Center.

Of course, we attended meetings across the country representing our state bar and tried to bring back ideas that will help all of us improve our association. The work of the OBA never stops, and we are always trying to meet the needs of our membership.

Dormant committees were reenergized, and the new Animal Law Section was approved by the Board of Governors. We fought to ensure lawyers followed the Rules of Professional Conduct and that the public was aware of the wonderful things we, as lawyers, do to improve our communities and the state of Oklahoma. There were many other things done that are too numerous to mention.

(continued on page 49)

And we were there for each of you to provide the guidance and support necessary for each of us to practice as attorneys in such a rough-and-tumble world.



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

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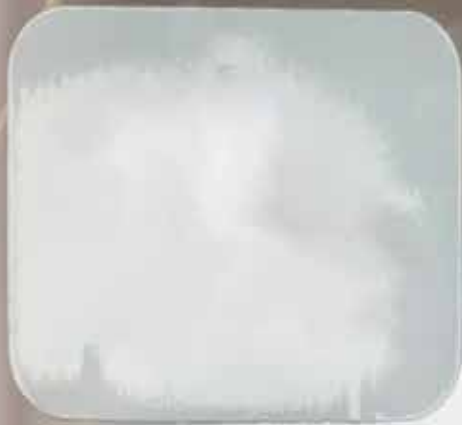
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All Aboard the Sub V Train

Faster, Cheaper Relief for Small Businesses Facing Financial Distress

By Christina W. Stephenson

BUSINESSES AND FAMILIES CONTINUE TO STRUGGLE with the crushing impact of inflation and higher interest rates. Bankruptcy statistics from across the country reflect that now more than ever, companies, especially small businesses, are seeking options for relief. Data collected by the U.S. bankruptcy courts shows a significant increase in commercial and personal bankruptcy filings in the first half of 2023 when compared to that same period in 2022. Per Epiq Global, overall commercial filings increased by 18%, while small business cases filed as Subchapter V elections within Chapter 11 increased by a surprising 55%.¹

When advising a company facing financial distress, it is important to acknowledge both the eligibility qualifications and the potential benefits of various elections. This article explains some of the fundamental differences between small business cases filed under Subchapter V of Chapter 11, or “Sub V cases,” and traditional Chapter 11 cases. It then notes that Sub V cases are generally a superior option to traditional Chapter 11 cases for small businesses because they are faster and less expensive, providing more attainable relief for small or closely held businesses.

WHO CAN FILE?

To qualify as a debtor for a Sub V filing, a business must meet the eligibility requirements under 11 U.S.C. §1182(1). Primarily, it

must engage in “commercial or business activities,” and at least 50% of its debt must arise from such activities.² The current debt limit is \$7.5 million.³ This assessment includes the aggregate noncontingent liquidated secured and unsecured debts of the potential debtor’s affiliates, excluding debts owed to insiders or affiliates.⁴ Public companies (and affiliates of public companies)⁵ and single asset real estate (SARE) entities are not eligible.⁶ Eligibility is calculated as of the petition filing date.⁷

IS THERE A TRUSTEE?

Unlike traditional Chapter 11 cases, all Sub V cases employ a Sub V trustee.⁸ Sub V trustees are unlike their Chapter 11 peers, which are sometimes appointed in the context of a traditional Chapter 11

case when a debtor-in-possession loses the right to manage its estate for cause. A Sub V trustee is tasked with facilitating the development of a consensual plan of reorganization and often aids the debtor in resolving creditor disputes.⁹ The estate is responsible for paying the Sub V trustee a monthly fee.¹⁰ However, these costs are offset by the fact that no quarterly U.S. trustee fees are charged in Sub V cases.¹¹

WILL A CREDITORS’ COMMITTEE BE APPOINTED?

Traditional Chapter 11 cases generally have a committee appointed to represent the interests of general unsecured creditors who might otherwise lack the incentive or means to participate in a meaningful way.¹² However, in a Sub V case, though the court

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For the foregoing reasons, the Sub V provisions of Chapter 11 have made reorganization a real option for many small businesses that previously had no choice but to close their doors.

may order otherwise, there is no automatic right to the appointment of an unsecured creditor committee. As a result, the estate lacks the additional and often significant expense of paying professional fees for a committee, which include fees for attorneys and financial advisors.¹³

IS THERE A SPEEDY PROCESS?

There is no deadline to file a plan in a traditional Chapter 11 case (where the debtor is not a SARE). Sub V debtors, however, must file their plans within 90 days of the petition date.¹⁴ Further, no disclosure statement is required, saving the debtor the cost of preparation and time required to seek approval of same,¹⁵ and only the debtor may file a plan.¹⁶ In a traditional Chapter 11 case, upon the expiration of the 120-day exclusivity period, a debtor must expend time and professional fees to seek extension of that protection or contend with creditors potentially filing competing plans. Also, while the Sub V debtor has 90 days to file a plan, there is no deadline under the Bankruptcy Code to *confirm* the plan, giving the Sub V

debtor flexibility to work through issues with creditors without being pressured to proceed immediately to confirmation.

ARE THEY EASIER TO CONFIRM?

Sub V debtors can more easily confirm their plans because, unlike in traditional Chapter 11 cases, Sub V cases lack an absolute priority rule.¹⁷ This rule prohibits junior creditors or equity holders from receiving distributions under a plan until all senior creditors have either been paid in full or have voted to accept the plan. Not having to comply with the absolute priority rule is especially helpful to closely held or family businesses that may struggle to pay all senior creditors their full claims, and retaining equity or ownership is of the utmost importance. For many family-owned businesses, this one crucial factor may determine whether reorganization is a realistic option. Furthermore, in Sub V cases, there is no requirement that any creditor vote to accept the plan.¹⁸ In traditional Chapter 11 cases, there must be an accepting class if the debtor is attempting to “cram

down” its plan over the objection of an impaired class of creditors.¹⁹ A Sub V debtor need not spend the associated professional fees negotiating claim treatment with creditors to find an accepting class vote. To confirm a Sub V plan, the plan must satisfy a “fair and equitable” test,²⁰ distributing the debtor’s “disposable income” (income over and above the company’s necessary expenses)²¹ to creditors over a three- to five-year period or distributing funds or property equal to that calculated amount of disposable income.²²

ARE PREPETITION PROFESSIONAL FEES DISQUALIFYING?

Prepetition professional fees of up to \$10,000 do not disqualify professionals from representing the debtor in a Sub V case.²³ In traditional Chapter 11 cases, debtors must ensure there are no outstanding fees owed to such professionals. Alternatively, the professionals must write off any prepetition balances to still be “disinterested” for case hiring purposes.²⁴ This is another way the Sub V law eases the path for small business debtors.

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CAN DISCHARGE BE CHALLENGED?

Section 1192(2) provides that debts “of the kind specified in section 523(a) of this title” may not be discharged.²⁵ While Section 523 applies only to individual debtors, Section 1192(2) applies to both individuals and businesses. Because both individuals and businesses can file Chapter 11 under Sub V, this has caused some controversy. For example, while the 4th Circuit has held that Section 1192(2) makes Section 523(a) applicable to *all* Sub V debtors,²⁶ various other district courts (and one bankruptcy appellate panel) have ruled that Section 523(a) does *not* apply to corporate Sub V debtors.²⁷ This issue is currently on appeal at the 5th Circuit awaiting a ruling.²⁸ The majority of courts that have ruled on this issue have ruled that a corporate Sub V debtor’s discharge may not be challenged under Section 523(a).

CAN ADMINISTRATIVE CLAIMS BE PAID OVER TIME?

If a Sub V plan is confirmed under Section 1191(b) (a non-consensual plan), a debtor can pay administrative claims over time. This can be an extraordinary advantage over traditional Chapter 11 plans, where administrative claims, unless otherwise agreed to, must be paid in full on or before the effective date of the plan.²⁹

ARE SUB V CASES MORE SUCCESSFUL?

Not only do Sub V cases provide strategic legal advantages for small businesses as described herein, they are also statistically more successful than traditional Chapter 11 cases.³⁰ When compared to traditional Chapter 11 cases over a two-year period, Sub V cases had double

the percentage of confirmed plans, half the percentage of dismissals, as well as a shorter time to confirmation. Furthermore, of those Sub V cases with confirmed plans, nearly 70% were consensual.

For the foregoing reasons, the Sub V provisions of Chapter 11 have made reorganization a real option for many small businesses that previously had no choice but to close their doors. If you have a client in need of insolvency counseling, contact a restructuring professional to determine what options are most beneficial.

ABOUT THE AUTHOR



Christina “Crissie” W. Stephenson is a shareholder in Crowe & Dunlevy’s Dallas office and serves as co-chair

of the Bankruptcy & Creditor’s Rights Practice Group. She assists companies and individuals in restructuring matters including Chapter 11 reorganizations, bankruptcy-related litigation and appeals as well as out of court restructuring.

ENDNOTES

1. “Commercial Chapter 11 Filings Increased 68 Percent in the First Half of 2023,” Epiq (July 3, 2023), <https://bit.ly/3u7xcxc>; “U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending June 30, 2023,” U.S. Courts, <https://bit.ly/3R046co> (last accessed Sept. 1, 2023).

2. 11 U.S.C. §1182(1)(A).

3. The Bankruptcy Threshold Adjustment and Technical Corrections Act reinstated the \$7.5 million debt limit for small businesses wanting to file Chapter 11 under the Sub V election. This more generous limit will be sunset on June 21, 2024, without further action.

4. 11 U.S.C. §1182(1)(A).

5. 11 U.S.C. §1182(1)(B)(ii)-(iii).

6. 11 U.S.C. §1182(1)(A).

7. *In re Free Speech Sys., LLC*, 649 B.R. 729 (Bankr. S.D. Tex. 2023).

8. 11 U.S.C. §1183.

9. 11 U.S.C. §1183(b)(7).

10. 11 U.S.C. §326(a), 330(a).
11. 28 U.S.C. §1930(a)(6)(A).
12. 11 U.S.C. §1102.
13. 11 U.S.C. §1102(a)(3).
14. 11 U.S.C. §1189(b).
15. 11 U.S.C. §1190(a)(1).
16. 11 U.S.C. §1189(a).
17. 11 U.S.C. §1129(b)(2)(B)(ii).
18. 11 U.S.C. §1191(b).
19. 11 U.S.C. §1129(a)(10).
20. 11 U.S.C. §1191(c).
21. 11 U.S.C. §1191(d)(2).
22. 11 U.S.C. §1191(c)(2).
23. 11 U.S.C. §1195.
24. 11 U.S.C. §327.
25. 11 U.S.C. §1192(2).
26. *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022).
27. *In re Hall*, No. 3:22-AP-00062-BAJ, 2023 WL 2927164 (Bankr. M.D. Fla. Apr. 13, 2023); *In re 2 Monkey Trading, LLC*, No. 6:22-BK-04099-TPG, 2023 WL 3145124 (Bankr. M.D. Fla. Apr. 28, 2023); *In re Lapeer Aviation, Inc.*, No. 21-31500-JDA, 2022 WL 1110072, at *2 (Bankr. E.D. Mich. Apr. 13, 2022); *In re Rtech Fabrications, LLC*, 635 B.R. 559, 564 (Bankr. D. Idaho 2021); *In re Satellite Rests. Inc. Crabcake Factory USA*, 626 B.R. 871, 876 (Bankr. D. Md. 2021); *In re Off-Spec Sols., LLC*, 651 B.R. 862, 864 (B.A.P. 9th Cir. 2023).
28. *In re GFS Indus., LLC*, 647 B.R. 337 (Bankr. W.D. Tex. 2022), *motion to certify appeal granted*, No. 22-50403-CAG, 2023 WL 1768414 (Bankr. W.D. Tex. Feb. 3, 2023).
29. 11 U.S.C. §1129(a)(9).
30. *Chapter 11 Subchapter V Statistical Summary*, DOJ: U.S. Trustee Program, <https://bit.ly/3MEeJi8> (last accessed Sept. 1, 2023).

How to Protect Your Settlement in the Event of Bankruptcy

By Lysbeth L. George



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CONGRATULATIONS ON REACHING THAT STELLAR SETTLEMENT in your hard-fought litigation. Your client is relieved to have it all behind them and is looking forward to finally getting paid after all these years (and attorney fees). Then the call comes: “I got some sort of notice in the mail about a bankruptcy. What does this mean? What about our settlement? Am I going to get paid?” Oftentimes (depending on, among other factors, the nature of the underlying claims in the lawsuit, the structure of the settlement and the amount of time between settlement payment and bankruptcy filing) that stellar settlement will be discharged, and the obligated party is now untethered from all payment obligations despite your masterfully drafted settlement agreement.

So what can we as litigators do to plan for the worst when negotiating settlements? This article is intended to help navigate and reduce potential risks associated with a subsequent unexpected bankruptcy filing.

THE BANKRUPTCY DISCHARGE

Individual debtors are entitled to a discharge of all personal liability for certain types of debts unless the debtor can be shown to have engaged in one of the various enumerated types of bad behavior (more to come on this) that warrant denial of their bankruptcy discharge.¹ If a debt is discharged, that means the individual debtor is relieved from all personal liability to repay such debt. This applies to

both secure and unsecured debt. However, “liens flow through bankruptcy,”² meaning that if the debtor fails to pay on a debt secured by collateral, the creditor retains its rights to enforce the lien and proceed *in rem* to liquidate the collateral and apply the proceeds to satisfy the debt.³

Entities (other than individuals) do not receive a discharge in bankruptcy.⁴ Rather, business entities can use the bankruptcy system to reorganize or liquidate assets to pay creditors.

AVOIDANCE ACTIONS: PREFERENTIAL TRANSFERS

The ideal settlement involves a single prompt lump sum payment before any bankruptcy filing is likely to occur. However, such

settlement payment still faces the risk of being treated as a preferential transfer and being clawed back into the bankruptcy estate for *pro rata* distribution to all creditors (yes, your client would actually have to return the payments made to them). Settlement payments are subject to avoidance under 11 U.S.C. §547. Pursuant to Section 547:

(b) ... the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses under Subsection (c), avoid any transfer of an interest of the debtor in property—

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- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made—
 - (A) on or within 90 days before the date of the filing of the petition;
 - (B) between 90 days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—
 - (A) the case were a case under Chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.⁵

As a result, settlement payments made within 90 days before the filing of a bankruptcy petition face the risk that a bankruptcy trustee may seek to avoid that transfer and require the creditor that received such payment(s) to disgorge such funds and pay them over to the trustee.

So what's a litigator to do? Give up on settling cases? Hold one's breath for 90 days in hopes the settlement will stick? Maybe. There are, however, some additional measures that can be incorporated into your settlement structure to reduce your 90 sleepless nights.

- 1) Require payment as quickly as possible so that the clock is running to get past the 90-day avoidance risk period.
- 2) Include a "springing release" that is not triggered until the 91st day following settlement. This release provision should provide that the claims will not be released until 91 days⁶ after receipt of payment without a bankruptcy filing. The release provision should expressly contemplate that the original claims remain in effect and are not released. Such a provision provides some protection in a worst-case scenario where a creditor is subject to avoidance by the trustee and required to return the settlement payment. If included, this provision would permit the creditor to pursue a nondischargeable action (if the claims meet the necessary bad behavior criteria discussed below).
- 3) Require a guaranty or direct payment from a third party. All legal and equitable interest of a debtor in property (less certain limited enumerated exceptions) become property of the bankruptcy estate upon commencement of a bankruptcy case.⁷ Accordingly, only the debtor's property may be recovered in an avoidance action.

Settlement payment made by a non-debtor third party, *i.e.*, the individual owner of a bankrupt entity, would not be subject to avoidance since such funds would not be considered property of the estate. Such payment structure could be included by making the third party a direct party to the settlement or a guarantor of the payments due thereunder.

SECURED VERSUS UNSECURED DEBTS

As discussed, bankruptcy only discharges personal liability (*in personam* liability) and does not wipe out secured interests in the property (*in rem* liability) of the debtor.⁸ Taking a security interest in the property of the debtor is one of the best ways to protect your settlement, especially if the settlement involves structured payments over time. Beware though: Similar to monetary payments received within the 90-day period immediately before a bankruptcy filing, transfers of property of the debtor within the 90-day lookback period are also subject to avoidance under Section 547(b).⁹

This combination of payment and secured interest in property could prove particularly helpful if the creditor is concerned that the debtor is not liquid enough to support the settlement payment but has unencumbered assets that could be pledged. While unconventional, the settlement terms could require the debtor to provide a security interest in a particular property immediately upon settlement, with the first payment not due until the 91st day (beyond the preference period). This would allow the secured interest in the

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debtor's property to become non-avoidable and allow the debtor to have the cash necessary to stay in operations for the 90-day period. In the event the debtor later (post 90-day risk period) defaults on payment and ends up in bankruptcy, the creditor would have the lien on the non-avoidable collateral available to satisfy the settlement obligation.¹⁰

NONDISCHARGEABILITY

Certain types of legal claims are not subject to the discharge. The U.S. Supreme Court has found that "Congress intended the fullest possible inquiry to ensure that all debts arising out of fraud are excepted from discharge, no matter their form."¹¹ Accordingly, the bankruptcy court is not prohibited from looking beyond the settlement documents to decide whether the underlying debt was nondischargeable.¹²

There are two bankruptcy code sections that govern whether a debtor may receive a discharge.

One type is individual claim/creditor specific,¹³ and the other results in a denial of discharge in its entirety (*i.e.*, no claims are discharged).¹⁴

11 U.S.C. §523

Section 523 of the Bankruptcy Code sets forth the categories of bad behavior that could result in a claim arising out of such behavior being excepted from the discharge. In relevant part to this article, Section 523 provides that a debtor is not entitled to discharge the following types of debt:

(a)(2) for money, property, services or an extension, renewal or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

...

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

...

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance;

...



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Beware that taking this course of action may obligate you (depending on the case law and local rules in your jurisdiction) to pursue the case through trial on behalf of all creditors in the bankruptcy case.¹⁷

(19) that—

(A) is for—

(i) the violation of any of the federal securities laws (as that term is defined in Section 3(a)(47) of the Securities Exchange Act of 1934), any of the state securities laws or any regulation or order issued under such federal or state securities laws; or

(ii) common law fraud, deceit or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on or after the date on which the petition was filed, from—

(i) any judgment, order, consent order or decree entered in any federal or state judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost or other payment owed by the debtor.¹⁵

Regardless of the basis asserted to seek nondischargeability, the creditor will be required to institute an adversary proceeding within the bankruptcy case¹⁶ and present evidence to the bankruptcy court demonstrating the elements giving rise to nondischargeability.

11 U.S.C. §727

An alternative basis for obtaining a determination of nondischargeability is to file an adversary to have the entirety of the debtor's discharge denied as to all claims and all creditors. Beware that taking this course of action may obligate you (depending on the case law and local rules in

your jurisdiction) to pursue the case through trial on behalf of all creditors in the bankruptcy case.¹⁷ The sorts of bad behavior that give rise to nondischargeability under Section 727 typically arise out of actions by the debtor in connection with the bankruptcy proceeding itself. Section 727 provides as follows:

(a)The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated or concealed, or has permitted to be transferred, removed, destroyed, mutilated or concealed—

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(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified or failed to keep or preserve any recorded information, including books, documents, records and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received or attempted to obtain money, property or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5) or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under Section 1141 of this

title, or under Section 14, 371 or 476 of the Bankruptcy Act, in a case commenced within eight years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under Section 1228 or 1328 of this title, or under Section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100% of the allowed unsecured claims in such case; or

(B)

(i) 70% of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in Section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in Section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that

the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (the United States trustee or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter; or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) Section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in Section 522(q)(1)(A) or liable for a debt of the kind described in Section 522(q)(1)(B).¹⁸

Should a creditor choose to pursue nondischargeability based on Section 727, the creditor will also be required to file a separate adversary proceeding within the bankruptcy case and put on evidence at a trial presented to the bankruptcy judge to determine if the requirements for complete denial of the discharge have been satisfied.¹⁹

CONCLUSION

Settlement is and will remain “the dominant outcome[] of civil litigation in the United States.”²⁰ Litigators should not only take into account achieving the most lucrative settlement for the clients but must also carefully evaluate the financial status of the opposing party in order to appropriately plan for the possibility of a future bankruptcy filing. Navigating settlement negotiations with these potential bankruptcy risks in mind can help the savvy litigator provide additional protections for their clients.

ABOUT THE AUTHOR



Lysbeth L. George serves as CEO of the Oklahoma City law firm of Liz George and Associates. Her areas of practice include bankruptcy and commercial litigation. She is an active member of several community service leadership boards, and she is a past recipient of the Oklahoma County Bar Association Pro Bono Award. She is a 2011 graduate of the OCU School of Law, where she served as an adjunct professor of civil procedure.

ENDNOTES

1. See, e.g., 11 U.S.C. §§523 and 727.
2. This quote can be attributed to every bankruptcy law professor’s opening statement of Bankruptcy 101.
3. Liens that have not been avoided survive the bankruptcy discharge. Accordingly, a lienholder may enforce the surviving lien against such collateral after the bankruptcy case is closed. See *Johnson v. Home State Bank*, 501 U.S. 78, 82, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991).
4. 11 U.S.C. §727(a)(1).
5. 11 U.S.C. §547(b).
6. Keep in mind that the lookback period for payments to insiders is actually one year, not 90 days, so if the settlement is made in favor of an insider of the debtor, 90 days won’t do the trick. See 11 U.S.C. §547(b)(4)(B). Insiders are defined in the Bankruptcy Code at 11 U.S.C. §101(31).
7. 11 U.S.C. §541(a)(1).

8. See endnote 3.
9. 11 U.S.C. §§541(a)(1) and 547(b).
10. In this situation, the debtor would either have to continue to pay current the obligation secured by the debtor’s property (the settlement) in order to retain the property, or the creditor could file stay relief to exercise its state law rights to liquidate the collateral and apply it to satisfy its debt. See 11 U.S.C. §362(d).
11. *Archer v. Warner*, 538 U.S. 314, 315, 123 S.Ct. 1462, 1464, 155 L. Ed. 2d 454 (2003)(internal citations omitted).
12. *Id.*
13. 11 U.S.C. §523.
14. 11 U.S.C. §727.
15. 11 U.S.C. §523(a).
16. See Fed. R. Civ. P 7001 *et seq.*
17. “In filing a §727 claim a plaintiff takes on a fiduciary duty to the creditor body. A plaintiff violates this fiduciary duty when it appropriates for itself the settlement of such litigation.” *In re de Armond*, 240 B.R. 51, 53 (Bankr. C.D. Cal. 1999).
18. 11 U.S.C. §727.
19. See endnote 15.
20. Eisenberg, Theodore and Lanvers, Charlotte, “What is the Settlement Rate and Why Should We Care?” (2009). *Cornell Law Faculty Publications*. Paper 203. <https://bit.ly/3syvbtz>.



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Dischargeability of Taxes in Bankruptcy

By Brandon Bickle

THE EXTENT TO WHICH TAXES ARE DISCHARGEABLE IN BANKRUPTCY IS A matter of considerable confusion – not just with general practitioners but with bankruptcy lawyers alike. As bankruptcy Judge Dana Rasure noted a few years ago, “The law concerning dischargeability of taxes and penalties is confusing at best, starting with the relevant statutes that are characterized by double and triple negative constructions and incorporate other statutes by reference.”¹ Many believe taxes simply are not dischargeable under any circumstances. This used to be the case, but not anymore.² The purpose of this article is to provide practitioners with a general overview of the basic rules concerning the treatment of taxes in bankruptcy.

THE TYPE OF TAX AND THE AGE OF THE TAX

The starting point is §523(a)(1)(A) of the Bankruptcy Code,³ which states, among other things, that any tax or customs duty that constitutes a priority unsecured claim under §507(a)(8) of the Bankruptcy Code – including income, property, employment, excise, trust fund taxes and tax penalties – subject to certain time limitations, are nondischargeable. By contrast, nonpriority taxes are generally dischargeable. Beginning with income and gross receipts taxes, §507(a)(8) describes these priority taxes as follows:

(A) [taxes] on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition –

(i) for which a return, if required, is last due, including extensions, after 3 years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of –

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that

240-day period, plus 90 days; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case.

Three time periods are in play with respect to the dischargeability of income and gross receipts taxes: the three-year lookback, the two-year lookback and the 240-day lookback:

- Three-year lookback: the due date of the return (note: the *due* date, not the *filing* date), which must be more

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than three years prior to the bankruptcy filing for the tax to be dischargeable;

- Two-year lookback: as discussed in greater detail below, a return must be filed more than two years prior to the bankruptcy filing for the tax to be dischargeable; and
- 240-day lookback: the date of the assessment,⁴ which, subject to certain exclusions for offers of compromise and stays of proceedings against collections (during which time the period is tolled), must be more than 240 days prior to the bankruptcy filing for the tax to be dischargeable.

The two-year rule is encompassed by §507(a)(8)(A)(iii)'s reference to §523(a)(1)(B), which is discussed further below. A narrower category of generally nondischargeable taxes are those *assessed* and *assessable*, under applicable law or by agreement, *after* the commencement of a bankruptcy case.⁵ The former references §507(a)(3) (which, in turn, references §502(f)) and addressees tax claims arising in involuntary bankruptcy

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cases between the date the petition is filed and the earlier of the appointment of a trustee or entry of an order for relief. The latter addresses income or gross receipts taxes “not assessed before, but assessable, under applicable law or by agreement, after the commencement of the case.” Both are nondischargeable.

Additional priority tax claims that are nondischargeable pursuant to Bankruptcy Code §523(a)(1)(A) and listed as priority claims under Bankruptcy Code §507(a)(8) include:

(B) [property taxes] incurred before the commencement of the case and last payable without penalty after 1 year before the date of the filing of the petition;

(C) [taxes] required to be collected or withheld and for which the debtor is liable in whatever capacity [including trust fund or withholding taxes];

(D) [employment taxes] on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection⁶ earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after 3 years before the date of the filing of the petition;

(E) [excise taxes⁷] on –

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after

3 years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the 3 years immediately preceding the date of the filing of the petition;

(F) [customs duties] arising out of the importation of merchandise –

(i) entered for consumption within 1 year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within 1 year before the date of the filing of the petition; or

(iii) entered for consumption within 4 years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisal or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) [penalties] related to [claims] of a kind specified in this paragraph and in compensation for actual pecuniary loss.

As alluded to above, the time periods stated in §507(a)(8) may be tolled in certain instances. The Bankruptcy Code contains tolling provisions in §507(a)(8)(A)(ii)(I) and (II),⁸ with respect to the 240-day

rule, as well as a more general tolling provision in the last “hanging” paragraph of §507(a)(8), which states as follows:

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

Notably, as provided in §§523(a)(1)(A) and 507(a)(8)(C) and (G) above, certain taxes are nondischargeable regardless of age – including “trust fund” taxes the debtor is legally required to withhold or collect from others and certain *compensatory* (as opposed to punitive) tax penalties. The Bankruptcy Code has a separate nondischargeability provision for a “fine, penalty, or forfeiture payable to and for the benefit of a governmental unit,” which applies to *noncompensatory* fines, penalties or forfeitures but notably excludes those relating to taxes that are dischargeable or that are “imposed with respect to a transaction or event that occurred” more than three years before the filing of the bankruptcy petition.⁹

Note that a filing extension – extending the due date for a tax return – may impact the applicable time periods. In *In re Hermann*,¹⁰ the

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Bankruptcy Court for the Northern District of Oklahoma held that a filing extension rendered a debtor's income tax liability nondischargeable when it may have otherwise been dischargeable due to the three-year limitations period provided in §523(a)(8)(A)(i).

FAILURE TO FILE A RETURN IN ACCORDANCE WITH NONBANKRUPTCY LAW

As referenced above, taxes owed for which a return (or equivalent report or notice) is required and remains unfiled or not given or was filed or given late and within two years before the bankruptcy filing are nondischargeable.¹¹

While the word "return" may seem straightforward, it is important to understand what is – and what is not – considered a "return" for bankruptcy purposes. According to another "hanging" paragraph in §523(a), which immediately follows §523(a)(20) of the Bankruptcy Code (sometimes cited as §523(a)(*)), "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements).^{12 13}

In *Mallo*, the 10th Circuit held that "the plain and unambiguous language of §523(a) excludes from the definition of 'return' all late-filed tax forms, except those prepared with the assistance of the IRS under [26 U.S.C.] §6020(a)."¹⁴ Additionally, under §6020(a), a return must be signed by the taxpayer to be accepted as a filed return. While in some cases, the IRS will file a return on behalf of a taxpayer, the 10th Circuit has also previously held that a return filed by the IRS but not signed by the taxpayer does not qualify as a filed return under §523(a)(1)(B).¹⁵ Notably, the issue



of when a late-filed return qualifies as a "return" for purposes of dischargeability is one on which courts disagree.¹⁶

FRAUD AND WILLFUL TAX EVASION

Pursuant to Bankruptcy Code §523(a)(1)(C), taxes "with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax" are nondischargeable. Unsurprisingly, there is no time limit associated with this provision. Note that nonpayment *alone* will not result in a finding that the debt is nondischargeable; however, "nonpayment is relevant evidence which a court should consider in the totality of conduct to determine whether or not the debtor willfully attempted to evade or defeat taxes."¹⁷ A debtor's ability to pay is also relevant. "A debtor's actions are willful under § 523(a)(1)(C) if they are done voluntarily, consciously or knowingly, and intentionally."¹⁸

TAX PENALTIES

Finally, under §523(a)(7) of the Bankruptcy Code, certain tax penalties are nondischargeable:

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty –

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection [*i.e.*, a tax that is dischargeable]; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition.

The 10th Circuit has held that §523(a)(7)(B) "creates an arbitrary cutoff of three years, after which all uncollected tax penalties may be discharged in bankruptcy."¹⁹

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But because of the “transaction or event” language in §523(a)(7) (B), the 10th Circuit Bankruptcy Appellate Panel has concluded that penalties arising from a frivolous filing are not dischargeable even if the taxes relate to tax years more than three years prior to the filing of the bankruptcy petition if the filing of the frivolous documents – which was the “transaction or event” – occurred within that three-year period.²⁰

CONCLUSION

Generally, in the absence of fraud or willful tax evasion, the Bankruptcy Code allows debtors to discharge many taxes that are beyond a certain age and for which a return, if required, has been filed in accordance with applicable nonbankruptcy law. The outcome turns on the type of tax – alas, there are many – as well as the timing of the filing of the return and other relevant events related to the tax. Knowing how to navigate the maze of applicable statutes and regulations is critical for attorneys to be able to competently represent bankruptcy debtor clients who owe taxes.

ABOUT THE AUTHOR



Brandon Bickle is a shareholder at GableGotwals in Tulsa, where he practices in the areas of general commercial litigation and bankruptcy, with an emphasis on Chapter 11 bankruptcy matters, foreclosures and collateral liquidation, as well as other debtor-creditor disputes.

ENDNOTES

1. *In re Moore*, 2017 WL 934641, at *3 (Bankr. N.D. Okla. March 8, 2017).
2. “Prior to 1966, tax debts were not dischargeable. In 1966, ‘consisten[t] with the rehabilitary purpose of the Bankruptcy Act,’ amendments were enacted ‘to make dischargeable in bankruptcy debts for taxes which became legally due and owing more than 3 years preceding bankruptcy, and to limit the prior accorded to taxes.’” *Dalton v. I.R.S.*, 77 F.3d 1297, 1300 (10th Cir. 1996) (quoting S.Rep. No. 1158, 89th Cong., 2d Sess. (1966), 1966 U.S.C.C.A.N. 2468, 2468, 2469).
3. References to the “Bankruptcy Code” are to Title 11 of the United States Code. Unless otherwise identified, section references (§) are to the Bankruptcy Code.
4. See 26 C.F.R. §301.6203-1 (Method of Assessment): “The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.”
5. See 11 U.S.C. §§523(a)(1)(A) and 507(a)(8)(A)(iii).
6. Bankruptcy Code §507(a)(4) describes the priority claim for wages, salaries and commissions as follows:
 - (4) Fourth, allowed unsecured claims, but only to the extent of \$15,150 [originally “\$10,000,” adjusted effective April 1, 2022] for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first, for—
 - (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
 - (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor’s business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

7. An excise tax is “[a] tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or an occupation or activity (such as a license tax or an attorney occupation fee).” *United Parcel Serv., Inc. v. Flores-Galarza*, 318 F.3d 323, 326 (1st Cir. 2003) (quoting *Black’s Law Dictionary* 585 (7th ed. 1999)).
8. *Supra*.
9. §523(a)(7).
10. See *In re Hermann*, 221 B.R. 944 (Bankr. N.D. Okla. 1998).
11. 11 U.S.C. §523(a)(1)(B).
12. See *In re Mallo*, 774 F.3d 1313, 1318 (10th Cir. 2014) (“the plain language of the statute requires us to consult nonbankruptcy law, including any applicable filing requirements, in determining whether the tardy tax forms ... are returns for purposes of discharge”).
13. See also *In re Wogoman*, 475 B.R. 239 (10th Cir. BAP 2012) (discussing various tests for interpreting this “hanging” paragraph and what constitutes a “return”).
- The hanging paragraph further provides that “[s]uch term [‘return’] includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986 [‘IRC’], or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the [IRC], or a similar State or local law.” “Section 6020(a) of the [IRC] refers to a return prepared by the IRS with the assistance of the taxpayer, and when signed by the taxpayer, may be treated as a return filed by the taxpayer. On the other hand, IRC § 6020(b) refers to a return prepared by the IRS without the assistance of the taxpayer and executed by the IRS.” *In re Wogoman*, 475 B.R. 239, 243–44 (10th Cir. BAP (Colo.) 2012).
- The hanging paragraph was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Prior to BAPCPA, the primary test used to determine whether a “return” was filed, which is still used today, is known as the *Beard* test, and has four elements: “[f]irst, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury.” *Mallo*, 774 F.3d at 1318 (quoting *Beard v. Comm’r*, 82 T.C. 766, 777 (1984), *aff’d*, 793 F.2d 139 (6th Cir.1986) (*per curiam*)).
14. 774 F.3d at 1327; see also note vi, *supra*.
15. *In re Bergstrom*, 949 F.2d 341, 343 (10th Cir. 1991).
16. See, e.g., *In re Shek*, 947 F.3d 770, 781 (11th Cir. 2020) (Discussing the issue, citing cases and disagreeing with the 10th Circuit in *Mallo*).
17. *Dalton v. I.R.S.*, 77 F.3d 1297, 1301 (10th Cir. 1996).
18. *Id.* at 1302; see also *In re Lowrance*, 324 B.R. 358, 364 (Bankr. N.D. Okla. 2005).
19. *In re Roberts*, 906 F.2d 1440, 1443 (10th Cir. 1990).
20. *In re Wilson*, 407 B.R. 405 (10th Cir. BAP 2009).



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Bankruptcy and the Automatic Stay: What Every Lawyer Should Know

By Elaine M. Dowling

THIS ARTICLE IS NOT INTENDED FOR ANYONE who ever anticipates representing a client in bankruptcy court. This is for the lawyer who is opening the mail when a notice of bankruptcy filing lands on their desk. Even if you didn't choose to come within the bankruptcy court's jurisdiction, bankruptcy can still be complex and unforgiving. This article is intended to introduce the basics of the automatic stay, which is one of the easiest ways to wind up in real trouble at the bankruptcy courthouse – even if you never intended to go there.

This is how I describe the automatic stay to my clients:

The automatic stay is an order that goes into effect automatically and stays, which is an archaic term meaning temporarily stops, all collection activity against the debtor or property of the debtor.

The Bankruptcy Code describes the automatic stay this way:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;



(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.¹

The first thing to notice is that the stay applies to “all entities” (tail end of Subsection (a)). Entity is a defined term in the Bankruptcy Code:

(15) The term “entity” includes person, estate, trust, governmental unit, and United States trustee.²

So, basically, the automatic stay applies to everybody, not just parties to the bankruptcy. There is also no requirement that the affected “entity” have notice of the bankruptcy filing.³ The automatic stay simply applies. To quote the definition I give my clients, “It goes into effect automatically, and it stays all collection activity against the debtor or property of the debtor.”

Most commonly for lawyers, the automatic stay will become relevant if someone who owes the lawyer money, someone who owes the lawyer’s client money or someone who is a party to litigation involving the lawyer files for bankruptcy. Clearly, collection activity must stop. Section 362(a) prescribes attempting to collect on a “claim” in multiple places. A “claim” is also a defined term in the Bankruptcy Code:

(5) The term “claim” means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,

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equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.⁴

In other words, if the bankrupt debtor owes you or your client money, the automatic stay stops you from collecting it. One common misconception is that if you believe your debt is not dischargeable in a bankruptcy, then somehow the automatic stay does not apply. Nowhere does Section 362 limit the automatic stay to nondischargeable claims. Even the IRS and student loan lenders are stopped by the automatic stay.

The automatic stay also applies to stay pending litigation in which the debtor is a party. Section 523(a)(1) is the most common subsection for staying litigation, and it stays all litigation attempting to collect a claim against the debtor. The question then becomes, what happens in cases with multiple defendants? Clearly, the case must be stayed as to the debtor, but what about the other defendants?

The majority rule is that the automatic stay only applies to the debtor.⁵ There is a statutory exception to that if the debtor filed a Chapter 13 bankruptcy that extends the automatic stay to co-debtors if the debt involved is a consumer debt.⁶ That is not going to apply in most cases, leaving us with the general rule that the automatic stay only stays litigation as to

One common misconception is that if you believe your debt is not dischargeable in a bankruptcy, then somehow the automatic stay does not apply. Nowhere does Section 362 limit the automatic stay to nondischargeable claims. Even the IRS and student loan lenders are stopped by the automatic stay.

the debtor. There is what is supposed to be a “narrow exception” to that rule that extends the stay to co-defendants “when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.”⁷

Obviously, there are instances when a bankrupt debtor is a party to litigation, but the litigation is not intended to collect a claim against the debtor. In those cases, each subsection of §362(a) needs to be read carefully with the specific facts in mind, but continue reading into §362(b) because just as Subsection (a) lists when the stay applies, Subsection (b) lists when the stay does not apply.

There are quite a few subsections listing fact patterns when the automatic stay does not apply. Of those, the first ones are the most common:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

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(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;⁸

Section 362(b)(2) excludes from the automatic stay a lot of family law proceedings, but there is a trap in both §362(b)(2)(A)(iv) and (b)(2)(B). Both of those sections reference “property of the estate.” Property of the estate is defined by 11 U.S.C. §541, which is neither a short nor a simple statute. However, in a nutshell, property of the estate is summed up in §541(a)(1):

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.⁹

Section 541 limits the family law court’s ability to divide property of the estate, but it also limits the ability to collect a “domestic support obligation”¹⁰ from property of the estate. The real trap here is that if the debtor filed for Chapter 13 bankruptcy, property of the estate is expanded to include property acquired post-petition, including post-petition wages; that means that collecting a “domestic support obligation,” which generally means child support or alimony that accrued prior to the time the bankruptcy was filed, is going to be stayed for the length of the debtor’s three- to five-year Chapter 13 plan of reorganization unless the stay is lifted or modified by the bankruptcy court. A far better plan is to file a proof of claim in the debtor’s Chapter 13 case because then the past-due support will have to be paid in full during the plan.

Before deciding how best to proceed with litigation or collection efforts involving property that may be property of the estate, read all of the statutes cited above carefully, paying particular attention to which chapter of bankruptcy the debtor has filed. Then, consult a bankruptcy attorney before proceeding further. Neither Section 541 nor the definition of “domestic support obligation” was quoted here in full. They are lengthy

and complicated statutes. Also, if the best decision is to ask the bankruptcy court to lift or modify the stay to allow the stayed proceeding to continue or to ask the court to abandon a specific asset from the estate, you will want to consult with experienced bankruptcy counsel.

CONCLUSION

Violating the automatic stay can have serious and expensive consequences. In the appropriate case, remedies include actual damages, punitive damages if appropriate, attorney fees and costs. Section 362(k)(1) allows an individual injured by a willful stay violation to recover damages if a preponderance of the evidence establishes that the offending party knew about the bankruptcy filing and intended the actions that violated the stay. Specific intent is not required.¹¹

Clearly, the automatic stay goes into effect when a bankruptcy is filed, but when does it end? The stay terminates at the earliest of the following events: the time the case is closed, the time the case is dismissed or when a discharge is granted or denied.¹² Never be afraid to contact a bankruptcy lawyer to walk you through this. We understand our boggling most of the Bankruptcy Code is to lawyers who don’t work with it regularly, and most of us are happy to take calls from other practitioners. In many cases, you are our best source of business!

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ABOUT THE AUTHOR



Elaine M. Dowling is a solo practitioner in northwest Oklahoma City. She represents people with debt or debt-related issues, doing various types of work for all kinds of people with credit report problems or identity theft issues – filing bankruptcies, helping people with credit reports, defending collection cases, defending foreclosure cases and otherwise trying to make a difference for people who have been handed more by life than they can handle.

ENDNOTES

1. 11 U.S.C. §362(a).
2. 11 U.S.C. §101(15).
3. See, *Kline v. Deutsche Bank Nat'l Trust Co.* (*In re: Kline*), 472 B.R. 98 (B.A.P. 10th Cir. 2012). In *Kline*, a creditor, without notice of the bankruptcy filing, served a foreclosure petition on the debtor eight days after the bankruptcy was filed. The court found that any action taken in violation of the automatic stay is void, even if there is no actual notice of the bankruptcy filing. *Kline*, 472 B.R. at 103.
4. 11 U.S.C. §101(5).
5. See, *Oklahoma Federated Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 141-142 (10th Cir. 1994).
6. 11 U.S.C. §1301.
7. *Oklahoma Federated Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 141-142 (10th Cir. 1994); citing, *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir.), cert. denied, 479.
8. 11 U.S.C. §362(b).
9. 11 U.S.C. §541(a)(1).
10. Domestic Support Obligation is defined at 11 U.S.C. §101(14A).
11. *In re: Calloway*, Case No. 15-13970-JDL (Bankr. W.D. Okla. Feb. 19, 2016), citing, *In re: Johnson*, 501 F.3d 1163 (10th Cir. 2007); *In re: Kline*, 472 B.R. 98, aff'd 514 Fed. Appx. 810 (10th Cir. 2013).
12. See, *In re: Calloway*, Case No. 15-13970-JDL (Bankr. W.D. Okla. Feb. 19, 2016).



ETHICS COUNSEL

DID YOU KNOW?

The ethics counsel is available to assist members with ethical questions and inquiries on subjects such as conflicts, confidentiality and client concerns. All contact with ethics counsel is confidential per Oklahoma law. The ethics counsel also presents CLE programs on ethics and professionalism.

CONTACT

Richard Stevens, *OBA Ethics Counsel*
www.okbar.org/ec | richards@okbar.org | 405-416-7055

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OBA CLE
Continuing Legal Education



FEATURED SPEAKER:



LENNE ESPENSCHIED, ESQ.

LAWYER, AUTHOR, NATIONAL SPEAKER AND PROFESSOR

TUESDAY, DEC. 26 @ NOON

The Dirty Dozen:

The 12 Most Common Grammar and Writing Errors

Lawyers are wordsmiths, and excellent writing is an essential competency in the practice of law; in fact, nothing is more important or more directly related to a lawyer's success. Grammar and writing errors damage a lawyer's credibility; they suggest that the lawyer is either careless or incompetent. This program examines the 12 most common errors and how to avoid them. **MCLE 1/0**

WEDNESDAY, DEC. 27 @ NOON

The Sneaky Dozen:

12 Subtle Grammar and Writing Errors

Excellent writing is an essential competency in the practice of law; in fact, nothing is more important or more directly related to a lawyer's success. Grammar and writing errors damage a lawyer's credibility; they suggest that the lawyer is either careless or incompetent. This sequel to "The Dirty Dozen" examines 12 subtle grammar and writing errors you may be making and explains how to avoid them. **MCLE 1/0**

THURSDAY, DEC. 28 @ NOON

Cyber Age Ethics for Transactional Lawyers

Got ethics? This program will explore ethical issues in the Cyber Age from a transactional lawyer's perspective. Using the ABA's Model Rules of Professional Conduct and recent legal ethics opinions as guides, we'll consider sticky situations that often arise in the course of negotiating and drafting contracts. **MCLE 1/1**

FRIDAY, DEC. 29 @ 9 A.M.

On-Ramp:

M&A Basics for New Transactional Lawyers

Get up to speed FAST with this M&A basics program, which introduces 83 words and phrases M&A lawyers use to negotiate with other lawyers and 35 forms of common provisions. Learn the difference between a direct merger, a forward triangular merger, and a reverse triangular merger. Learn about specific kinds of risk unique to M&A transactions, like completion risk, mis-valuation risk, and value-shift risk, and learn tried and true techniques for shifting these risks to the other party. Learn how a merger agreement is typically structured, what issues are covered in each section, and what dozens of words and phrases like "within the collar," "Buyer Power Ratio," and "Social Issues" mean, and how they factor into negotiating strategies. We'll walk through the articles of a typical merger agreement, covering each concept within the context of the provision where it usually arises. Using 35 real forms from recent transactions as examples, you'll learn exactly what you need to know to negotiate and draft M&A agreements more confidently. **MCLE 3/0**

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ANNUAL MEETING HIGHLIGHTS





1. *The Choctaw ROTC presents the colors during the Friday morning General Assembly.*
2. *Retired Justice Steven W. Taylor addresses attendees during his Annual Luncheon keynote speech on professionalism and civility.*
3. *Former head football coach of the OU Sooners and Dallas Cowboys, Barry Switzer, entertains the crowd during the OU College of Law Luncheon.*

4. *Spoken word poet and lawyer Samantha Marchand recites her poetry during the Diversity Awards Dinner.*
5. *Attendees gather at the annual Ada Lois Sipuel Fisher Diversity Awards Dinner to hear from keynote speaker Professor Carla D. Pratt.*
6. *Congratulations to the 2024 officers and newly elected board members. From left 2024 President Miles Pringle, 2024 President-Elect D. Kenyon Williams Jr., 2024 Vice President Amber Peckio Garrett, Judicial District 6 Governor Philip D. Hixon, Judicial District 1 Governor William Ladd Oldfield and Member At Large Jeffery D. Trevillion Jr. Not pictured, Judicial District 7 Governor Chad Alexander Locke. New officers and board members will begin their terms on Jan. 1.*





5.



6.



7.



8.



9.



10.

7, 8. *President-Elect Miles Pringle and Executive Director Janet Johnson facilitate the voting process for the contested member at large election during the General Assembly.*

9. *President Hermanson is joined by his daughter, Charlcy, and his wife, Ruslyn, as he cuts the cake for the Wednesday night Welcome Reception.*

10. *Retired Justice Tom Colbert hosts a signing for his book, 50 Years from the Basement to the Second Floor, following his Wednesday morning CLE presentation.*



11.



12.

11. President Brian Hermanson presents President's Awards for leadership to OBA Vice President D. Kenyon Williams Jr. and Immediate Past President Jim Hicks during Thursday's Annual Luncheon.

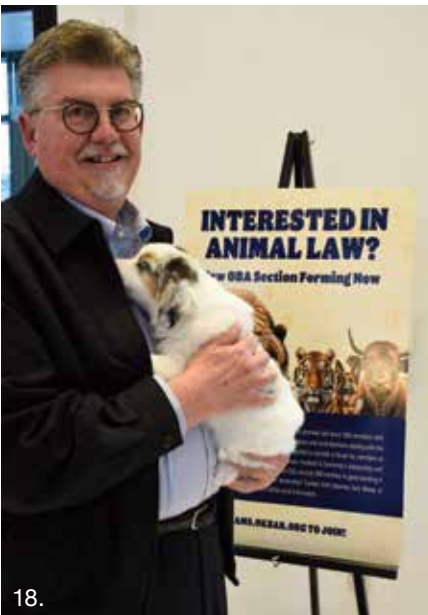
12. 2023 OBA President Brian Hermanson, Immediate Past President Jim Hicks and State Bar of Texas President-Elect Steve Benesh pose for a photo during the Welcome Reception.

13. An OBA President's Award is presented to Bench and Bar Committee Co-Chair Judge Richard Ogden. He and Co-Chair Leah Rudnicki were recognized for revitalizing the committee in 2023.

14. President Hermanson presents a President's Award to OBA Governor S. Shea Bracken for his efforts in rebuilding the OBA Military Assistance Committee.

15. OBA Governor Angela Ailles Bahm was recognized with a President's Award to honor her leadership and support of the Lawyers Helping Lawyers Assistance Program Committee and the Legislative Monitoring Committee.





16, 17, 18. Bar members take a wellness break to snuggle some adorable, adoption-eligible puppies, brought to the Annual Meeting by the Oklahoma Humane Society. The Hug A Pup event was co-sponsored by the new Animal Law Section, chaired by Gary Maxey of Enid.



HOUSE OF DELEGATES ACTIONS

Friday, Nov. 3, 2023

President-Elect Miles Pringle, Presiding

ELECTION TO BOARD OF GOVERNORS (UNCONTESTED)

President-Elect: D. Kenyon Williams Jr., Tulsa

Vice President: Amber Peckio Garrett, Tulsa

SC Judicial District One: William Ladd Oldfield, Ponca City

SC Judicial District Six: Philip D. Hixon, Tulsa

SC Judicial District Seven: Chad Alexander Locke, Muskogee

ELECTION TO BOARD OF GOVERNORS (CONTESTED)

Member At Large: Jeffery D. Trevillion Jr., Oklahoma City

TITLE EXAMINATION STANDARDS

Revisions and additions to the Oklahoma Title Examinations Standards, published in Courts & More Vol. 3 No. 39 (Sept. 27, 2023) and posted online at <https://bit.ly/2023TES>, were approved and are effective immediately.

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THURSDAY MORNING PLENARY



ALTERNATIVE DISPUTE
RESOLUTION SECTION

ANNUAL LUNCHEON



FAMILY LAW SECTION

HUG A PUP



ANIMAL LAW SECTION

WELLNESS MATTERS



LAWYERS HELPING LAWYERS
ASSISTANCE PROGRAM

DIVERSITY AWARDS DINNER

McAfee & Taft P|M

PHILLIPS MURRAH P.C.
Attorneys and Counselors at Law



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Oklahoma Human Services - Child Support Services | Oklahoma Access to Justice Foundation
Go Security Pro | Convert It Marketing | Justice Tom Colbert | Simple Modern | The University of Tulsa

JULY 9-12, 2024

— SAVE THE DATE —

OBA ANNUAL MEETING

EMBASSY SUITES | NORMAN



WELCOME TO
NORMAN

EST. 1889



**CONTINUING LEGAL
EDUCATION**



**NETWORKING
OPPORTUNITIES**



**AWARDS
PRESENTATIONS**

AND MORE!

COMING SUMMER 2024

A fresh new take on the OBA Annual Meeting. New location, new events and fun for all. Gather with your friends, colleagues and members of our state's judiciary in a relaxed and informal resort setting as we conduct the business of the association and bring you top-notch OBA CLE to improve your professional practice.

Join us in Norman, July 9-12, 2024. Summer School is in!

Mark your calendars now and save the date!





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2024: Your Time to Get Involved!

NOW IS YOUR OPPORTUNITY to join other volunteer lawyers in making our association the best of its kind – by signing up to serve on an OBA committee in 2024.

Did you know the OBA has more than 20 active committees – meaning there are many opportunities for you to serve and lead in your profession? By joining a committee, you can get more involved in the association, network with colleagues and work together for the betterment of

our association and our communities – all in a way that is meaningful and relevant to you!

By serving on an OBA committee, you can tackle projects for which you have a passion – whether that’s improving access to justice for all Oklahomans, fostering public understanding of the law or helping your fellow lawyers who may be facing challenges with addiction or substance abuse. Plus, you’ll have the opportunity to build relationships with your professional

colleagues and build your network and leadership skills at the same time.

I invite you to review the full list below. We will make appointments for 2024 soon, so choose your top three committee choices and fill out the online form at <https://bit.ly/3SjMzce>.

I am looking forward to hearing from you!

Miles Pringle
President-Elect



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

Access to Justice

Works to increase public access to legal resources

Awards

Solicits nominations for and identifies selection of OBA Award recipients

Bar Association Technology

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

Bar Center Facilities

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

Bench and Bar

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

Cannabis Law

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

Civil Procedure and Evidence Code

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

Disaster Response and Relief

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

Diversity

Identifies and fosters advances in diversity in the practice of law

Group Insurance

Reviews group and other insurance proposals for sponsorship

Law Day

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

Law Schools

Acts as liaison among law schools and the Supreme Court

Lawyers Helping Lawyers Assistance Program

Facilitates programs to assist lawyers in need of mental health services

Legal Internship

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

Legislative Monitoring

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

Membership Engagement

Facilitates communication and engagement initiatives to serve bar members

Member Services

Identifies and reviews member benefits

Military Assistance

Facilitates programs to assist service members with legal needs

Professionalism

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

Rules of Professional Conduct

Proposes amendments to the ORPC

Solo and Small Firm Conference Planning

Plans and coordinates all aspects of the annual conference

Strategic Planning

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

OKLAHOMA BAR ASSOCIATION



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

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SHOW YOUR CREATIVE SIDE ON THE BACK PAGE

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



MANDATORY CONTINUING LEGAL EDUCATION CHANGES

OK MCLE RULE 7, REGULATION 3.6

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



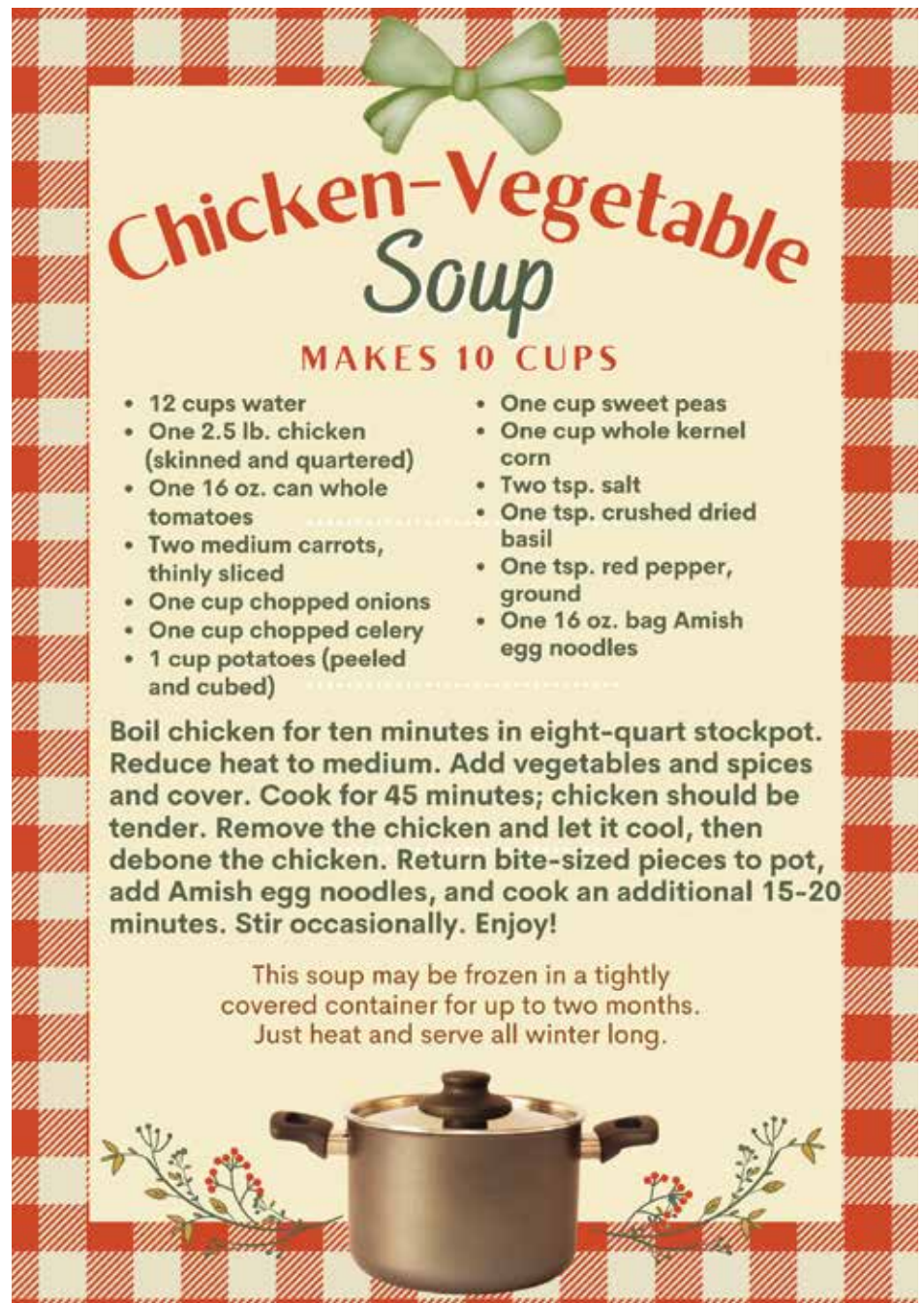
The Recipe for Success

A Recap of the Highly Successful 119th Annual Meeting

By Janet Johnson

AFTER ALL THE TIME AND preparation that went into our 119th Annual Meeting, it is hard to believe it is already behind us. This year's Annual Meeting holds a special place in my heart. It is my first in my role as executive director, and I left with many lifelong memories and lessons. In my new role, I gained a unique perspective that allowed me to see more than just behind-the-scenes work. I was able to see the lifeblood of our organization at work in handling bar business. Moreover, our success was made possible by our amazing OBA staff.

Our goal for this Annual Meeting was to aspire and inspire our members. Many of our traditions remained the same, and some new lighthearted aspects were added. We continued our tradition of providing quality CLE programming on topics such as core concepts in nonprofit law, high-conflict resolution and Lawyers Helping Lawyers. Law school luncheons were a great reunion for many. My personal highlight was the addition of the Hug A Pup event sponsored by our new Animal Law Section. The Animal Law Section partnered with the Oklahoma Humane Society, whose volunteers brought adoption-eligible puppies for us all to enjoy. My only regret is that we didn't have them longer and couldn't take them everywhere.




Chicken-Vegetable Soup

MAKES 10 CUPS

- 12 cups water
- One 2.5 lb. chicken (skinned and quartered)
- One 16 oz. can whole tomatoes
- Two medium carrots, thinly sliced
- One cup chopped onions
- One cup chopped celery
- 1 cup potatoes (peeled and cubed)
- One cup sweet peas
- One cup whole kernel corn
- Two tsp. salt
- One tsp. crushed dried basil
- One tsp. red pepper, ground
- One 16 oz. bag Amish egg noodles

Boil chicken for ten minutes in eight-quart stockpot. Reduce heat to medium. Add vegetables and spices and cover. Cook for 45 minutes; chicken should be tender. Remove the chicken and let it cool, then debone the chicken. Return bite-sized pieces to pot, add Amish egg noodles, and cook an additional 15-20 minutes. Stir occasionally. Enjoy!

This soup may be frozen in a tightly covered container for up to two months. Just heat and serve all winter long.



We also took time to recognize our amazing members. During the Annual Meeting, we took time to recognize the achievements and contributions of our members. It's always an honor to recognize our colleagues' accomplishments and dedication to the practice of law. My hope is that these actions continue to aspire and inspire our members.

There were also several networking opportunities that allowed attendees to connect and further a sense of community. From President Hermanson's Welcome Reception and the Oklahoma Bar Foundation Reception to the Diversity Dinner and the addition of the Ice Cream Social and Movie Night, there was something for everyone each night. And as tradition would have it, of course there were several hospitality suites to catch up with colleagues and friends.

I truly hope that those of you reading this article are remembering the meeting as fondly as I am. If you were not there, please make plans to join us in July 2024 in Norman. The 120th OBA Annual Meeting will be held in conjunction with the Oklahoma Judicial Conference in a resort-casual atmosphere with solo and small firm and young lawyers tracks. Our goal is to bring us all together again! We believe our recipe for success is fostering inclusivity and ensuring all members of the bench

and bar feel welcome and valued. The summer of 2024 will allow us to do just that.

In summary, I feel we found our recipe for success. However, I would be remiss to not include a recipe from Executive Director Emeritus John Morris Williams in a December *Oklahoma Bar Journal*. Enjoy!



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

Your Law Firm Upgrade

By Jim Calloway

BUSINESSES TODAY FIND themselves in what seems to be a never-ending process of improving, upgrading and experimenting with changing their business operations. Many of these changes are spurred by technological advances. The internet changed the way many businesses operate. Historically speaking, not that long ago, businesses had no computers and employed many typists working on manual typewriters.

Law firms, like all other businesses, have had to change. We've moved from debating whether it is professional for a lawyer to have a computer on their desk to almost every lawyer having a computer on their desk that they use daily. And who knew how habit-forming mobile phones would quickly become?

The challenge with law firm upgrades is, as I have noted before, that it often seems like trying to overhaul an airplane engine without landing the plane. Law firms have deadlines to meet and projects to complete. It is very challenging to pause operations even for a day, much less several days.

If a law firm would list all the changes the lawyers and staff want to make, combined with the changes they need to make, it would likely involve a time commitment of weeks of projects.

Lawyers were early adopters of office technology. Fax machines were a miracle that saved the



firms much in delivery and courier expenses. Word processors and computers allowed editing of documents without having to pay someone to retype the entire document on a manual typewriter. It was a great disappointment to many lawyers to learn that computers needed to be replaced much more frequently than manual typewriters.

Sometimes, IT upgrades are caused by problems. Law firms cannot have the network “going down” regularly, and no one has the patience to watch the hourglass spin, waiting too long for something to load. But that can result in not addressing the changes, aka upgrades, that are important but not urgent. And let’s not

kid ourselves. Change is usually difficult, and change management is challenging as well. For some additional reading on this topic, see “10 Beliefs That Get in the Way of Organizational Change” from the *Harvard Business Review*.¹ One of the most interesting misconceptions is that change must take place slowly. Sometimes, it has a better chance of success if it happens more quickly. And, of course, deferring nonurgent needs often results in the problems becoming an emergency, often at what seems to be the most difficult time.

Desmond Tutu is credited with saying, “There is only one way to eat an elephant: a bite at a time.” Massive projects will seem less

daunting once you break them down into several tasks and then prioritize those tasks. So I have a suggestion. Instead of looking at all the things you would like to upgrade, pick one or two and set a goal to accomplish the task within six months – by July 1.

IMPROVING CLIENT SERVICES

Improving client services is an area ripe for improvement in many law firms. This does not mean you are not doing legal work well. But the expectations of clients have changed from the days of mailing a letter and waiting several days for a response. My October 2023 Law Practice Tips column, “Providing Exceptional Customer Service,”² covers many aspects of improving the client experience.

Maybe it is time to install a client portal, or better yet, start developing the processes to use the client portal provided in a subscription package you already have. Maybe it is about improving standard communications sent out during the representation.

One essential first step is to ask everyone who works in your office if they have noted any periodic client complaints in any area of representation. It also may help to survey a few clients whose files have recently been closed to see if they have any suggestions.

LESS TASKS AND MORE PROCESSES

What we used to think of as tasks, we now must think of as processes. Lawyers and other law firm staff complete many tasks each day. But efficiency today requires that we think of tasks as linked. This is a first step toward automation, but it will yield benefits today. Here’s a simple example: One appears in court to get an order signed, and a follow-up document must be filed within 10 days. The deadline is docketed, and a few days before the due date, someone gets assigned to draft the document. An improved method would be that the first draft of the document has been completed by office staff and/or automated procedures a day or so after the hearing and is ready for the lawyer’s review. Automating these processes is often accomplished in practice management systems with their workflow features.

ESTATE PLANNING FOR LAW FIRMS

Larger law firms have an advantage over smaller law firms and solo practitioners when covering for a lawyer who unexpectedly dies or becomes disabled. There are lawyers who are available to step in and are motivated to take care of matters properly. In addition, they have staff to assist. A solo practitioner or a two-lawyer firm does not have those resources. A solo practitioner with only one staff

assistant may be better positioned than a solo practitioner with no staff. But even then, no matter how loyal the assistant is, someone must guarantee to pay them, and other firms may reach out to offer them employment. So heirs cannot count on months of staff assistance.

The small firm lawyer should designate a lawyer to step in in these situations. Staff (or a family member) should be trained to go through the files to make certain the lawyer isn’t involved in any of them. The successor lawyer should not be given access to those files. The OBA provides a great free resource for assisting you with this. It is called the *Planning Ahead Guide: Attorney Transition Planning in The Event of Death or Incapacity (A Handbook and Forms)*. Just log in to MyOKBar and select Attorney Transition Planning Guide from the list on the right side labeled MyOKBar links.

SIGNAGE

Are you underutilizing an asset with your signage? Law firms practicing in office buildings have few options for signage. But if your office is located on a busy street, you might want to review your signage. I have seen many law firms’ signs with small letters and various shades of brown or tan lettering on a dark background, which becomes very difficult to read after dark. Are there municipal restrictions on signage, or can the letters on

the building be larger? Consider having the office phone number on your signage. Have you considered lighting the sign during the evenings? And even though you may know people who can create signage, hire a professional. This may sound expensive, but compare the costs to a nearby small billboard or advertising on a bus stop bench.

Like many marketing efforts, the return on investment for this effort will probably never be identified. It's unlikely a new client will volunteer that they hired you because they liked your signage. But a lot more people in your area will know where your law office is located just from lighting efforts. And this one should only take a few weeks to accomplish.

IMPROVING YOUR ONLINE IMAGE

The law firm website is still the basic tool of online marketing. Although something else will likely be needed to drive sufficient traffic to the site (e.g., setting up your free Google Business profile and some social media marketing). Your website needs to be updated regularly, including adding new profile pictures of all attorneys.

Today's wisdom, based on studies, is that it is fine to tout the attorney's credentials, education and accomplishments if your target audience is corporate general counsel. But if you are seeking clients in the people law sector, you will improve results if the focus of the website is the most common legal problems your firm addresses and your approach to empathically serving clients.

Another interesting item from recent studies is that potential new clients often leave phone messages that are not returned by the law firm. With all the effort and expense law firms invest in marketing, it is hard to understand how they fumble the last step. Set up processes to make certain your firm is not guilty of this marketing mistake. If lawyers are not available, a trained senior staff member should return these calls within 15 or 20 minutes, offering to schedule an initial consultation in the office or a phone appointment with a lawyer within a few hours.

FIRM MISSION STATEMENT OR MOTTO

What is the primary purpose of your law firm? Certainly, all law firms should be about serving

clients' best interests in a profitable way. But what makes your law firm unique, and what common traits do your lawyers share?

This may sound a bit philosophical, but I have had lawyers report that determining their mission statement was one of the lasting benefits of a law firm retreat.

In private law practice, the goal is certainly to make money. A mission statement or motto provides aspirational guidance for other goals beyond profit. These may inform marketing or other law firm operations. Maybe a goal is to support local community projects or to do other projects that advance improvements in the law relating to your primary practice areas. If your extracurricular projects require volunteer time, then select a project where everyone would enjoy working on the project. A law firm motto is not required. Many firms already have one. They just haven't formalized it.

CONCLUSION

Some of the above suggestions may give you ideas for your law firm's upgrade. Or they may not. A discussion with all employees and lawyers may yield better ideas. But as a business owner, you have to regularly invest time in improving your law business operations because those improvements are one important way great law practices are built and thrive.

Mr. Calloway is the 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://bit.ly/46bBIRs>.
2. <https://bit.ly/3QWW1oz>.



FROM THE PRESIDENT

(continued from page 4)

And we were there for each of you to provide the guidance and support necessary for each of us to practice as attorneys in such a rough-and-tumble world. We must be ready at all times to protect our profession.

I have really enjoyed this year. I hope I leave the OBA better off at the end of my term. I hope you have felt that we were doing a good job for you – for indeed, the members of the association are whom we do this for. I would like to thank the Board of Governors

for their steadfast commitment to serving the state bar. Also, a special thanks to Executive Director Janet Johnson and the OBA staff. Every day, this team does incredible work to ensure our organization continues to be relevant and responsive to every attorney's daily needs.

I still serve on the Board of Governors for another year as immediate past president. I hope I can assist 2024 President Miles Pringle during his upcoming term. I am confident he will do an outstanding job!

And finally, I say thank you. Thank you for trusting me with this incredible office. Thank you to those who said yes when I contacted you about your willingness to assist the association. Thank you for all you do that makes me proud to be an attorney in the state of Oklahoma. And thank you for your daily commitment to professionalism and civility as we enter the boardrooms and courtrooms every day. Each day, you make me proud to be an attorney.

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Meeting Summary

The Oklahoma Bar Association Board of Governors met Oct. 13, 2023.

REPORT OF THE PRESIDENT

President Hermanson reported he spoke at the three swearing-in ceremonies for the new OBA admittees held at the Oklahoma state Capitol on Sept. 26. He met with Executive Director Johnson and Director of Administration Brumit about Annual Meeting activities and related subjects. He spoke to the Murrah Student Association at the OCU School of Law, recorded a video presentation on the Annual Meeting with Communications Director Rasmussen and wrote an article for the November issue of the *Oklahoma Bar Journal*. He worked on appointments and Annual Meeting assignments and visited with the State Bar of Texas president-elect about the Annual Meeting and the OU/Texas game. He reviewed litigation on current cases and attended the Elected District Attorney Training, the District Attorneys Council board meeting and the Oklahoma District Attorneys Association board meeting. He also attended the Board of Governors joint reception with the Kay County Bar Association and the OBA Executive Board meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Pringle reported he worked on OBA appointments and reviewed discovery requests from an ongoing lawsuit. He attended the joint reception with the Kay County Bar Association and started preparing for the Annual Meeting.

REPORT OF THE VICE PRESIDENT

Vice President Williams reported he submitted a meeting room request for the Professionalism Committee's CLE presentation at the Annual Meeting and coordinated with the presenting panel members regarding the revised date. He met with potential TU College of Law students to encourage a career path in Oklahoma and submitted his recommendation for the 2024 chair of the Professionalism Committee. He coordinated the Professionalism Committee's CLE presentation and attended to provide technology support at the Canadian County Bar Association and coordinated and presented CLE for the committee at the Creek County Bar Association. He coordinated the November meeting in Tulsa for the Environmental Law Section, as well as Professionalism Committee CLE presentations in December for the Washington County Bar Association, the Garvin County Bar Association and the Guardian Ad Litem Institute. He drafted correspondence regarding the activities and status of the Professionalism Committee

and chaired the October committee meeting. He virtually attended the Legislative Monitoring Committee's October meeting and attended the OBA Executive Board meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the September YLD board meeting, reviewed YLD elections with Communications Director Rasmussen and attended the new lawyer swearing-in ceremonies. She reviewed the *Oklahoma Bar Journal*, elections, nominations and other timeline updates due to the 2024 Annual Meeting summer date. She continued to prep for this year's and next year's Annual Meetings, attended the Oklahoma Bar Foundation's book signing and continued a conversation with post-commission stakeholders of Access to Justice. She reviewed discovery requests for an ongoing lawsuit and attended a meeting of the Lawyers Helping Lawyers Assistance Program Committee, the Lawyers Helping Lawyers Foundation and A Chance to Change regarding the expansion of services. She also hosted and presented to visiting Armenian judges and attended a meeting about programming with the Oklahoma Medical Marijuana Authority, as well as the joint reception with the Kay County Bar Association. She also reported the Court on the Judiciary has been invoked, and per the constitutional requirements, she

will begin working on a list of prosecutors for the board's approval.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Hicks reported he prepared for the Southern Conference of Bar Presidents in West Virginia and the OBA Annual Meeting.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Lawyers Helping Lawyers Assistance Program Committee meeting with the liaison and the executive director of A Chance to Change. She also attended the Legislative Monitoring Committee meeting and signed off on the engagement letter from Smith Carney, the auditors who are anticipated to present at the Annual Meeting, as chair of the Audit Committee. **Governor Barbush** reported he conferenced with the Lawyers Helping Lawyers Assistance Program Committee chair, reviewed the Cannabis Law Committee meeting agenda and attended the Lawyers Helping Lawyers Assistance Program Committee meeting with A Chance to Change, Executive Director Johnson and Governor Ailles Bahm. He conferred with Executive Director Johnson about the LHL meeting and hosted an open house for the Bryan County Bar Association. **Governor Bracken** reported he discussed the Oklahoma Lawyers for America's Heroes Program with OBA staff

regarding updates and improvements to the program. He met with the dean of the OCU School of Law to discuss various issues related to the law school and the OBA and attended the joint reception with the Kay County Bar Association. **Governor Conner** reported he attended the Garfield County Bar Association meeting and the joint reception with the Kay County Bar Association. **Governor Dow** reported she attended the October Oklahoma County Bar Association Family Law Section meeting, the Cleveland County Bar Association meeting and the joint reception with the Kay County Bar Association. **Governor Smith** reported she attended the September Diversity Committee meeting. **Governor Thurman** reported he attended a Pontotoc County Bar Association meeting, organized and attended a Pontotoc County Bar Association social hour and attended the District 22 monthly multidisciplinary team meeting for updates on investigations for abused children. He also attended a Board of Directors meeting for the Southwestern Oklahoma State University Alumni Association and participated in the East Central University homecoming parade to represent the Pontotoc County Bar Association. He also attended the joint reception with the Kay County Bar Association. **Governor Vanderburg** reported he attended the Cost Administration Implementation Committee meeting in October and a planning

meeting for judicial training to implement rewritten legislation. He also worked with the task force from the committee to finalize the various forms for submission to the Court of Criminal Appeals, which are necessary to implement recent legislation in the district courts and all municipal courts. **Governor White** reported he attended two hearings as the presiding master for the Professional Responsibility Tribunal.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Shaffer Siex reported she attended the September YLD board meeting and the Access to Justice October meeting. She reviewed the Access to Justice September meeting minutes, met with the Tulsa County Bar Association YLD regarding the YLD New Lawyer Happy Hour, drafted an article for the November issue of the *Oklahoma Bar Journal* and attended the joint reception with the Kay County Bar Association.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported on the status of litigation involving the OBA. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

Governor Bracken reported the Military Assistance Committee is finalizing plans for its inaugural military law CLE, focusing on the intersection of deployments and family law that will be held during the Annual Meeting.

BOARD LIAISON REPORTS

Governor Ailles Bahm reported that members of the **Lawyers Helping Lawyers Assistance Program Committee** met with A Chance to Change. The committee is developing a CLE program aimed at training mentors. She also discussed the existing LHL Foundation as a separate entity ripe for revitalization and is working proactively to move forward. She also discussed the Wellness Matters CLE program that will be held during the upcoming Annual Meeting. She also reported the committee is still working on outreach to non-metro counties and other law-related groups in metro counties. Vice President Williams reported the **Professionalism Committee** has been active and is making numerous presentations to local county bars. He also reported the **Legislative Monitoring Committee** met in October and determined key dates for 2024, including the Legislative Kickoff, Feb. 2; OBA Day at Capitol, March 26; and the Legislative Debrief, to be held during the 2024 Annual Meeting. Governor Smith reported the **Diversity Committee** has invited the Board of Governors to attend the upcoming Diversity

Dinner planned for the Annual Meeting, and she encouraged all members to attend. Governor Bracken reported the **Military Assistance Committee** is finalizing plans for its inaugural military law CLE, focusing on the intersection of deployments and family law that will be held during the Annual Meeting.

PROFESSIONALISM MOMENT

Vice President Williams discussed the importance of maintaining professional courtesy while continuing to zealously advocate for those who are being represented.

2024 OBA BUDGET AND PERSONNEL SCHEDULE

The board reviewed and discussed the association's proposed 2024 annual budget as recommended for passage by the Budget Committee. The board passed a motion to approve submission of the proposed 2024 budget to the Supreme Court.

ACCESS TO JUSTICE ARTICLE DISCUSSION

The board reviewed highlights from a recent report prepared by the Oklahoma Access to Justice Foundation. The report focused on inequities in the state's judicial debt collection system and specifically on how consumer debt, and its tendency to cycle upward with the addition of fees and fines, disproportionately affects low-income Oklahomans.

ANNUAL MEETING AND DIVERSITY DINNER

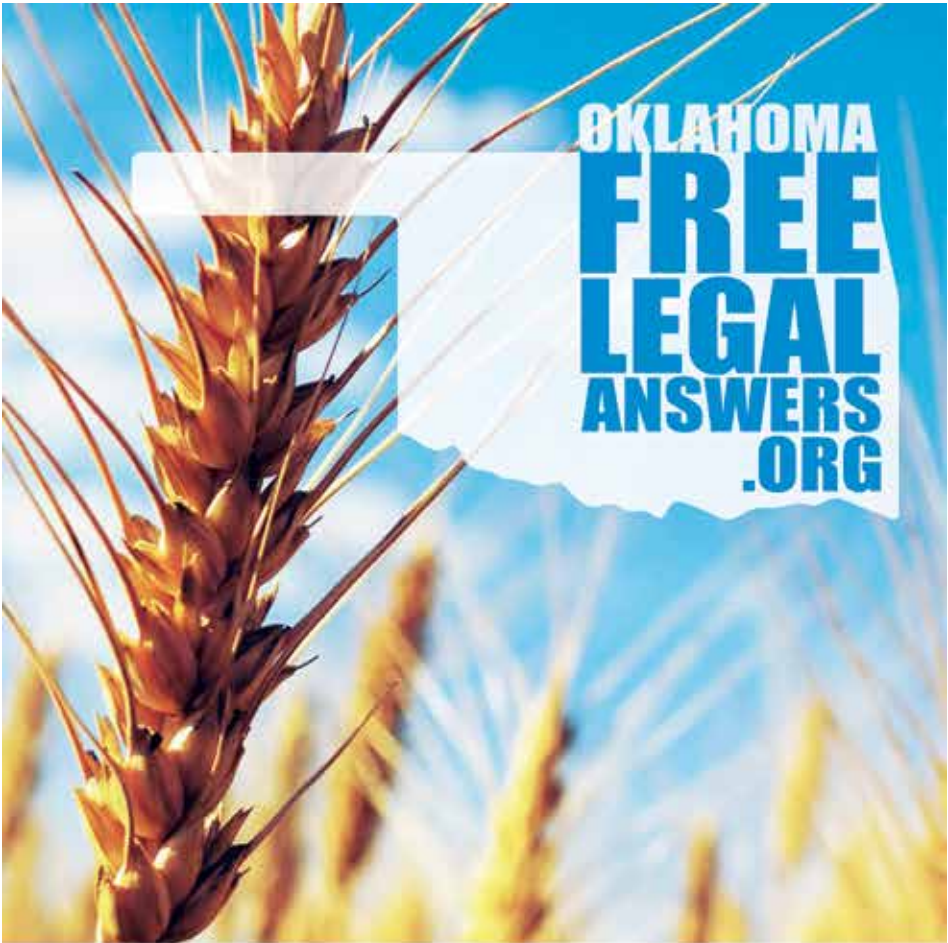
President Hermanson encouraged board members to register and attend events to be held in conjunction with the Annual Meeting, to be held Nov. 1-3 in Oklahoma City.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hermanson reviewed upcoming bar-related events, including several monthly joint receptions and holiday events with local county bars; the Access to Justice Summit, Oct. 20, virtual; and the OBA Annual Meeting, Nov. 1-3, Skirvin Hilton Hotel, Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in November, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held Friday, Dec. 8, in Oklahoma City.



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Oklahoma Bar Foundation Award Recipients

ROGER SCOTT MEMORIAL AWARD

The Oklahoma Bar Foundation is excited to announce that Ben Russ is the 2023 Roger Scott Memorial Award recipient. This award is named after Roger Scott for his service as an OBF Trustee from 2003 to 2009 and for his leadership as chair of the Development Committee.

Like Roger Scott, Ben Russ encompasses outstanding professionalism, congeniality and the highest regard for ethics. Mr. Russ is an active member of the OBF Board of Trustees, and he makes valuable contributions to the committees he serves, especially his work as chair of the Grants & Awards Committee. He is also a generous Community Partner for

Justice donor and is dedicated to supporting the OBF Grantees.

Congratulations, Ben! Thank you for your leadership as a board member, and thank you for being a loyal donor of the Oklahoma Bar Foundation. You are making a difference for those in need of legal services.

KLEIN/BROWN PRESIDENTS AWARD

The OBF is also extremely proud to recognize Patrick O'Hara as the 2023 Klein/Brown Award recipient. This award is named after two OBF past presidents, Gerald B. Klein and Jack L. Brown, for their vision-ary leadership.

Like Mr. Klein and Mr. Brown, Mr. O'Hara, throughout his career, has made significant contributions to

the OBF. He served as an Executive Committee member and moved up the ranks to serve as 2020 president. He also served as Grants & Awards chair for several years and participated in a special task force to create a brand-new allocation process that helps fund nonprofits providing mortgage foreclosure defense and community redevelopment. He also interviewed his sister, Broadway star Kelly O'Hara, on video to entertain attendees of the OBA's virtual Annual Meeting during the COVID pandemic. Mr. O'Hara is an OBF Partner for Justice donor, and his firm, Tisdal & O'Hara, has given generously to the OBF over the years.

Thank you, Patrick, for your past and continued leadership. Your vital contributions continue to empower legal services programs in Oklahoma.



OBF President Judge Deanna Hartley-Kelso presents Ben Russ with the Roger Scott Memorial Award during the General Assembly at the 2023 OBA Annual Meeting.



Patrick O'Hara receives the Klein/Brown Award from Judge Hartley-Kelso during the General Assembly at the 2023 OBA Annual Meeting.

More About Gerald B. Klein and Jack L. Brown

Gerald B. Klein, while serving as OBA president in 1946, created the Oklahoma Bar Foundation as the charitable arm of the association. Mr. Klein then served as OBF president in 1957.

Jack L. Brown served as OBF president in 2016 and is responsible for modernizing the administration and management of the foundation's assets. His leadership as president created a new level of effectiveness and awareness about the OBF's impact on legal services in Oklahoma.

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Legacy Partners for Justice

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

More Ways to Support the OBF



Cy Pres

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



Memorials & Tributes

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



Unclaimed Trust Funds

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



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So Here Is My Swan Song

By Caroline Shaffer Siex

A GREAT TRADITION OF the YLD board is to have the new bar admittees join the celebration of the last chair. When you come on after a strong board, you feel an energy between the board members. I remember the thought that came to my mind for the outgoing chair was that this must be bittersweet. Many who have not served on the YLD board do not realize that by the time you are chair of the YLD, you have

volunteered for many projects, traveled many miles and given up many hours of sleep. When all is said and done, you do not regret one part.

This year was no exception. Just coming out of enjoying our Annual Meeting while writing this article, I have a lot of highs. The Annual Meeting in Oklahoma City was held Nov. 1-3. As always, it was a success. The event kicked off with a great YLD meeting. We

were joined by our longtime YLD friends, Phil Fraim and Laura Stone with Oklahoma Attorneys Mutual Insurance Co. They provided great information to the board and helped brainstorm for our future.

Then, my time finally came to give out my awards to board members. The first was the Executive Member of the Year. This went to my long-time board companion, Laura Talbert. Laura and I came together at that first



Members of the YLD Board of Directors pose with puppies at the Hug A Pup event during the Annual Meeting. From left Taylor Venus, Caroline Shaffer Siex, Laura Talbert, Clayton Baker and Allie Gage.

meeting years ago. We have put together many bar exam survival kits, filled many ice buckets and coordinated many outfits. She received this award as any time I needed to reach out to an executive member, she was there to support me. Even when I had a trial conflict with an ABA trip, she was willing to take additional time off of work to fill in for my spot.

My second award was given to someone I met as just a 1L in law school, Clayton Baker. Clayton has set an example to other board members. He has consistently demonstrated his dedication to the YLD for years as a district representative based out of Jay. This past year, he planned, organized and executed a Wills for Heroes event in his county. This was the first Wills for Heroes event we had following COVID. The follow-through and compassion he has kept for this board have been remarkable. Even when facing adversity in his personal life, he never stopped his commitment.

After the YLD meeting was the Welcome Reception. Of course, no Annual Meeting would be complete without a YLD hospitality suite. Thanks to OAMIC and the OBA Estate Planning, Probate and Trust Section, our suite was a great success. These sponsorships mean more to the YLD than our sponsors realize. Our goal was to provide a party that extended beyond the young lawyers. I always find

these suites provide a great hub for networking.

Of course, I would be remiss if I did not mention the great CLE content at the Annual Meeting. I particularly enjoyed the Wellness Matters CLE from the Lawyers Helping Lawyers Assistance Program. I was ecstatic to see the topic of gratitude as a part of this CLE. I have written an article about the practice of gratitude, and I received more exercises to practice this. Many CLEs at the Annual Meeting were unique and enjoyable. Likewise, the Diversity Awards Dinner has always been an inspiring and thought-provoking event. Finally, I must highlight the best part of the Annual Meeting: the cuddly and fluffy puppies!

Now, it is my time moving into the end of the year, where my focus is shifting to my family at home. I will decorate the tree, make my famous eggnog and enjoy my son and my annual tradition of pasta making on New Year's Eve. When I leave, I will bring in my dear friend, Laura Talbert, as the new chair. The most exciting part is that after all the hours given to this board over the years, it is still bittersweet. I will always cherish my time serving and leading.

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



Young Lawyers Division Chair-Elect Laura Talbert and outgoing Chair Caroline Shaffer Siex enjoy the YLD events during the Annual Meeting.

FOR YOUR INFORMATION

LEGISLATIVE KICKOFF SAVE THE DATE

The Oklahoma Legislature reconvenes in February, and hundreds of bills will be prefiled – many of them potentially affecting your practice or the administration of justice. Join the OBA Legislative Monitoring Committee at 9:30 a.m. Friday, Feb. 2, at the Oklahoma Bar Center as they identify top bills of interest to the OBA and your practice area. Plus, earn two hours of MCLE credit. Donuts and coffee will be provided. RSVP to Mark Scheidewent at marks@okbar.org to attend.

KICK IT FORWARD: HELP PAY DUES FOR MEMBERS HAVING DIFFICULTIES

The Kick It Forward Program paid for two members' dues for 2023, and donations to the program for the year totaled nearly \$3,000. The program was born out of a desire to help fellow lawyers with financial difficulties. With the many economic challenges lawyers face today, it can be a struggle to build up and maintain a legal practice. That's why the Young Lawyers Division launched Kick It Forward in 2015, with a mission to assist lawyers of all ages in need by paying their OBA dues while they get on their feet.

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

OBA members who would like to donate to the program or request assistance paying their 2024 membership dues may visit www.okbar.org/kif for more information or to download an assistance request application.



UPS SAVINGS PROGRAM: AN OBA MEMBER BENEFIT



Did you know OBA members can score big savings with UPS shipping, Smart Pickup and other UPS services? Sign up for a new account at www.savewithups.com/oba, or log in to your existing account to ensure you are taking advantage of your OBA UPS Savings Program discounts. Member Savings Include:

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- 50% off International Exports and 40% off Imports
- Up to 50% off on additional services
- Plus, UPS Smart Pickup service is free

MEMBER DUES STATEMENTS ARE AVAILABLE ONLINE

The OBA Membership Department has posted member dues statements online in MyOKBar. As a follow-up, a paper statement was mailed around the first of December to members who have not yet paid. Please help the OBA in this effort by paying your dues today! Members can pay their dues by credit card online at MyOKBar or by mailing a check to the OBA Dues Lockbox, P.O. Box 960101, Oklahoma City, OK 73196. Dues are due Tuesday, Jan. 2, 2024.



IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday and Tuesday, Dec. 25-26, for Christmas; Monday, Jan. 1, for New Year's Day; and Monday, Jan. 15, for Martin Luther King Jr. Day.

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

Are you connected to the OBA LinkedIn page? It's a great way to get updates and information about upcoming events and the Oklahoma legal community. Follow our page at <https://bit.ly/3lpCrec>, and be sure to find the OBA on Facebook and Instagram.



MCLE DEADLINE APPROACHING

Dec. 31 is the deadline to earn any remaining MCLE credit for 2023 without having to pay a late fee. The deadline to report your 2023 credit is Feb. 15, 2024. As a reminder, the annual ethics requirement is now two credits per year. The 12 total annual credit requirement did not change.

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

LHL DISCUSSION GROUP HOSTS JANUARY MEETINGS | NEW WOMEN'S GROUP TO MEET IN TULSA



The Lawyers Helping Lawyers monthly discussion group will meet Jan. 4 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The Oklahoma City women's discussion group will meet Jan. 25 at the first floor conference room of the Oil Center, 2601 NW Expressway; the newly estab-

lished Tulsa women's group will meet Tuesday, Jan. 23, at Graves McLain, 4137 S. Harvard Ave., Ste. F.

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, and be sure to keep an eye on the OBA events calendar at www.okbar.org/events for upcoming discussion group meeting dates.

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.



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ON THE MOVE

Jeff Love has been named partner at the Oklahoma City law firm of Rosell & Love PLLC. He has practiced at the firm for four years.

Russell C. Lissuzzo has joined the Oklahoma City law firm of Chansolme Harroz Hays as an associate attorney. He practices in the areas of resolution of business and commercial litigation, including disputes among shareholders of small businesses and closely held corporations before state and federal courts, as well as representing clients in litigation regarding liability defense, negligence and tort defense, professional negligence, product liability defense and trust and estate litigation.

Grant A. Fitz has joined the Tulsa office of GableGotwals as a shareholder. He has more than 15 years of experience representing clients in state and federal courts in the areas of business, insurance and health care law. Prior to private practice, Mr. Fitz served as an assistant district attorney with the Tulsa County District Attorney's Office. During that time, he successfully prosecuted numerous criminal trials and was appointed

chief prosecutor of the Adult Protective Division. He is the vice president of the Oklahoma Association of Defense Counsel and is affiliated with the Defense Research Institute. He graduated from Indiana University with a bachelor's degree in criminal justice and received his J.D. from the OU College of Law.

Taylor Gronlund has joined the Oklahoma City law firm of DeBee, Clark & Weber PLLC as an associate attorney. She practices in the areas of comprehensive estate planning, trust administration and probate. Ms. Gronlund received her J.D. from the OCU School of Law.

Elizabeth V. Salomone has joined the Oklahoma City office of Phillips Murrah as a transactional attorney. She practices in the area of commercial transactions and represents individuals and corporate clients in a wide range of business matters. Ms. Salomone worked in the oil and gas industry before pursuing her law degree, where she gained ample experience in title review, as well as land and leasing acquisitions.

KUDOS

Dan Fulluo was inducted as a Fellow of the International Academy of Trial Lawyers during its 2023 annual meeting. He is a partner at Rhodes, Hieronymus, Jones, Tucker & Gable.

Lauren Mass received the Thought Leadership for In-House Counsel Award at the Women, Influence & Power in Law Conference, which was held in New Orleans on Oct. 18. These awards honor top women lawyers who have made remarkable differences in the legal profession, whether in shaping the law, achieving outsized results for their clients, being an outstanding jurist or assisting those in need of legal services.

George Freedman has been selected to join the International Association of Defense Counsel, a global legal organization for attorneys who represent corporate and insurance interests. Mr. Freedman practices in the area of commercial litigation, particularly assisting businesses and insurers in diverse segments including oil and gas, construction, water, employment, products liability and complex probate matters. He received his J.D. from the University of Missouri School of Law.

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:

Hailey Boyd
Communications Dept.
Oklahoma Bar Association
405-416-7018
barbriefs@okbar.org

Articles for the February issue must be received by Jan. 1.

IN MEMORIAM

Charles F. Alden III of Edmond died Nov. 5. He was born May 6, 1947, in Little Rock, Arkansas. He studied political science at OSU, where he was a member of the Army ROTC, the National Society of Scabbard and Blade and Lambda Chi Alpha. **Mr. Alden was commissioned into the U.S. Army Reserve on July 14, 1970, from which he was honorably discharged on July 17, 1980.** He graduated second in his class from the OCU School of Law and was admitted to the bar in 1973. He briefly worked as an assistant municipal counselor for the city of Oklahoma City and as an assistant district attorney for Oklahoma County. He worked in private practice until shortly before his death. He obtained his pilot's license and multiple ham radio licenses. He was a member of St. Luke's Methodist Church in Oklahoma City.

James G. Davidson of Tulsa died Oct. 8. He was born Dec. 28, 1921. Mr. Davidson graduated from OU. **He was a World War II veteran.**

Marjorie P. Downing of Oklahoma City died Oct. 2. She was born June 16, 1933, in Denver. She received her J.D. from the OU College of Law in 1959 and was the only woman in her class. Ms. Downing became the first full-time female member at the OCU School of Law and served as the interim dean during her tenure. She retired from the school in 1998 but continued to lead the way for more women to hold professional positions.

Charles Edwards Drake of Stillwater died Oct. 21. He was born Oct. 20, 1940, in Ponca City. He graduated from OSU with his bachelor's degree in business administration, with a major in economics. Mr. Drake continued his education at Indiana University and the OU College of Law, where he received his J.D. in 1966. He was a member of the Order of the Coif, president of Phi Alpha Delta Law Fraternity, a contributor for the *Oklahoma Law Review* and a law intern in Oklahoma City. In 1966, he served as an attorney in the Civil Division of the U.S. Department of Justice in Washington, D.C. A year later, he ventured into private practice, representing banks, major contractors, lumber companies, oil jobbers and a diverse range of clients. For 39 years, Mr. Drake served as general counsel to the OSU Board of Regents. He was a respected member of organizations such as the Oklahoma Turnpike Authority, ABA, Oklahoma Trial Lawyers Association and the Ponca City Chamber of Commerce. He served as president of the Ponca City community theater and the Ponca Area Council of Camp Fire Girls. Memorial contributions may be made to the OSU Foundation.

Victor Michael Firth of El Paso, Texas, died May 17. He was born Feb. 15, 1960. He graduated from the University of Texas at El Paso in 1981 with his bachelor's degree in finance with a 4.0 GPA. He received his J.D. from the TU College of Law in 1984. Mr. Firth began practicing at Crowe & Dunlevy PC in Oklahoma City and joined Grambling-Mounce in El Paso in 1986. He eventually

became a shareholder at the firm before leaving to form his own. His law firm, Victor M. Firth PC, became Firth, Johnston, Martinez PC and finally Firth, Bunn, Kerr, Neill PC. Mr. Firth was licensed to practice in Oklahoma and Texas and was a dedicated real estate attorney, representing numerous local lending institutions, real estate investors and developers and El Paso businesses. He served his community through pro bono work and mentorships to countless lawyers. Additionally, he was a Division 1 collegiate football official and helped establish the West Texas Football Clinic to provide training and placement opportunities for those wanting to become college football officials. He was inducted into the El Paso Athletic Hall of Fame. Memorial contributions may be made to the Victor M. Firth and Sylvia Borunda Firth Fund, which provides scholarships for West Texas A&M University students studying law, stipends for law students working for nonprofit or governmental entities and legal services for veterans and other underserved individuals through the El Paso Community Foundation.

David W. Lee of Oklahoma City died Oct. 19. He was born Dec. 2, 1947, in Lubbock, Texas. He graduated from OU with his bachelor's degree in finance and received his J.D. from the OU College of Law. He was a member of Sigma Alpha Epsilon. While in law school, he volunteered at Legal Aid Services of Oklahoma and as a public defender at the Oklahoma City Municipal Court. **After law school, Mr. Lee was**

deployed to Fort Gordon in Georgia, where he received a commission and completed his military obligation. He worked as a legal intern in New York City with his mentor from Legal Aid Services of Oklahoma before moving back to Oklahoma. He worked various jobs, including at the Oklahoma County District Attorney's Office as an assistant to Andy Coats and at the Attorney General's Office as first assistant attorney general and chief of the Criminal and Federal divisions for three attorneys general: Jan Eric Cartwright, Mike Turpen and Robert Henry. He was also honored to serve as an assistant U.S. attorney in the Western District of Oklahoma for then-U.S. Attorney David L. Russell. Memorial contributions may be made to Skyline Urban Ministry, the Oklahoma Innocence Project or your local library.

John McHenry Mee of Nichols Hills died Oct. 17. He was born March 19, 1930, in Oklahoma City. He graduated from Pomona College in 1951. Mr. Mee received his J.D. from the OU College of Law in 1954. During law school, he served on the Board of Editors for the *Oklahoma Law Review* during his two-year tenure with the publication and was a member of Phi Alpha Delta. He served one year as a trial attorney with the U.S. Department of Justice in Washington, D.C. **Mr. Mee served two years in the Judge Advocate General's Department of the U.S. Air Force, stationed at the flying training headquarters in Waco, Texas.** He opened Richardson, Shatel & Cochran, a private law firm in Oklahoma in 1957. In 1971, he joined McAfee & Taft as a

shareholder, vice president and member of the Board of Directors until his retirement. He was named a Legacy Honoree for his contributions and commitment to the firm for more than 40 years of service. Mr. Mee also served his community, including serving on numerous civic boards such as the American Red Cross, the American Cancer Society and the Travelers Aid Society. He headed the professional division of Oklahoma City United Way and served as president of the Economic Club of Oklahoma and on the Board of Directors of the Oklahoma City Chamber of Commerce and the Oklahoma City Golf & Country Club. He also served three terms as a councilman and mayor of Nichols Hills and was a co-author of *Successful Partnering Between Inside and Outside Counsel*, published by the American Corporate Counsel Association and the WestGroup in 2000. Mr. Mee was involved in many organizations within his community and was a member of the ABA and the Oklahoma County Bar Association. Memorial contributions may be made to the John Mee Scholarship fund at the OU College of Law.

Michael J. Moore of Oklahoma City died Nov. 7. He was born on Sept. 25, 1949, in Oklahoma City. He received his J.D. from the OU College of Law in 1974.

Otis Warren Morrow of Arkansas City, Kansas, died Jan. 2, 2023. He was born Jan. 24, 1948, in Winfield, Kansas. He graduated from Southwestern College in 1970 and received his J.D. from the Washburn University

School of Law in 1972. Mr. Morrow was the city attorney for Arkansas City for 30 years and served on various boards, including the V.J. Wilkins Foundation. He was also a member of the Rotary Club in Arkansas City, Kansas Bar Association, ABA and Etzanoa Conservancy. Memorial contributions may be made to the First Presbyterian Church or the Etzanoa Conservancy.

Nanette Jordan Patton of Oklahoma City died Oct. 3. She was born Nov. 14, 1946, in Oklahoma City. She graduated with her bachelor's degree from OSU and received her J.D. from the OU College of Law in 1971. She worked as an attorney and eventually was elected to serve as a district court judge in Oklahoma County. Ms. Patton was a devoted member of the Oklahoma City Golf & Country Club, the Chi Omega Sorority Alumnae and the All Souls' Episcopal Church.

Judge Gary Morgan Purcell of Norman died Nov. 12. He was born Dec. 26, 1950. He graduated from OU with his bachelor's degree in economics, where he was a member of Phi Gamma Delta and was honored as OU's Outstanding Economics Senior. He received his J.D. from the OCU School of Law in 1975. Judge Purcell was appointed as special judge for Cleveland County in 1977, where he enjoyed 15 years of serving on the bench. He was sworn in as United States federal magistrate judge for the Western District of Oklahoma in 1992. During his 44 years on the bench, Judge Purcell presided over 200,000 cases, spoke at numerous

legal seminars and enjoyed serving as a mentor to many judges and lawyers. Memorial contributions may be made in his name to the Stephenson Cancer Center or the OU College of Arts and Sciences.

Chris L. Rhodes III of Tulsa died Sept. 3. He was born March 31, 1932. Mr. Rhodes received his J.D. from the OU College of Law in 1959. He served as senior statesman of Rhodes, Hieronymus, Jones, Tucker & Gable PLLC, where he consulted with the firm's litigation groups in areas including corporate, insurance and damage suit

defense, insurance rehabilitation and liquidation, construction and suretyship. Mr. Rhodes also served as the Oklahoma Deputy Insurance Commissioner, as counsel for the Oklahoma Insurance Commissioner and as a receiver in rehabilitations and liquidations since 1971. He was a Fellow and former Oklahoma chair of the American Bar Foundation, a Trustee of the Oklahoma Bar Foundation and a member of the American Judicature Society, the Defense Research Institute and the Tulsa County and American bar associations.

Joe Davis Wheeler Jr. of Oklahoma City died Oct. 8. He was born Aug. 18, 1948, in Oklahoma City. He attended OU, where he was a member of Phi Delta Theta. **Mr. Wheeler served in the Oklahoma Air National Guard.** Upon completion of his service, he finished his undergraduate degree at OCU. He maintained a family legacy of practicing law and received his J.D. from the OCU School of Law. Mr. Wheeler practiced law with his father throughout his father's entire career. He practiced law for more than 46 years.



NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office of Associate District Judge, Seventeenth Judicial District, Pushmataha County, Oklahoma. This vacancy is due to the resignation of the Honorable Jana Wallace on November 1, 2023.

To be appointed an Associate District Judge, an individual must be a registered voter of the applicable judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms may be obtained online at okjnc.com or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, December 15, 2023. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before December 15, 2023 to be deemed timely. Applications should be mailed/delivered to:

Jim Bland, Chairman
Oklahoma Judicial Nominating Commission
c/o Tammy Reaves
Administrative Office of the Courts
2100 N. Lincoln Blvd., Suite 3
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If you would like to write an article on these topics, please contact the editor.



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at (918) 607-7211

POSITIONS AVAILABLE

ASSOCIATE ATTORNEY IN VINITA, OK. NE Oklahoma diversified law firm with offices in Claremore, Vinita and Miami seeking an attorney with 0-4 years of experience to fill a position in our Claremore office. Candidate should be self-motivated, detail-oriented, organized, and able to prioritize multiple projects at one time and have the ability to assist senior attorneys to best serve client needs. Law firm areas of practice include criminal, civil, family, personal injury, municipal, real estate, probate and condemnation. Interested candidates are asked to provide the following: (1) Cover Letter; (2) Resume; (3) Professional References; and (4) Law School Transcript. Please direct all communications to hlf@hartleylawfirm.com. Salary and benefits are negotiable and commensurate with experience payable bi-monthly.

ESTABLISHED SMALL DOWNTOWN TULSA LAW FIRM within walking distance of state and federal courthouses seeks an attorney for office sharing arrangement. Interested individuals should send a resume to advertising@okbar.org with the subject line "Position DG."

POSITIONS AVAILABLE

STEIDLEY & NEAL, PLLC, is seeking an associate attorney with a minimum of 2 to 5 years of experience for its Tulsa office. Competitive salary and benefits commensurate with level of experience. Looking for a motivated candidate interested in all aspects of civil litigation, including some research and writing, with an emphasis in insurance defense. Applications will be kept in strict confidence. Send resume, references, and salary requirements to Steidley & Neal, located in CityPlex Towers, 53rd Floor, 2448 E. 81st St., Tulsa, OK, 74137, attention Ruth Miley, Legal Administrator, or via email: rem@steadley-neal.com.

GUNGOLL, JACKSON, BOX & DEVOLL, P.C. IS SEEKING A LITIGATION ATTORNEY with 3+ years' experience for position in Enid or Oklahoma City. Family law experience preferred but not required. Competitive salary and excellent benefits. Please send cover letter, resume and writing sample to blanton@gungolljackson.com.

THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA in Muskogee, OK is seeking applicants for one or more Assistant U.S. Attorney positions for our Criminal Division. AUSAs in the Criminal Division have the unique opportunity to represent the United States of America by directing the investigation and prosecution of federal offenses occurring within the Eastern District, including Indian Country. Salary is based on the number of years of professional attorney experience. Applicants must possess a J.D. degree, be an active member of the bar in good standing (any U.S. jurisdiction) and have at least one (1) year post-J.D. legal or other relevant experience. Prior violent crime prosecution and jury trial experience is preferred. AUSAs may live within 25 miles of the district, which includes much of the Tulsa metropolitan area. See vacancy announcement 23-12029252-AUSA at www.usajobs.gov (Exec Office for US Attorneys). Applications must be submitted online. See How to Apply section of announcement for specific information. Questions may be directed to Jessica Alexander, Human Resources Specialist, via email at Jessica.Alexander@usdoj.gov. This is an open, continuous announcement that will close no later than December 26, 2023. Applications will be reviewed on a rolling basis, with the first review no earlier than 5 days after the date of this announcement. Additional reviews of applications will be conducted periodically, after the initial review, until all positions are filled.

POSITIONS AVAILABLE

OKLAHOMA INDIGENT DEFENSE SEEKING ATTORNEYS

The Oklahoma Indigent Defense System (OIDS) is seeking applicants for Attorney (Defense Counsel) positions in our Non-Capital Trial Division satellite offices. OIDS employs Defense Counsel in each of our nine NCT satellite offices: Altus, Clinton, Enid, Guymon, Lawton, Norman, Okmulgee, Sapulpa, and Woodward.

Defense Counsel provide clients with competent legal advice and zealous advocacy at every phase of the criminal trial process, while representing indigent individuals in state court at the trial level in felony, misdemeanor, juvenile delinquency, traffic and wildlife cases. Applicants should possess a Juris Doctorate degree, active membership, and good standing with the State Bar of Oklahoma, or eligibility for admission; OR should be scheduled to take the Oklahoma Bar Exam.

Salary for this position starts at \$66,900; commensurate with qualifications and agency salary schedule.

OIDS provides a comprehensive benefits package designed to support our employees and their dependents, including:

- Benefit allowance to help cover insurance premiums
- Health/Dental/Vision/Basic Life/Supplemental Life/Dependent Life/Disability insurance plans
- Flexible spending accounts
- 15 days of vacation and 15 days of sick leave (increases with years of service)
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- Longevity Bonus for years of service

Applications must be submitted online. Visit www.oids.ok.gov or <https://bit.ly/3lsI70r> to view job announcements and apply online. This is an open, continuous announcement; application reviews will be conducted periodically until all positions are filled.

POSITIONS AVAILABLE

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THE BOARD OF EDUCATION FOR MOORE PUBLIC SCHOOLS, a school district with approximately 24,000 students, is currently seeking district legal counsel. The position requires the ability to interact and function effectively in an academic setting. Applicants must be licensed to practice law in Oklahoma. Experience/background in education law and/or constitutional law is highly preferred. Also preferable is for the incumbent to office, either wholly or partially, in the Administrative Service Center of Moore Public Schools. Salary for the position is negotiable. If interested, send your application to: Vicki Brickman, Clerk of the Board, Moore Public Schools, 1500 S.E. 4th Street, Moore OK 73160. Applications will be accepted until the job is filled.

NORTHEAST OKLAHOMA. Logan & Lowry, LLP is seeking associates with two or more years of experience to assist senior partners in civil, regulatory, family, and criminal practice. Firm's clients are widely diversified, ranging from major institutional clients to personal injury, insurance bad faith and wrongful death plaintiffs. Salary is based on experience, plus competitive benefits. Healthy work/life balance. Send resume, references, and cover letter to Logan & Lowry, LLP, P.O. Box 558, Vinita, OK 74301.

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HORNBECK VITALI & BRAUN, PLLC seeks sharp, self-motivated associate attorneys for diverse, expanding, statewide civil litigation practice. 1-5 years of experience is preferred. Candidates should be organized, personable and have strong research and writing skills. Competitive compensation and benefits package commensurate with experience. Healthy work/life balance. Some travel within the state will be required. Please submit a confidential resume with references to bryan@hvblaw.com.

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume

POSITIONS AVAILABLE

OKC AV RATED LAW FIRM IS SEEKING AN ASSOCIATE with excellent litigation, research, analytical and writing skills, 3-5 years' experience for general civil/commercial litigation practice, health care law. Must have solid litigation experience for all phases of pretrial discovery and trial experience. Submit a confidential resume with references, writing sample and salary requirements to Box LC, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152. with one-page cover letter to Info@TaxHelpOK.com.

JUDGE ADVOCATE GENERAL'S (JAG) CORPS for Oklahoma Army National Guard is seeking qualified licensed attorneys to commission as part-time judge advocates. Selected candidates will complete a six-week course at Fort Benning, Georgia, followed by a 10 ½-week military law course at the Judge Advocate General's Legal Center on the University of Virginia campus in Charlottesville, Virginia. Judge advocates in the Oklahoma National Guard will ordinarily drill one weekend a month and complete a two-week annual training each year. Benefits include low-cost health, dental and life insurance, PX and commissary privileges, 401(k) type savings plan, free CLE and more! For additional information, contact CPT Jordan Bennett at jordan.r.bennett.mil@army.mil.

HIRING – ASSOCIATE ATTORNEY. Rosette, LLP is a leading majority-Indian-owned national law firm representing tribal governments and tribal businesses with offices in Arizona, California, Michigan, Oklahoma and Washington, D.C. We represent tribes and tribal businesses across the United States. We have a national reputation for representing tribal clients to achieve success both inside the courtroom and out. We are looking for Associate Attorney who is interested in practicing Indian Law. Please see our website for more information on our work: www.rosettelaw.com. Please email all resumes to saboul-nasr@rosettelaw.com.

My Day in the Amusement Park

By Travis Pickens

ILEARNED THROUGH A TEXT that I had been accepted for admission to the famous amusement park – expensive, hard to get into and with terrifying rides.

The day came, and I jostled with the morning crowd through the narrow entry gate and into a new world, through a courtyard packed with large, fanciful character statues hewn from leafy bushes and hedges at the beginnings of an expansive forest. I started down the narrow beginners' path and merged into a group about the same age who seemed to share my anticipation – part joy, part terror.

We started with the brightly painted flying mice and swirling teacups. But even these relatively tame rides could be noisy, rattling and shaking, unpredictably operated by those whose contracts with the park were to disturb the patron's peace. After the bumper cars, a few in our group had experiences punitive enough to discover they had made a mistake in coming, especially if this was just the beginning. They quietly left. For those who remained – some brave, some ignorant, some reckless – we laughed and congratulated each other as courageous survivors each time we finished a ride and graduated to the next.

We continued into the heart of the park and took rides with long drops and dips and floated winding rivers and rapids, splashing and swirling and curling above and through the beautifully landscaped grounds. As we walked through the park, we heard snatches of screams, laughs, muffled chatter and gasps.



Finally, we proceeded up the trail to face the park's signature and highest ride: the "Scream Supreme." We anxiously strapped in and rolled past a mysterious, black-robed figure waving a slow goodbye. Then, we quickly grew lightheaded and rueful as the "click, click, click" of the metallic giant slowly pulled us to the top of its squeaking track, what seemed to be a thousand feet above the park, for the easy level prelude of a few feet before the steep drop ahead, straight down, shooting us like an unguided missile on wheels through the rest of the ride. We were jerked left! Then right! Screaming with every bend and twist and drop ... then finishing and slowly realizing our survival, we began to laugh with relief as we rolled to a stop. We leapt from our roller cars and skipped strode away from the coaster and down the trail as happy warriors. Triumphant, exultant.

And on we went the rest of the day, gradually looking for milder, less demanding attractions and finally, reluctantly retiring to the shade of a recessed patio boxed in by tall trees. The aroma of popcorn and roasted nuts hung in the air. We said our goodbyes, and I started to leave the park, still feeling the emotions the day had wrought. I had a sense of completion, even accomplishment.

I passed streams of eager faces coming into the park's entrance. Their fresh clothes were dry and clean, and they looked younger and had the same air of anticipation as my comrades and I had that morning. They were there for their own discoveries, trials and dramas until it closed at midnight.

I thought about the fun they would have and the imagined dangers and nervousness they would face, a lifetime in a day, and for a moment lingered, thinking I might stay a bit longer, perhaps one more pendulum turn on the scales of "Lady Justice." It was hard to leave what had been so exhilarating, so enjoyable and now over. But then I realized I had been lucky to have my day in the park at all. I should be grateful for that.

Better to move on. It was their turn now.

Mr. Pickens is an ethics and civil litigation lawyer practicing in Oklahoma City.



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Original Program Date: Aug. 25, 2023 - MCLE 3/0

FOUNDATIONS IN ENERGY AND NATURAL RESOURCE LAW FOR THE LAWYER WITH NO FOUNDATION

This program will cover selected topics in energy & natural resource law to provide a basic introduction and understanding for the general practitioner and lawyer.

Original Program Date: Sept. 6, 2023 - MCLE 4/0

EVOLUTION OF CANNABIS IN OKLAHOMA

In this presentation, attorneys involved in the cannabis industry will provide a summary of the evolution of marijuana related rules and regulations since the start of Oklahoma's program.

Original Program Date: Sept. 8, 2023 - MCLE 1.5/0

2023 BANKING AND COMMERCIAL LAW UPDATE

Original Program Date: Oct. 13, 2023 - MCLE 7/0

FINES, FEES, AND DUE PROCESS: AN UPDATE FOR DEFENDANTS' RIGHTS UNDER HB 2259

This program will summarize the changes and provide advocacy tools to help attorneys advocate for relief from court debt for their clients.

Original Program Date: Oct. 18, 2023 - MCLE 1/0

MORE EFFECTIVE WRITING MAKES MORE EFFECTIVE LAWYERS

There's what you know in your particular areas of the law – and then there's how well you're able to communicate that knowledge.

Original Program Date: Oct. 24, 2023 - MCLE 6/0

THE BAD LAWYERS OF HOLLYWOOD: AN ETHICS PROGRAM

Join the CLE Performer Stuart Teicher as he explores the misdeeds of the real and fake lawyers of Hollywood.

Original Program Date: Oct. 26, 2023 - MCLE 1/1

2023 OBA ANNUAL MEETING

- Artificial Intelligence and the Law: Promise or Peril? - MCLE 1/0
- Family Law - Full Day Program - MCLE 5/0
- Is Civility an Old Fashioned Concept? - MCLE 1/0
- LHL Wellness Plenary - MCLE 3/0
- Military Family Law Update - MCLE 1/0
- Nonprofit Law Core Concepts - MCLE 1/0
- Plenary Session - MCLE 2/1
- Your First (or Next) Expungement - MCLE 1/0

Original Program Dates: Nov. 1 & 2, 2023

2023 YEAR END REVIEW

Original Program Date: Nov. 29 & 30, 2023 - MCLE 12/2 (For Both Days)

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