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THE OKLAHOMA BAR Journal

Volume 95 — No. 1 — January 2024



Meet 2024 OBA President Miles Pringle

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THE OKLAHOMA BAR Journal

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On the cover: 2024 OBA President Miles Pringle of Oklahoma City takes a walk on the Skydance Bridge near downtown. Photo by Emily Buchanan Hart.

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Setting Goals for the New Year

By Miles Pringle

I AM HUMBLD AND EXCITED TO SERVE AS THE Oklahoma Bar Association president for 2024. As a native Oklahoman and third-generation attorney, it is an honor to serve our honorable profession. I hope to make you proud.

Perhaps you feel it too, but I believe we are at a moment of great change. That means the practice of law is in the midst of change as well. For example, our demographics are shifting. The OBA has more members over the age of 80 than under the age of 30. Nevertheless, Oklahoma's population and the number of businesses continue to grow. That means lawyers are needed to serve the needs of more clients than ever.



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Technology continues its march forward, transforming the practice of law. As a child, I spent much of my time at my parents' law offices. One of the main areas of action was the law library, where I loved climbing up and down the ladders. Today, few law firms keep libraries and instead use online services for legal research. It's hard to imagine, but the technological pace of change may actually increase in the coming years with the implementation of technologies like artificial intelligence.

Despite these changes, the OBA and its mission remain more important than ever. As set out by the Oklahoma Supreme Court in the preamble of the Rules Creating and Controlling the Oklahoma Bar Association, its purpose is:

Perhaps you feel it too, but I believe we are at a moment of great change. That means the practice of law is in the midst of change as well.

In the public interest, for the advancement of the administration of justice according to law, and to aid the courts in carrying on the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; to carry on a continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereto; to prevent the unauthorized practice of law; to encourage the formation and activities of local bar associations; to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof, may be more effectively and efficiently discharged in the public interest, and acting within the police powers vested in it by the Constitution of this State.¹

That is a huge responsibility, but it is the responsibility the OBA has carried out attentively for more than 100 years. Our task today is to continue to execute this mission in an ever-changing world. To that end, the OBA staff is working on improving its technology, such as a more user-friendly website and integrating a single sign-on to the MCLE website.

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NORTH LINCOLN BOULEVARD

Do Right, Fear Not

Professionalism and the Oklahoma Lawyer

By Justice Steven W. Taylor

I HAVE SOME VERY STRICT VIEWS ABOUT ETHICS AND PROFESSIONALISM, and as an old, retired justice, I continue to voice them. I believe the license to practice law is a public trust. Admission to the bar should be strict, strenuous and exacting. Discipline for ethical violations should have one goal: strict, unbending protection of the public and our system of justice.

Your law license is not a business license. Your admission to the practice of law is not a commercial opportunity – it is a sacred public trust granted upon your oath before the Supreme Court that allows you to walk inside the bar of courtrooms all over this state to represent clients during some of their most difficult times. You hold a public trust. You are an officer of the court. Your law license is granted with one primary mission, and that mission is to uphold the rule of law.

Our country is the only country on Earth that exists because of ideas – the ideas of democracy, freedom and the rule of law. Our nation represents ideas – not a race, not a specific religion – and we must never forget that because we are one of the front-line guardians of the rule of law.

And I ask that you remember history. From the founding of our country, lawyers were there at every step. Every great document

in American history – the Declaration of Independence, the Constitution, the Bill of Rights, the Emancipation Proclamation – was the dream and the work and the craft of lawyers. Lawyers were there at every advance in social justice, civil rights and human rights. Lawyers were there at every advance in our nation's history.

And today, you are needed more than ever. The courts have become more important than ever in resolving disputes; the courts and lawyers have become the adults in the room on so many occasions. When all other institutions fail, the people rely on lawyers and judges to solve all problems.

Our nation is divided on almost every subject: right vs. left, Democrat vs. Republican, MSNBC vs. Fox, urban vs. rural. It has become 50% vs. 50%. It seems that anger has become more pervasive than optimism. We have forgotten how to disagree with one another.

In addition to advocacy skills, judges and lawyers are called to use mediation, settlement and compromise abilities. The courts and lawyers are being called to service more than ever – to repair the breach we find in our communities. Who does your community call upon in times of need, turmoil or problems? It is usually lawyers. Repairing the breach, from the Book of Isaiah, is a part of our calling. Sometimes, we are called to encourage good communication and recognize, as George Bernard Shaw wrote, “The single biggest problem in communication is the illusion that it has taken place.” And in that journey, we must never forget the teaching found in the Book of Micah to do justice, love kindness and walk humbly.

I ask that you remember your clients – those who entrust the most important matters of life to you – they expect and deserve excellence from you. You have no

I leave you with an aspirational goal that you learn to love justice more than you love victory.

unimportant clients. When you stand in the courtroom with your client, it may well be the most important event in their life. You are their voice – the person they chose to be their advocate. Their life, liberty, fortune and family may be in your hands. It is a public trust. Earn it every day.

Never turn your head away from injustice, never stop believing that you can make a difference. Remember: It has been written, and it is an absolute truth, “Success is never final and failure never fatal.” What matters is your personal and professional courage to do what is right. Lawyers and judges must be armed with courage. John Wayne defined courage as “being scared to death but saddling up anyway.” Thomas Paine defined it as “fear that has said its prayers.”

You must be courageous – have your voice heard. Courage to say things that others may not want to hear. Courage to never bend the truth. Courage to speak for those without a voice, those without wealth or power.

As lawyers and judges, we must all be dedicated to the command of the rule of law, the basic right to a fair trial and due process. One example from my many years as a trial judge was from the Oklahoma City bombing trial. As you will recall, the motive for

the bombing was the defendant’s hatred and distrust of our government. At the sentencing hearing, I said to the defendant, “It is ironic that the government that you hate so much is the government that is good enough and strong enough to give you a fair trial.”

But that is just one example of what happens in courtrooms every day across our country. Judge on the bench. Jury in the box. Witness on the stand. Counsel and parties present. Citizens in the gallery. The courtroom in every community of this state is a sanctuary of justice. What happens every day in our courtrooms is a thing of beauty. We must never forget that. Judges, lawyers and jurors doing their work. It is art, and it is just as beautiful as any painting in a museum or any symphony in a concert hall.

That is what we do, every Oklahoma lawyer. Be proud of that; we are all privileged to be a part of it. Never forget that. Remember that the next time you walk into a courtroom.

I leave you with an aspirational goal that you learn to love justice more than you love victory. And I remind you of a command that is inherent in your oath as an attorney: do right, fear not.

Editor’s Note: This article is adapted from Justice Taylor’s keynote speech presented during the OBA Annual Meeting on Nov. 2, 2023.

ABOUT THE AUTHOR



Justice Steven W. Taylor, a native of McAlester, served on the Oklahoma Supreme Court from 2004 until his retirement

in 2016. He served a term as chief justice from January 2011 until January 2013. He is currently serving a nine-year term as a regent for the Oklahoma State Regents for Higher Education that began in 2019.

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Take Five, But Civilly: A Civil Litigator's Primer on the Fifth Amendment

By Andrew J. Hofland and Justin A. Lollman

FOR MANY CIVIL PRACTITIONERS, the world of criminal law can be strange and intimidating. Different rules, different issues, different clients, different stakes. But even for litigators with an entirely civil practice, criminal law issues can and do arise. Nowhere is this more common than with issues concerning the Fifth Amendment. So what are you, the civil practitioner, supposed to do when in the lead-up to your client's deposition, you realize the responses to the other side's questions might incriminate your client? How does your client invoke the privilege? What are the pros and cons of doing so? Who decides whether your client's invocation of the privilege is justified? What standard applies in making that determination? And what are the potential strategies for navigating these issues while minimizing the potential risk for your client, both civilly and criminally?

This article aims to answer these and other frequently asked Fifth Amendment questions, providing civil litigators with a brief primer on the Fifth Amendment privilege and the rules governing its invocation in civil cases.

DOES THE FIFTH AMENDMENT APPLY IN CIVIL CASES?

Yes. Although the Fifth Amendment to the U.S. Constitution states, "No person ... shall be compelled in any *criminal* case to be a witness against himself,"¹ the Supreme Court has held that the right against self-incrimination

may "be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory."² This is, in part, because the privilege "not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which could furnish a link in the chain of evidence needed to prosecute the claimant for a crime."³ Otherwise, compelled testimony, regardless of the forum, would let the genie out of the bottle, leaving the witness exposed to future criminal prosecution. So whenever "the witness has reasonable cause to apprehend

danger from a direct answer" – irrespective of whether criminal charges are pending – a person can invoke the Fifth.⁴

WHEN AND HOW DOES A WITNESS INVOKE THE PRIVILEGE IN A CIVIL CASE?

Unlike in a criminal context, where a person may make a blanket assertion, in a civil context, the Fifth Amendment privilege must be invoked on a question-by-question basis.⁵ In addition to avoiding potentially incriminating statements at trial or deposition, the privilege is also routinely invoked earlier in civil

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litigation during written discovery.⁶ Not only does the privilege apply to interrogatories and requests for admission,⁷ but the privilege can apply to document production as well. When “the act of producing documents ... [has] a compelled testimony aspect” by implicitly communicating statements of fact – including, for example, admitting “that the papers existed, were in his possession or control, and were authentic”⁸ – the Fifth Amendment protection is available. The requirement to assert the privilege over particular questions or discovery requests facilitates the ability to review, on a question-by-question basis, whether the Fifth Amendment is properly invoked.⁹

WHO DETERMINES WHETHER THE INVOCATION IS JUSTIFIED?

Ultimately, the judge decides whether the witness properly invokes the right – or, in other

words, that the witness is facing a “real and appreciable” threat of criminal liability.¹⁰ But if “it clearly appears to the court that he is mistaken[,]” the judge may require the witness to testify.¹¹ A witness’s “say-so does not of itself establish the hazard of incrimination.”¹² In some instances, it’s “evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question ... might be dangerous because injurious disclosure could result[,]” and a judge needs nothing further.¹³ In nonobvious cases, it’s incumbent on the invoking party to explain why they fear criminal liability.¹⁴ Because detailing their concern in open court may lead to forfeiting the very protections they seek to invoke, courts often hear about the potentially incriminating nature of the testimony *in camera*.¹⁵ Once a “court determines that the

answers requested would tend to incriminate the witness, it should not attempt to speculate whether the witness will in fact be prosecuted.”¹⁶ The legitimate possibility of charges is enough to sustain the privilege “absent clear evidence of an absolute bar to prosecution.”¹⁷

WHEN IS THE FEAR OF CRIMINAL LIABILITY UNFOUNDED, RENDERING THE PRIVILEGE UNAVAILABLE?

When the prosecution is barred, often because of the statute of limitations or immunity. A witness does not face a “real and appreciable” threat of prosecution when prosecutors are categorically prohibited from bringing charges. Even though a witness may wish to protect their privacy and not be exposed to potential disgrace or disrepute, they may be compelled to answer the question at issue if prosecution is legally impossible.¹⁸

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Conduct that predates the pertinent statute of limitations is typically fair game and not privileged under the Fifth Amendment.¹⁹ But the analysis of what is beyond the statute of limitations may not be so simple. The witness may properly invoke the privilege if the potentially incriminating testimony concerns conduct that may fall under a longer statute of limitations, either because of a creative charging decision or the jurisdiction.²⁰

The fear of prosecution is also not well-founded if the witness is granted immunity.²¹ Use immunity (or “use and fruits” immunity) under 18 U.S.C. §6001 *et seq.* removes the potential for criminal liability – whether in federal or state court and whether the potential use is direct or derivative.²² It is considered “coextensive” with the scope of the Fifth Amendment privilege, allowing the witness to be compelled to testify once granted.²³ But “use” immunity does not guarantee that the witness will not be prosecuted for the underlying conduct – it’s not “transactional immunity.” The government may still prosecute the witness if it can prove that its evidence “was derived from legitimate sources wholly independent.”²⁴

CAN A WITNESS INADVERTENTLY WAIVE THE PRIVILEGE?

Yes. Once a witness provides testimony on a particular subject matter, they may be precluded from asserting the privilege over other testimony within the same area.²⁵ Because the Fifth Amendment seeks to protect the witness, once the witness opts to voluntarily waive their privilege of silence and make a materially incriminating statement, the cat’s

out of the bag.²⁶ Under Oklahoma law, however, disclosure does not waive the privilege if it was erroneously compelled or “made without the opportunity to claim the privilege.”²⁷ In any event, when a witness intends on invoking the Fifth over a matter, due care should be taken to avoid answering any substantive questions that might have an arguable nexus, however attenuated, to the matter.

DOES WAIVER OF THE PRIVILEGE IN ONE PROCEEDING WAIVE THE PRIVILEGE IN FUTURE PROCEEDINGS?

No. “It is settled that a waiver of the Fifth Amendment privilege is limited to the particular proceeding in which the waiver occurs.”²⁸ Thus, a witness who waives their privilege in one proceeding is not stopped from asserting “the privilege as to the same matter in a subsequent trial or proceeding.”²⁹ But crucially, this limitation does not bar the government from later using an individual’s statements or testimony from

one proceeding against them in a subsequent criminal prosecution.³⁰

CAN THE PRIVILEGE BE WITHDRAWN?

Maybe. Allowing a witness to withdraw their previous invocation of the privilege is a fact- and circumstance-dependent determination left to the discretion of the judge.³¹ Generally, courts should be “especially inclined” to permit withdrawal of the privilege, so long as “there are no grounds for believing that opposing parties suffered undue prejudice.”³² But litigants trying to “abuse, manipulate or gain an unfair strategic advantage over opposing parties” can find their request to withdraw the invocation denied.³³ This most often occurs when a party invokes the privilege during discovery only to later withdraw the privilege to submit a declaration in support of or opposition to a motion for summary judgment or to testify at trial.³⁴ In such cases, the later declaration is often stricken or new testimony precluded.³⁵



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WHAT ARE THE CONSEQUENCES OF INVOKING THE FIFTH IN A CIVIL CASE?

A party may refuse to reveal information by invoking the privilege, but that party “may have to accept certain bad consequences that flow from that action.”³⁶ First, the invocation itself is generally considered admissible against the invoking party, no matter if it occurs at the deposition or trial.³⁷ That the witness remained silent in the face of an accusation is considered “evidence of the most persuasive character.”³⁸ Not only is it proper for evidence of the invocation to be admitted and for the opposing party to comment on the invocation,³⁹ but the factfinder may draw an adverse inference that the answer to the question would have been unfavorable to the invoking party.⁴⁰ In some cases, the adverse inference may be drawn against a party even when a nonparty takes the Fifth.⁴¹ In the most extreme cases, courts may resort to dismissal.⁴² Suffice it to say, the repercussions for invoking the privilege against self-incrimination in a civil case may negatively affect the invoking party’s chances at a favorable outcome in that matter.

WILL THE COURT STAY THE CIVIL ACTION TO AVOID THE WITNESS’S HOBSON’S CHOICE?

Maybe. Generally, a court has the discretion to stay a civil case pending resolution of a related criminal action.⁴³ But one is not required, absent substantial prejudice to a party’s rights.⁴⁴ Courts often consider the following six factors when determining whether to stay the civil proceeding: 1) the

extent to which the issues in the criminal case overlap with the issues in the civil case, 2) the status of the case, including whether the defendant has been indicted, 3) the private interests of the other party in proceeding expeditiously versus the prejudice to the plaintiff caused by the delay, 4) the private interests of and burden on the defendant, 5) the interests of the court and 6) the public interest.⁴⁵ Some of the key concerns for the invoking party include potential self-incrimination, the advantages the prosecution might enjoy with expanded discovery under the civil rules and that the criminal defense strategy might be exposed before the criminal trial.⁴⁶ Depending on how the court evaluates the factors, it might stay the case – more often when charges are already pending – or it might deny the stay, leaving the witness to choose between silence and an adverse inference versus potential self-incrimination.

Should the court not wish to afford the defendant a stay to resolve their criminal matter, there are other measures it may take to mitigate as much of the harm as possible. In general, courts attempt to permit as much discovery as possible while still protecting a person’s Fifth Amendment rights.⁴⁷ If countervailing interests prevail over the defendant’s request, less drastic methods – such as “sealing answers to interrogatories, sealing answers to depositions, imposing protective orders, imposing a stay for a finite period of time, limiting a stay to a particular subject or limiting disclosure only to counsel” – may be appropriate.⁴⁸

CAN CORPORATIONS INVOKE IT?

No. The privilege is a personal one, not available to business entities. Corporations,⁴⁹ limited liability companies,⁵⁰ partnerships⁵¹ and labor unions⁵² cannot invoke the Fifth. But a sole proprietorship, as an extension of the person, can.⁵³ The relationship between individuals and the corporate party may have special implications under Fifth Amendment case law. For instance, a corporate document custodian cannot invoke the Fifth because they hold the records in a representative capacity for the corporation, not individually. Even though disclosing the records might incriminate them personally, they cannot avoid the production of corporate records on Fifth Amendment grounds.⁵⁴ And as noted above, the invocation of the privilege by nonparty employees – whether past or present – could create an adverse inference against the employer-defendant.⁵⁵ The universe of potentially complex relationships and their corresponding effects on a corporate defendant is worthy of extra attention going into discovery or trial.

CONCLUSION

When deprivation of one’s liberty is a possibility, the stakes are high. Staying vigilant over the ways in which a response or answer in a civil case may affect a current or future criminal case is paramount. Specialized knowledge of the federal or state criminal code is not required. But having a sense of where the potential issues are and how they’re likely going to come up will help prevent a misstep with serious ramifications.

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ENDNOTES

1. U.S. Const. Amend V (emphasis added).
2. *Kastigar v. United States*, 406 U.S. 441, 445 (1972); see also *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924) (holding the nature of the proceeding is not determinative but rather “wherever the answer might tend to subject to criminal responsibility him

who gives it”); *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973) (explaining that the Fifth Amendment permits an individual “not to answer official questions put to him in any proceeding, civil or criminal, formal or informal, where the answers might incriminate him”).

3. *Hoffman v. United States*, 341 U.S. 479, 486-487 (1951).

4. *Id.* At 486 (citing *Mason v. United States*, 244 U.S. 362, 365 (1917)); *State ex rel. Oklahoma Bar Ass’n v. Moss*, 1990 OK 22, 794 P.2d 403, 410 n. 6 (citations omitted) (the danger of incrimination must be “substantial and real, and not merely trifling or imaginary”).

5. *United States v. Schmidt*, 816 F.2d 1477, 1481-82 (10th Cir. 1987); *United States v. Jones*, 703 F.2d 473, 477 (10th Cir. 1983).

6. See, e.g., *Davis-Lynch v. Moreno*, 667 F.3d 539, 547 (5th Cir. 2012).

7. See *Omni Air Int’l, LLC v. Austin Technik 1, Inc.*, 2018 WL 1740936, at *5 (N.D. Okla. April 11, 2018) (permitting a party to plead the Fifth Amendment in response to a request for admission); *Helena Chem. Co. v. Skinner*, No. 4:11CV00691 SWW, 2012 WL 3860604, at *2 (E.D. Ark. Sept. 5, 2012) (holding party was justified in pleading the Fifth in response to request for admission, notwithstanding Rule 36(b)’s limitation that a party’s answer to a request for admission “cannot be used against the party in any other proceeding”). But see *Ledet v. Perry Homes*, 2022 WL 831809, at *1 n.1 (5th Cir. March 21, 2022) (“[R]equests for admissions responses cannot be used against defendants in criminal proceedings, so the Fifth Amendment is not a defense to the requests.” (citing Fed. R. Civ. P. 36(b))).

8. *United States v. Hubbell*, 530 U.S. 27, 36 (2000). Although the privilege may not be properly invoked over the production of nontestimonial evidence or evidence that is a “byproduct of obedience to a regulatory requirement, such as filing an income tax return, maintaining required records or reporting an accident.” *Id.* at 35.

9. *Schmidt*, 816 F.2d at 1482.

10. *Hiibel v. Sixth Jud. Dist. Ct. of Nevada, Humboldt Cnty.*, 542 U.S. 177, 190 (2004).

11. *Hoffman*, 341 U.S. at 486 (quoting *Temple v. Commonwealth*, 75 Va. 892, 899 (1881)).

12. *Hoffman*, 341 U.S. at 486.

13. *Id.* at 486-87.

14. *Id.*

15. See, e.g., *S.E.C. v. Farmer*, 560 Fed. Appx. 324, 326-27 (5th Cir. 2014) (discussing the procedure a court should undertake to receive evidence on the potentially incriminating nature of the testimony).

16. *United States v. Jones*, 703 F.2d 473, 478 (10th Cir. 1983).

17. *United States v. Nipper*, 210 F.Supp.2d 1259, 1262 (N.D. Okla. 2002).

18. *Brown v. Walker*, 161 U.S. 591, 597-98 (1896).

19. *Frierson v. Woodford*, 463 F.3d 982, 987 n.5 (9th Cir. 2006).

20. See Robert Heidt, *The Conjuror’s Circle—the Fifth Amendment Privilege in Civil Cases*, 91 *Yale L.J.* 1062, 1078-80 (1982).

21. *Kastigar*, 406 U.S. at 460.

22. 18 U.S.C. §6002 (“no testimony or other information compelled under the order [compelling testimony under use immunity] (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case.”); *Hubbell*, 530 U.S. at 45.

23. *Hubbell*, 530 U.S. at 45; *Kastigar*, 406 U.S. at 453.

24. *Hubbell*, 530 U.S. at 40.

25. See, e.g., *Rogers v. United States*, 340 U.S. 367, 373 (1951) (“Disclosure of a fact waives the privilege as to details. ... ‘Thus, if the witness himself elects to waive his privilege ... and discloses his criminal connections, he is not permitted to stop, but must go on and make a full disclosure.’” (quoting *Brown*, 161 U.S. at 597)); *Mitchell v. United States*, 526 U.S. 314, 321 (1999) (after witness waives for “matters to which the witness testifies[,] the scope of the waiver is determined by the scope of the relevant cross-examination.”).

26. *Id.* See also 12 O.S. §2511 (the witness “waives the privilege if the person or the person’s predecessor voluntarily discloses or consents to disclosure of any significant part of the privileged matter.”).

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27. 12 O.S. §2512.
 28. *United States v. Rivas-Macias*, 537 F.3d 1271, 1280 & n.14 (10th Cir. 2008) (quoting *United States v. Licavoli*, 604 F.2d 613, 623 (9th Cir. 1979)).
 29. *Id.* (quoting *United States v. Yurasovich*, 580 F.2d 1212, 1220 (3d Cir. 1978)).
 30. *Harvey v. Shillinger*, 76 F.3d 1528, 1535-36 (10th Cir. 1996).
 31. *S.E.C. v. Smart*, 678 F.3d 850, 855 (10th Cir. 2012).
 32. *Id.*
 33. *Id.*
 34. *Id.* (citing *Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 547-48 (5th Cir. 2012) (post-discovery change of heart often places opposing party “at a significant disadvantage because of increased costs, delays, and the need for a new investigation.”)).
 35. See *United States v. \$148,840.00 in U.S. Currency*, 521 F.3d 1268, 1277 (10th Cir. 2008) (“It is well established that in a civil case a district court may strike conclusory testimony if the witness asserts the Fifth Amendment privilege to avoid answering relevant questions, yet freely responds to questions that are advantageous to his cause.”); see, e.g., *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903 (9th Cir. 2008) (victim’s wife precluded from testifying at criminal trial of another about her involvement or lack thereof in her husband’s murder after asserting Fifth Amendment privilege in response to questions about involvement at deposition in civil suit); *Smart*, 678 F.3d at 854-56 (affirming order striking defendant’s summary judgment declaration where defendant invoked the Fifth Amendment during discovery and “did not attempt to withdraw his assertion of the Fifth Amendment until after the [the plaintiff] had moved for summary judgment and the discovery cut-off date had expired.”).
 36. *Mid-Am. ’s Process Serv. v. Ellison*, 767 F.2d 684, 686 (10th Cir. 1985).
 37. See, e.g., *F.D.I.C. v. Fidelity & Deposit Co. of Maryland*, 45 F.3d 969 (5th Cir. 1995).
 38. *U.S. ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54 (1923).

39. *Matter of C.C.*, 1995 OK CIV APP 127, ¶11, 907 P.2d 241, 244; but see 12 O.S. §2513 (“[a] claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.”).
 40. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); but see *United States v. 15 Black Ledge Drive*, 897 F.2d 97, 103 (2d Cir. 1990) (adverse inference instruction in civil forfeiture cases poses “a troubling question, given the severity of the deprivation at risk”).
 41. See *LiButti v. United States*, 107 F.3d 110 (2d Cir. 1997) (establishing the widely used factors to guide whether courts draw an adverse inference from a nonparty’s invocation, including “1) the nature of the relevant relationship, 2) the degree of control of the party over the non-party witness, 3) the compatibility of the interest of the party and the non-party witness in the outcome of the litigation, and 4) the role of the non-party witness in the litigation.”); *Fidelity & Deposit Co. of Maryland*, 45 F.3d at 969 (5th Cir. 1995) (instruction against defendant appropriate even though nonparty investor had no special relationship to defendant-fidelity bond insurer).
 42. See, e.g., *Serafino v. Hasbro, Inc.*, 82 F.3d 515, 519 (1st Cir. 1996) (dismissal appropriate because evidence was sought was “central” to defendant’s defense, there was “no effective substitute” for plaintiff’s answers and “no adequate alternative remedy”); *Wehling v. Columbia Broadcasting Sys.*, 608 F.2d 1084, 1087 n. 6 (5th Cir. 1979) (dismissal may be an appropriate remedy of “last resort”); *Lyons v. Johnson*, 415 F.2d 540, 542 (9th Cir. 1969) (use of privilege as a shield and sword may “create an imbalance in the pans of the scales,” requiring dismissal).
 43. *United States v. Kordel*, 391 U.S. 1, 12 n. 27 (1970); *State ex rel. Oklahoma Bar Ass’n v. Gasaway*, 1993 OK 13, ¶18, 863 P.2d 1189, 1197 (acknowledging that “a court may exercise its discretion and grant a stay when a strong public interest in proceeding expeditiously on a civil case is absent.”).

44. *Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009).
 45. *In re CFS-Related Sec. Fraud Litig.*, 256 F. Supp. 2d 1227, 1236-37 (N.D. Okla. 2003).
 46. *S.E.C. v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980).
 47. See *United States v. Certain Real Prop. and Premises Known as 4003-4005 5th Ave., Brooklyn, New York*, 55 F.3d 78, 84 (2d Cir. 1995).
 48. *CFS*, 256 F. Supp. 2d at 1236.
 49. *Hale v. Henkel*, 201 U.S. 43, 74-75 (1906).
 50. *United States v. Roe*, 421 Fed. App’x 881, 883 (10th Cir. 2011).
 51. *Bellis v. United States*, 417 U.S. 85, 95-96 (1974).
 52. *United States v. White*, 322 U.S. 694, 701 (1944).
 53. *Braswell v. United States*, 487 U.S. 99, 101 (1988).
 54. *Id.* at 113.
 55. *LiButti*, 107 F.3d at 123-124.



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The Art of Using Interpreters in Trial Practice

By Elissa Stiles



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“HAVE YOU EVER BEEN ARRESTED?” the attorney asked in English. A Spanish interpreter translated the question and then the witness’s response: “No.”

“Have you ever had a criminal charge?” the interpreter spoke in Spanish, and then they translated the response: “Only two rapes in the car in 2012, but I paid for them.” Stunned silence hung in the courtroom until the attorney stammered, “Two rapes? What do you mean?”

Via interpretation, the witness explained, “Yes, I was pulled over twice for speeding in 2012, but I paid the fines.”

Confused, the attorney replied, “But you said something about raping someone?”

The blood drained from the witness’s face as the interpreter spoke. “No, no, no!! I did not rape anyone! I never said that!”

“But you said you had two rapes in 2012?” Verbal chaos continued until the attorney asked for clarification on the word the interpreter used for rape: *violación*.

“Does *violación* have more than one meaning, Mr. Interpreter?”

“Oh ... yes, it can mean a legal violation or a rape. I guess he meant a traffic violation.”

INTERPRETATION AS ACCESS TO JUSTICE

Nearly 68 million Americans speak a language other than English at home, according to the U.S. Census Bureau in 2019.¹ In Oklahoma, 2019 census records report that more than 10% of the population aged 5 years or older speaks a language other than English at home – an increase of more than 26% between 2010 and 2019.² According to the Migration Policy Institute, as of 2021, nearly 140,000 Oklahomans (ages 5 and up) speak English “less than very well.”³ In addition, an estimated 194,000 Oklahomans have hearing disabilities, many of whom use American Sign Language (ASL) as their mode of communication.⁴

These statistics indicate that for 200,000 to 300,000 Oklahomans, true access to justice hinges on the ability to bridge a language barrier by way of competent and readily available interpretation. Without a skilled interpreter (and an attorney who ensures the interpretation is correct and consistent), this huge sector of our state’s

population simply cannot exercise its legal rights and responsibilities as residents of this state.

As Oklahoma trial attorneys who zealously advocate for our clients and justice, we must be familiar with the use of interpreters and be prepared for when an interpreter steps into the courtroom. This article provides some background on Oklahoma interpreter qualifications, as well as tips for using interpreters skillfully in the courtroom.

OKLAHOMA INTERPRETERS AND HOW TO HIRE ONE

Oklahoma courts recognize two levels of credentialing for non-sign language courtroom interpreters. Qualified and authorized interpreters may be either “registered” or “certified” based on how many testing levels they have passed. Registered interpreters have passed the first level of basic testing, while certified interpreters have first passed both the registration exam and the far more advanced certification exam.⁵ While a registered interpreter is registered as fluently *knowing* both

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languages, a certified interpreter has been specifically tested in live *interpreting*. Separately, certified ASL interpreters are tested and certified for qualification to interpret in the courtroom.⁶ All these credentialed categories are authorized to interpret in Oklahoma state courts; however, even a registered interpreter may recommend you use a certified one whenever possible for trial.

All three lists of Oklahoma courts' credentialed interpreters – registered, certified and certified ASL – are publicly available on the OSCN website by navigating to “Programs” and then “Certified Courtroom Interpreters.”⁷ To hire an interpreter, simply navigate to the desired list, find the target language needed, and then use the personal contact information to reach out to interpreters directly, as they work as freelancers and not directly for the court system.

THE BASICS OF USING AN INTERPRETER

One of the most common causes of confusion for practitioners who are unfamiliar with interpreting services is whether to address the witness or the interpreter. It feels natural to speak to the interpreter about the client or witness – after all, the interpreter is the one who is directly talking to the other person. However, trained interpreters are taught to interpret *exactly*, as if the interpreter themselves is not present. This means that those speaking through an interpreter should talk normally to one another in the second person and not directly to the interpreter.

To illustrate, if I wish to speak to my client, I may look to the interpreter and say, “What are her

parents' names, and how many siblings does she have?” The interpreter is trained to translate that sentence exactly to the client, in its third-person state: “What are her parents' names, and how many siblings does she have?” Obviously, that would cause great confusion, as the witness would think I were asking her about an unnamed third person's family members.

Rule one, then, is to speak *directly* to your witness in the *second person*. Don't directly address the interpreter when trying to speak to the witness.

Rule two is to speak in short phrases and *take many breaks*. As talented as credentialed interpreters are, there is only so much content they can remember to then, in turn, translate to the target language. If you spew a long paragraph of information without allowing them a break to interpret, they will likely lose some of the details or forget some part of your lengthy oration. Don't hamstring yourself by not giving your interpreter a chance to interpret thoroughly and accurately along the way. Rule two is equally important for the witness to follow! When beginning your communication through an interpreter, you can assist yourself and the interpreter by instructing the witness to take many breaks between sentences so that the interpreter can keep up. The interpreter will thank you, and you will have prevented potential inaccuracies in the translation.

Rule three is to *practice* with an interpreter whenever possible, for both your sake and the sake of your client or witness. Communicating through an interpreter can, at first, feel like a clunky and unnatural process (see rules one and two again), which

means the only way to become good at it is to practice. It's hard to remember to take breaks for interpretation while you're focusing on your examination, and this is *particularly* true if you understand some of the target language. It is easy to forget to let the interpreter speak when you understand that “*sí*” means “yes” in Spanish, and you're ready for your next question. For this reason, everyone – particularly bilingual speakers or those who understand some of the language – ought to practice using an interpreter. Practice is the path to mastering the art of pausing frequently and at natural points for interpretation.

This third rule is also vital for avoiding courtroom confusion, like the introductory example, where the interpreter misunderstood the client's use of a word. When you practice with an interpreter, you give the interpreter and the witness the important opportunity to use the wrong words and misunderstand each other then figure out the misunderstanding long before either sees a courtroom.

ADDRESSING INTERPRETING ERRORS IN THE COURTROOM

Credentialed interpreters are talented and skilled individuals who have an extremely taxing job, constantly switching from language to language for hours without a break. As a result, while they are generally very competent, errors like the introductory example do occur with some frequency. How you, as a practitioner, handle the error can win over or alienate the jury, judge and witness. Accordingly, here are some options and suggestions for addressing errors

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To hire an interpreter, simply navigate to the desired list, find the target language needed, and then use the personal contact information to reach out to interpreters directly, as they work as freelancers and not directly for the court system.

or miscommunications during live interpretation, starting with the most positive and effective solutions.

Craft Questions to Prevent Errors

Most errors can be *prevented* by asking well-crafted questions that leave no room for confusion or miscommunication. The easiest ways to do this are to 1) eliminate pronouns, 2) keep questions as short as possible and 3) use the simplest, most direct language possible. Much interpretation confusion is caused by long-winded questions peppered with 25-cent words when simple sentences work best.

- *Don't:* "Had you two ever encountered those law enforcement officials previously?"
- *Do:* "Had you or your husband ever met those police officers before the car crash?"
- *Even Better:* Ask the "Do" question above twice – once about the witness and once about her husband.

Rephrase the Question

If it seems your witness didn't quite understand the translated question, try again using different and more direct language. Similarly, if you're not sure the interpreter translated correctly, use different, simple words to ask the same question and verify the answer. Use the simplest, most straightforward words possible. A basic rephrasing of the question often remedies any confusion.

Ask the Interpreter for Verification

If incorrect interpretation seems to be a reoccurring issue, you may (with the judge's permission) ask the interpreter directly to clarify the witness's answer. This should never be the first solution when you suspect an error, but it can be helpful after you've tried the solutions above.

Why should you not employ this solution right away? There are several reasons. First, it calls into question the interpreter's ability and performance, which can alienate your interpreter, as well as the judge and jury, who are

likely sympathetic to the interpreter and their challenging job. It is poor practice to call the interpreter out on their first perceived error. Second, speaking directly to the interpreter and asking them to verify opens a line of uncontrolled communication between the interpreter and the witness. By inviting the interpreter to converse with the witness, you risk losing control of what is said and how it is said.

Finally, the judge may challenge your request to speak to the interpreter, so you must be positive that the error occurred (either by having personal knowledge of the language or by having another interpreter sitting with you to alert you to inaccuracies). In rare circumstances when interpretation errors continue and cannot be controlled by the first two strategies, asking the interpreter for verification may be your best move.

- *Example:* You believe the witness stated it was the morning of March 6, but the interpreter said, "the middle of the night of March 6."

- *Try:* “Mr. Interpreter, could you please verify that last answer and confirm the witness stated it was the middle of the night on March 6?”

Object

Only object after you have tried every other strategy without success. Objecting to the interpretation is inherently hostile toward the interpreter and is likely to be viewed negatively by your judge and jury. Also, much like objecting to a nonresponsive witness without trying other examination strategies, objecting to the interpretation smacks of your inability to control the examination. Objecting is a last resort when the interpretation is continuously and egregiously incorrect.

AMERICAN SIGN LANGUAGE: SPECIAL CONSIDERATIONS

ASL is a complex language with its own grammar and syntax, and a great deal of linguistic meaning is imparted by facial expressions and body language, not just hand signs.⁸ As a result, working with an ASL interpreter is a skill and an art all its own that can only be mastered through practice.

One great difference between spoken and sign language interpretation is that, in some cases, the best interpretation solution for a witness with hearing loss is to employ *two* interpreters: a deaf interpreter and a hearing interpreter, who translate together as a team. This need can arise when the witness experiences additional challenges to hearing loss, such as having other disabilities, lacking support and resources for language learning in childhood and coming from a non-English-speaking culture.^{9 10}

To provide an example of this, this author once had a deaf client who immigrated from a Spanish-speaking country to the U.S. as a child. Due to poverty and cultural misunderstanding, this client was not truly educated in any robust language until middle school and was not taught ASL until his teenage years – education deprivations that left him delayed in cognition and speech. The client used a combination of some ASL and unique “home signs” to communicate. Because of the significant communication difficulties he faced, the author’s legal team used a set of interpreters for trial: one deaf interpreter, who could communicate most fluently with the client in his hybrid sign language, and one hearing interpreter, who could interpret ASL to English adeptly.

CONCLUSION

Competent courtroom interpretation is necessary for due process and access to justice. It directly affects the rights of hundreds of thousands of Oklahomans. By knowing where to find credentialed interpreters and practicing the tips and strategies shared in this article, all Oklahoma lawyers can advocate fiercely and skillfully for their non-English-speaking clients.

ABOUT THE AUTHOR



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Objection: ‘Shut Up!’

By M. Shane Henry

“Treat objections as requests for further information.” – Brian Tracy

Law schools across the country teach objections from an academic view. The evidentiary basis is explained at length. However, no one explains the practical side. What are objections? How do they really work in trial? Why are they even there? How are they properly made? This article provides a “real-world” look into objections and their use at trial.

PURPOSE OF OBJECTIONS

Trials are used by civilized societies to resolve disputes between parties. Duels, fistfights and other forms of violence have been used in the past and sometimes continue to be used, but trial is the preferred method of dispute resolution in modern life. Parties are encouraged to reach agreements, but if they are unsuccessful, their cases are tried. The cases are brought before “triers of fact” (juries and/or judges) who consider the evidence and make decisions.

Not just any evidence can be used at trial. The evidence presented to the trier of fact must comply with the Evidence Code, which is easiest to remember as the three R’s: Evidence must be relevant,¹ reliable² and compliant with the rules.³ But rather than offer an in-depth

analysis of the three R’s, the focus of this article is objections. Objections are verbal interruptions made by trial lawyers to confirm that the offered evidence complies with the Evidence Code. The framers of the Evidence Code set up a system to ensure that the evidence presented at trial is proper for the triers of fact to consider.

The presentation of evidence at trial mainly consists of testimony by witnesses and the introduction of exhibits. Exhibits are usually tangible items, such as documents, correspondence, photographs and other recorded information. When a lawyer offers such testimony and exhibits, there must be a way for the opposing lawyer to give verbal notice that the offered evidence is not proper for consideration by the trier of fact. These verbal interjections are called objections. Often, the trial lawyer’s goal in lodging an objection is to get the witness to stop talking – to just “shut up!”

PROPER FORM OF OBJECTIONS

Trial advocacy techniques leave room for many different styles, personalities and interpretations. However, there are a few basic principles for making objections at trial. Before objecting, the lawyer

must determine when to make it. The proper time depends on the type of evidence presented. This is very important as untimely objections are potentially waived.⁴

During trial, opposing counsel may attempt to ask a witness a question that calls for a response that would violate the Rules of Evidence. If a question is asked and the answer violates the Rules of Evidence, the objection must be stated immediately. One of many reasons why trial lawyers must listen intently throughout the trial is to ensure they do not miss any opportunity to object.

When stating an objection, the trial lawyer should first stand up. This signifies to the court, witness and everyone else in the courtroom that an objection is going to be made. Then, the lawyer should simply state, “Objection,” and cite the basis for the objection. For example, “Objection – hearsay.” (This needs to be stated at a volume loud enough to be heard but not so loud as to be considered shouting.)

The objection should be made by speaking directly to the judge. It may be tempting to direct the objection to the opposing counsel or jury, but this is not proper. One of the judge’s most important jobs

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at trial (bench or jury) is to decide evidentiary issues.⁵ This means ruling on objections.

The role of judges at trial is passive. It is not their job to make the objections but rather to rule upon the objections made by the lawyers. If an objection is not made, then a judge cannot rule on it. It is the lawyers' job to make the objections.

Court rules are established to promote and facilitate orderly court proceedings. If lawyers make objections to (and at) each other, trials can quickly turn into shouting matches. Trials are stressful and put a lot of pressure on the lawyers. Can you imagine that pressure coupled with a system in which the lawyers direct objections at each other? Thankfully, our framers were wise enough to avoid that prospect. Objections are made to the judge.⁶

Finally, if the objecting lawyer wishes to explain the basis for the objection, they should ask the judge, "May I explain?" This gives the court the power to determine if hearing an explanation is proper at that time. Sometimes, the judge wants to hear the reasoning for the objection. In other instances, the judge does not. This decision is solely in the hands of the judge.

An improper way to make an objection is to shout, "Objection!" and then go right into the argument

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for why the evidence is objectionable. This is called a “speaking” objection – a mini-closing argument made during trial, sometimes repeatedly throughout trial. Speaking objections are improper because they give the lawyer the ability to coach witnesses and influence juries, and they make trials much longer, among other things.⁷

After the judge makes a ruling, the lawyer should say, “Thank you, judge,” so that trial can immediately proceed. This is not the time to argue with the judge. The ruling has been made; it is no longer up for discussion. The lawyer should show the court respect and move on. Even if the judge’s ruling does not favor the objecting lawyer, saying, “Thank you, judge,” is advised as it acknowledges the court’s position of power. It also may give attendees in the courtroom (including clients) who are unfamiliar with the legal process the perception that the ruling was in the objecting lawyer’s favor.

When a court reporter is present, the trial lawyer needs to make sure that their objections are stated loudly enough that the court reporter can hear and note the objection. At a bench trial, it is often easier to speak with the appropriate volume as the attorney can directly check that the court reporter has heard the objection and captures it. However, when these objections are made during a jury trial, the attorney is walking the fine line at the bench conference between wanting to make the objection known to the judge and the court reporter while also not wanting the jury, when present in the room, to be able to hear the objection. The attorney should consider these things

while also ensuring that the court reporter can hear any objections. Depending on the circumstances, how, when and the volume at which objections are made are all part of the art of trial work.

In summary, the proper objection is made by the trial lawyer as follows:

- Stand
- Say, “Objection,” and cite the statutory basis
- Optionally ask, “May I explain?”
- Silently wait for the judge’s ruling
- Receive the judge’s ruling, thank them and move on

UNDERSTANDING THE JUDGE’S RULINGS ON OBJECTIONS

The judge will consider the objection, and possibly the explanation, and then make a ruling. The ruling will either be “overruled” or “sustained.” If the objection is overruled, it means the judge does not agree with the objection, and the offering lawyer is permitted to move forward with their presentation of the evidence. If the objection is sustained, it means the judge does agree with the objection, and the offering lawyer cannot proceed with the introduction of the evidence in the same manner. These rules can be tough to remember during the heat of a trial. They are also confusing for our non-legally trained clients. An easy way to remember them (and to explain them to clients) is that “sustained” means stop. They both start with an “s,” so this is easy to remember. If sustained equals stop, then the opposite (overruled) means go.

PROFFER

When evidence is offered at trial, an objection is made by the opposing lawyer and the judge sustains the opposing lawyer’s evidence, then the moving lawyer has the option to ask to “proffer” evidence. Proffering means to make the non-accepted evidence a part of the record. Therefore, on appeal, the evidence may be reconsidered by the appellate court. To be able to make this objection later, it must be made a part of the record. This is called making the record, so you are preserving the option to appeal.

For a jury trial, when a judge receives a lawyer’s request to make a proffer, they will schedule a time for this proffer to be made outside the presence and hearing of a jury. This is often done on a lunch break, a previously scheduled break or a break specifically scheduled by the judge for the proffer. In making the proffer, the attorney explains the evidence that was offered, the foundations or reasons the attorney believes the evidence should have qualified to be accepted into the record, and the impact, if this evidence were introduced, it would have on the case, the client’s position or just the overall relevance of the case.

In a bench trial, judges handle proffers in one of two ways. They will either allow the attorney to go ahead and give at that time while they are in there listening to it, or they will say something along the lines of, “Yes, you may make your proffer, and you may do so on lunch break,” or at a time when the attorney is just making this proffer to the court reporter. Practically speaking, it is sometimes beneficial when the judge allows the attorney to make the

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proffer, and the judge is present and listening to what is happening. Often, after hearing a proffer, judges in bench trials will reverse the ruling they had made earlier. On other occasions, a judge may hear everything about the proffer, and at a later point in the trial, the evidence may get offered again, and the judge will change the previous ruling. An example of when this often happens in bench trials is when an objection is sustained for lack of foundation. In the proffer, the attorney is able to explain what is going on. Another example is when an objection is sustained for relevance. Often, through the proffer, the attorney can explain how the evidence is relevant to the case and the issues at hand. One other example is when an objection is sustained based on hearsay. A proffer sometimes allows the attorney to explain the basis, and thereby, it is allowed to become part of the record, come into evidence and be considered at trial.

EXPLAINING OBJECTIONS TO THE JURY

As part of the trial strategy, if the trial lawyer becomes aware at pretrial and at pretrial motions that they are going to have to lodge objections during the trial, it is sometimes a good strategy to go ahead and bring this fact up during *voir dire*. During *voir dire*, the attorney can explain to the jurors that there are rules of evidence during trial and the way the legal process is set up based upon those rules of evidence – if one attorney believes a piece of evidence has come up that does not comply with the rules, then that attorney may object. Those objections are then taken before

the judge, who will rule on those objections. In addition, the attorney can let the jury know that as part of the rules and advocating on behalf of their client, there may be times they have to object to evidence. Their intent is not to keep evidence from the jury, hide facts or anything else – it is just to comply with the Rules of Evidence. The attorney would give this explanation and then ask if anyone has a problem with that.

Another option is that after the explanation, the attorney would state that some jurors feel like when a lawyer makes objections, they are trying to hide evidence, and therefore, that action should be held against the client. Other jurors feel like that is part of the rules – that is how the system is set up, and that is how things work – and they are fine with that and don't hold anything against the client. The attorney would then address a particular juror

by asking, "Mr. Smith, how do you feel about this?" After giving jurors those two options and letting them voice their concerns, the judge can issue an instruction, or if the attorney needs to use one of their strikes, that could be up for consideration.

The other way to handle objections would be to make any objections throughout the trial, have everything dealt with, and if the attorney feels like it needs to be addressed, they address it in their closing argument. The attorney can explain in closing that there were times throughout the trial that on behalf of their client, they had to make some objections. The objections were based on the Rules of Evidence. The intent was not to hide information from the jury but to keep improper evidence, evidence that could not be relied upon, out. Therefore, they were compelled to make those objections.



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A common feeling among experienced trial lawyers is that it is a mistake to object in front of a jury. The jury, they believe, will think the lawyer is trying to hide something from them.

CURING INSTRUCTIONS: 'UNRINGING THE BELL'

What happens when improper evidence is presented and a timely objection is made, but the trier of fact heard the evidence before the ruling? For instance, a compound question is asked, and the witness answers while the objection is being made. The court has heard the answer from the witness. Another example is when the offering lawyer reveals the contents of a document before offering it into evidence. The opposing lawyer never got a chance to object, and the court heard the contents. While improper, this often happens at trial. When it does, the objecting lawyer must protect the record. They should immediately make an oral motion to strike the offending evidence. The judge will then rule on the motion to strike. This “protects the record,” keeping the transcript accurate in the event of an appeal. Interestingly, even if the judge orders the evidence stricken, it remains in the transcript so that the appellate court can review it if that specific ruling is appealed. The appellate court is trusted to disregard the improper evidence.

After making the motion to strike, the lawyer still has the obligation to ensure that their client receives a fair trial. How can this be accomplished after improper evidence was heard by the trier of fact? How can one “unring the bell?” Our legal system has established three options for the judge.

In jury trials, the judge can issue a “curing instruction.”⁸ These are orders to the jury to disregard the evidence they just heard. Judges usually allow the lawyers from both sides to propose the exact language, and then the judge gives the instructions to the jury. In theory, this works effectively. Juries obey the instructions; they put the evidence out of their minds and give it no consideration. The problem is that juries are composed of human beings. Even with the best intentions, humans have a hard time ignoring evidence they have heard in reaching their decisions, regardless of instructions to ignore it.

In bench trials, the judge can simply disregard the violating evidence. The theory is that the judge has the knowledge and experience to evaluate evidence properly, giving it the weight it

deserves or ignoring it. The legal idiom for this concept comes from an old case, where it was noted that the judge could “separate the wheat from the chaff.”⁹ The phrase comes from Matthew 3:12 in describing separating things that are of a high standard from things that are of low quality. This means the judge can determine the important evidence and disregard the rest. There is no way to know for sure, but experienced judges should be able to do this successfully. However, judges are also humans, so the earlier point about the limitations of human thought holds true here too.

The final option is that the judge declares a mistrial. This is proper when there is no way that a fair trial can be conducted. The current trial is stricken, and the case is set for a new trial with a new trier of fact.¹⁰ A mistrial, in law, is “a trial that has been terminated and declared void before the tribunal can hand down a decision or render a verdict. The termination of a trial prematurely nullifies the preceding proceedings as if they had not taken place. Therefore, should another trial on the same charges, with the same defendants, be ordered, that trial would start from the beginning, with the previous testimony or other findings not necessarily relevant in the new court proceedings.”¹¹

The option of a mistrial is highly disfavored in jury trials and even less commonly declared in bench trials. In jury trials, significant time and resources are expended in getting a case to trial. The option of shutting everything down and starting all over again is not something most judges, and sometimes lawyers and/or parties, want. Judges go to great lengths to issue “curing instructions” instead

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of declaring a mistrial in a jury trial. In bench trials, the judge simply disregards the improper evidence and moves forward.

In criminal cases, requesting a mistrial is often advisable for defense lawyers. In that situation, the lawyer is fighting for the freedom and liberty of their client. In personal injury cases, the plaintiff's lawyer should request a mistrial only when the client can no longer receive a fair trial. In a domestic bench trial, practically speaking, it is a waste of time to request a mistrial.

The timing of the request is critical. The objecting lawyer must understand the options and make the appropriate oral motion after the ruling on the motion to strike. Failure to do so can function as a waiver, resulting in the case moving forward with a tainted factfinder and potentially resulting in an unjust decision.

TRIAL LAWYERS' OBJECTION PATH

Many trial lawyers have followed a similar path in how they use trial objections. To new lawyers, trials can be uncomfortable and downright scary. We don't understand objections and are afraid to make them. The last thing we want to do is interrupt trial and take a chance at revealing how inept we feel. Then, after we have several trials under our belts, we start to get more comfortable. We see how objections work and start using them. We have some success with objections, so we reason that if a few objections are good, numerous objections will be great! So we start objecting to anything and everything. Anything that happens in trial that we do not like draws an objection from

us. Time goes by, and we try more cases. We start to pay attention and notice the behavior of the elite trial lawyers. We notice judges' and jury members' reactions in response to objections. We learn how to deal with unfavorable evidence when it comes in. And our behavior at trial changes. We rarely object. The only objections we lodge are when we are either certain the objection will be sustained or when the objection is useful for a strategic purpose.

VIEW OF OBJECTIONS

A common feeling among experienced trial lawyers is that it is a mistake to object in front of a jury. The jury, they believe, will think the lawyer is trying to hide something from them. Therefore, they should decide against the sneaky lawyer and their client. The thinking is that if the jury believes the lawyer is being tricky and deceitful, then logically, the verdict should go against their client.

In a bench trial, there are other considerations. Most dockets are overcrowded, so some judges view the overuse of objections as a waste of time, making the trial take longer than necessary. It is human nature to punish someone who makes things more difficult and time-consuming and who exploits the rules.

After multiple days of numerous overruled objections, I have seen judges take a break and order counsel to chambers. The judge then sharply explains that the pointless objections are offensive and waste everyone's time. A potential negative case outcome combined with the hit to the lawyer's reputation with the bench and bar should outweigh any perceived benefit of this behavior.

Conversely, when one lawyer presents evidence in a manner that does not comply with the Rules of Evidence and the other lawyer does not object, a judge is forced into a position with two options. First, the judge cannot make a ruling if the attorney is not doing their job in making the appropriate objections. Any time a potential piece of improper evidence is being offered, and there are no objections, if it is a close call, the judge must let that evidence come in regardless of how they feel about it. These instances can be very frustrating for a judge. However, secondly, if it is an egregious situation and there is plain error, then the judge has the obligation to keep the evidence out, even when a lawyer fails to object.¹² The substantial rights of a party must be affected, and this is a much higher burden. In the heat of trial, with the speed of everything, it will have to be at a much higher level for a judge to jump in and make that ruling *sua sponte*.

I learned this lesson once while watching a bench trial. The lawyers were both inexperienced, and neither made any objections. The trial went much longer than necessary. Evidence that was not even remotely relevant was presented, admitted and discussed. Later, in chambers, the judge vented his frustration. He was furious that his time had been wasted. After reflecting on this situation, I realized the purpose and wisdom of the Rules of Evidence.

TO OBJECT OR NOT?

There are multiple reasons trial lawyers may decide either to object or to refrain from objecting. One reason to refrain is that the lawyer can deal with the offending

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evidence later in the trial. Often, the document or testimony being offered is not relevant to the claim. The trial lawyer who chooses to refrain can flip this evidence to the opposing party. On redirect, they can bring up irrelevant evidence in cross-examination to show illogical reasoning or a lack of connection. Then, in the closing argument, they can point out to the trier of fact that the opposing party is asking for a verdict based on evidence irrelevant to the claim. In this way, the trial lawyer blows up the fact that the irrelevant evidence was introduced and relied on. They use it to poke holes in the opposing case.

One reason to object is to see how opposing counsel will handle the objection. When an objection is sustained, some lawyers simply move on to the next line of questioning. In that instance, the lawyer has just quit on that evidence. The objecting lawyer has won this battle as the objected evidence will not be considered by the trier of fact.

Good trial lawyers will use an objection sustained against them to “teach better.”¹³ They will slow down. The evidence will be highlighted as they lay a detailed foundation and show the relevance of the evidence. When executed correctly, this strategy is painful for the objecting lawyer and their client’s case. This, of course, is a reason to withhold future objections.

Trial work has always been, and will continue to be, a collision of facts, evidence, arguments, psychology, persuasion, emotion, fear and human perception. Ultimately, the trial lawyer must understand objections and use discretion when employing them. The learning process never ends.

ABOUT THE AUTHOR



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ENDNOTES

1. 12 O.S. §2401 “Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”
2. 12 O.S. §2901.
3. Steven N. Peskind, *The Family Law Trial Evidence Handbook* 16-18 (2013).
4. *Id.* at 306.
5. Okla. Stat. Ann. tit. 12, §2104 (West 2022).
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Legal Project Management for In-House Litigation Counsel

By Jennifer Castillo

LITIGATION AND DISPUTES OF ALL TYPES HAVE BEEN RISING SINCE 2020. According to Norton Rose and Fulbright’s 2023 Annual Litigation Trends Survey,¹ a majority of corporate counsel surveyed in late 2022 expected all legal disputes to stay the same or increase, and nearly half of all respondents expected lawsuits to increase in 2023.² At the same time, companies are implementing measures to reduce expenses, including overall legal spend, in response to economic, regulatory and operational pressures stemming from COVID-19 and other historic weather and political events. Of particular concern to in-house lawyers is the increasing attention on the amount spent on outside counsel, most especially outside counsel engaged to handle litigation. As a result, in-house lawyers are under more pressure to handle more matters internally. For in-house litigators, this creates a need to quickly and appropriately assess claims to determine whether to spend precious resources taking a case to trial or to settle the case so resources can be reserved for those cases the corporate client deems more appropriate. This can feel like a herculean task.

Richard Susskind, a British author, speaker and independent advisor to international law firms and national governments, recognized in his book, *Tomorrow’s Lawyers – An Introduction to Your Future*, that most general counsel and in-house lawyers believe their primary responsibility is legal risk management.³ As Mr. Susskind continues in Chapter 7 of the book, “[i]n-house lawyers are faced, on a daily basis, with a barrage of requests, problems, and questions from across their organizations ... while some of these inquiries merit serious legal attention, others

assuredly do not. The hope of most GCs is that they can organize themselves to become more selective; that they can move from being excessively reactive to being proactive. In other words, their job should be to anticipate problems before they arise. The focus should be on avoiding disputes rather than resolving them.”⁴ This shifting focus from reactive to proactive demands in-house lawyers to “become increasingly systematic and rigorous in their management of risk” and utilize “sophisticated tools and techniques to help them.”⁵

For example, in-house legal departments and law firms across the country are applying project management tools and concepts developed in other fields to the provision of legal services, including litigation. This article will outline key areas of project management, discuss implementation of project management principles in the in-house legal department and highlight risks and impediments to the utilization of project management in legal settings.

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PROJECT MANAGEMENT, GENERALLY

Although various project management tools, processes and systems have been developed over the past few decades, all project management involves six key areas:⁶

- 1) Development of a more thorough understanding of the project/matter at the outset, especially as it relates to understanding the client's situation and expectations. This involves beginning each matter with an in-depth analysis of the key influencers, or stakeholders, affecting the matter. This analysis drives the understanding

of the client's expectations, individuals who will affect the direction or approach to the matter, the types of communications that will be needed during the matter, the budget and more.

- 2) Enhanced communication with key stakeholders in the client organization and with the project team inside the law firm throughout the matter, but especially at the beginning, to define criteria for success, limitations on the matter, budget/cost expectations, etc.
- 3) Development of a scope of work statement at the outset of the matter that

defines what is in scope and what is out of scope for the particular matter. The scope of work, combined with an assessment of risks that can affect the ability to meet the client's objectives and the assumptions upon which the scope and budget are based, enable a matter team to ensure they are on the same page with clients and to manage the matter and budget accordingly.

- 4) Development of a template for how the work will be done so a more accurate budget can be developed, and the matter can be managed to that budget.

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- 5) Ongoing monitoring throughout the life of the matter, including budget to actual key milestones for progress with the client's objectives, changes in scope, risk or influencers and more.
- 6) Evaluating a matter at the end to identify "lessons learned" and how similar matters with the same or different clients can be improved in the future – resulting in future efficiencies and/or improved results for the client.

LEGAL PROJECT MANAGEMENT

Legal project management (LPM) provides methods and techniques to address concerns about the time and resources required for legal matters. LPM can be defined as:

- 1) A proactive, disciplined approach to managing legal work that involves defining, planning, budgeting, executing and evaluating a legal matter;
- 2) The application of specific knowledge, skills, tools and techniques to achieve project objectives (the client's and law firm/legal department's); and
- 3) The use of effective communication to set and meet objectives and expectations.⁷

Benefits of LPM

When integrated into legal matter management, the key concepts of project management create benefits for the individual lawyer, law firm and legal department. Benefits to the individual lawyer

and law firm include improved profitability for the law firm and reduced cost to the legal department, greater client satisfaction and enhanced risk management. Benefits of LPM to the individual lawyer and law firm also include a greater differentiation from competitors and improved knowledge management.⁸ Benefits to the legal department and client include greater predictability, a more managed approach to legal work, on-budget and on-time work, greater efficiencies and enhanced quality of work.⁹ One of the most impactful benefits to the individual lawyer, law firm and legal department/client is the creation of a collaborative environment among the legal team realized in the form of improved teamwork, enhanced lawyer development and the resulting improvement in morale.¹⁰

LPM can be especially beneficial when applied to litigation. LPM imposes the discipline required to conduct early case assessment, short-term and long-term goal setting, a budget and an overall game plan for conducting the litigation, all of which is then approved by the in-house legal department and/or client and outside counsel and updated or modified as the litigation progresses and the "inevitable vagaries of litigation set in."¹¹

Key Differences Between LPM and Project Management

While LPM borrows processes and systems from traditional project management, which has been employed by corporate America for decades, there are some key differences simply because of specifics required to practice law, statutory and court-ordered timelines. LPM is focused on anticipating risks through reliable estimates,

greater cost control and enhanced communication. LPM also requires more flexibility in project plans due to the fact that both internal and external parties are working together to manage matter-specific deadlines on top of client and law firm schedules. Traditional project management deals with traditional business concerns such as adequate staffing, failure to meet deadlines, budget constraints and contractual obligations. LPM helps in-house legal departments and law firms accommodate resources efficiently while dealing with roadblocks.

IMPLEMENTING LEGAL PROJECT MANAGEMENT

There is currently no standard framework for LPM. However, the Legal Project Management Institute's (LPMI) LPM framework, developed by LawVision Group, provides a useful tool for understanding the critical LPM concepts and approaches. Pursuant to the LPMI framework, there are four phases of LPM: engaging, planning, executing and evaluating, and closing. These iterative and often overlapping phases are discussed in more detail below.

The Engaging Phase

The Engaging Phase is the first stage of LPM and can also be referred to as the Initiating Phase in organizations applying traditional project management. This phase is primarily focused on ensuring the lawyers and the client are on the same page regarding the details of the matter as they are known at that time. The activities and processes generally encompassed by the Engaging Phase are identifying stakeholders, setting matter expectations and parameters, and establishing initial objectives. The

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LPM is focused on anticipating risks through reliable estimates, greater cost control and enhanced communication. LPM also requires more flexibility in project plans due to the fact both internal and external parties are working together to manage matter-specific deadlines on top of client and law firm schedules.

deliverables and work product generally encompassed in the Engaging Phase are a stakeholder analysis, a high-level matter timeline/schedule and a scope of work statement.

The Planning Phase

The Planning Phase is one of the most crucial parts of LPM. The activities and processes generally included in the Planning Phase are to determine the deliverables/work product, establish work assignments and other resources needed, develop a detailed budget, a detailed matter schedule, a communication plan, a risk management plan and a change management plan. The deliverables and work product generally included in the Planning Phase are a list of specific deliverables/work product, a task plan detailing work assignments, an approved budget, an updated matter timeline and a project plan. In summary, the project plan should guide the team in the active

management of the matter through completion.¹² Developing a project plan and following it should result in many benefits, including more efficient delivery of legal services.

A Note About Budgeting vs. Pricing

Development of a budget is a critical part of the Planning Phase. The corporate client's legitimate concerns with the billable hour include the law firm's lack of accountability and the disconnect between value and cost. Collaboration using LPM ensures better and more transparent communication with the client and the legal team on the budget. Identifying the framework for development and tracking of the budget includes determining whether to map the phases of the matter by significant scheduling milestones or by significant deliverables. A starting point is to determine whether UTMBs task-based billing codes or simply task codes will be used as the framework.

The Six Step Budget Approach can be an effective way to develop a litigation budget that the legal team and the client can adopt and execute. It is comprised of the following six steps: 1) confirm the scope of the engagement; 2) identify the framework for budget development and tracking; 3) create a playbook for the matter; 4) identify resources, rates and time estimates; 5) identify task-level assumptions, risks and constraints; and 6) collaborate with the client and implement the budget.

Rather than automatically adopting the budget as the price, the firm should identify the most appropriate fee structure and then decide on the appropriate fee level. It is these decisions that are the difference between budgeting and pricing.

The Executing Phase

The Executing Phase is comprised of two main aspects: doing the legal work for the matter and managing

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the legal work as a project.¹³ In addition to doing the legal work, the four most important parts of the Executing Phase are dealing with changes in scope, managing communication with the various stakeholders, managing the project team and monitoring the budget.¹⁴ The activities and processes generally included in the Executing Phase are to monitor work completion and adherence to matter strategy, acquisition of resources to perform work assignments, modify the matter timeline, communicate with stakeholders early and often, manage scope changes with client and other key stakeholders and monitor against budget. The deliverables and work products generally included in the Executing Phase are an updated matter timeline, updated deliverable lists and budget and change requests.

The Evaluating Phase

The benefits of the Evaluating/Lessons Learned Phase include the enhancement of handling of future similar matters and/or matters for the same client, even in a different area of law, and the ability of the lawyer to differentiate themselves from other lawyers by offering to have a debrief session. The Evaluating/Lessons Learned Phase is critical for gathering data about the costs of matters, changes that occurred and affected achievement of the project outcomes and issues affected by stakeholder expectations.

During the Evaluating Phase, the performance of in-house partners/managers and the firm are evaluated. Additional considerations for post-matter evaluation include the thoughts and opinions of businesspeople – how well were client expectations managed? The

activities and processes included in the Evaluating Phase are to monitor scope, budget and relationships throughout the Executing Phase and after, meeting of team members to conduct after action review, revise matter strategy for future similar matters, administratively close the matter, deliver final product, archive reusable work product/create “reusable” assets and obtain final payment. The deliverables and work product in the Evaluating Phase are an updated plan and budget, change orders, final budget-to-actual, exemplars/templates and model documents saved to the law firm knowledge management system.

PERFORMANCE IMPROVEMENT

Tools used to improve design and manufacturing processes can and should be used in the LPM arena. Performance improvement tools, whether for improvement of design, manufacturing processes, project management or LPM, all boil down to four actions: analyze, search, solve and control. Using the process of performance improvement, litigation managers can determine the best way to carry out a certain kind of legal work to achieve efficiency, excellence, probability of a particular outcome and predictability.

OBSTACLES TO LPM

Lawyer personality traits that pose the greatest impediment to the effective use of LPM and process improvement are 1) abstract reasoning, 2) skepticism and 3) urgency. Abstract reasoning can cause over-analysis to the point where nothing gets resolved. Skepticism can result in over-adversarial communication style, which is counterproductive to the collaborative

process of LPM as well as to process improvement. Urgency can prevent lawyers from having the patience and taking the time to work through the phases of LPM.

CONCLUSION

LPM is one tool that in-house legal departments can implement to create efficiencies in the do-less-with-more era. Even when working through the phases of LPM feel counter-intuitive, especially to in-house litigators tasked with managing increasing claims and litigation with limited resources, the discipline and rigor will result in more predictability and more efficient use of resources.

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ENDNOTES

1. Norton Rose Fulbright surveyed more than 430 general counsel and in-house litigation leaders in the United States and Canada in multiple industries, including financial services, energy, healthcare and technology, <https://bit.ly/46l2E2W>.
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3. *Id.*
4. *Id.*
5. *Id.*
6. *The Power of Legal Project Management*, p. 36, 37 – Susan Raridon Lambreth and David A. Rueff Jr.
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11. “Taming the Litigation Beat with Legal Project Management Technology,” Donald A. Loft, <https://bit.ly/3R9mA8Z>.
12. *The Power of Legal Project Management*, p. 99.
13. *The Power of Legal Project Management*, p. 140.
14. *Id.*

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Long-Awaited Changes to Rule 702 Impact Qualification and Admissibility of Expert Witness Testimony and May Signal Changes to Oklahoma Law

By Timothy F. Campbell and Anamayan Narendran

ON APRIL 24, 2023, United States Supreme Court Chief Justice John G. Roberts Jr. transmitted amendments to Rules 106, 615 and 702 of the Federal Rules of Evidence to then-Speaker of the House Kevin McCarthy and Vice President Kamela Harris in her ex officio role as president of the Senate.¹ After Congress failed to modify or reject the changes, the chief justice's proposed revisions went into law Dec. 1, ending a rule-making process begun by the Advisory Committee on Evidence Rules in 2017.

Of those changes, the new amendments to Rule 702 have the potential to be most impactful for litigators, as Rule 702 governs the qualification and admissibility of expert testimony in federal court. Further, as we will see, state laws analogous to Rule 702, such as Oklahoma's 12 O.S. §2702,² may also be in line for revision prompted by the change to Rule 702.

At present, Rule 702 reads as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education

may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles

and methods to the facts of the case.

The amended Rule 702, which seeks to clarify the standard a proponent of expert testimony must meet to satisfy the rule and present the testimony to the jury, reads as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise *if the proponent demonstrates to the Court that it is more likely than not that:*

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- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the *expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.*

The changes, while somewhat subtle, serve a number of purposes. First, the new Rule 702 cements the court’s “gatekeeper” function of keeping unhelpful and unreliable expert testimony from the jury. This change makes clear that it is the judge, not the jury, who determines Rule 702’s elements have been met.³ Once the determination has been made to admit expert testimony, matters of weight are left to the jury and remain proper subjects for cross-examination.

Second, the amended Rule 702 provides further clarity through the express inclusion

of a preponderance of the evidence standard, applicable to all four elements of the rule, by adding that the court must find “it is more likely than not that” the proponent of the evidence has satisfied Rule 702’s requirements. According to a memorandum prepared by the Advisory Committee on Evidence Rules, this change was prompted by the perceived misapplication of Rule 702 by a substantial number of courts: “[T]he Committee resolved to respond to the fact that many courts have declared that the reliability requirements set forth in Rule 702(b) and (d)—that the expert has relied on sufficient facts or data and has reliably applied a reliable methodology—are questions of weight rather than admissibility, and more broadly that expert testimony is presumed to be admissible.”⁴

Finally, the amendment’s emphasis on greater judicial scrutiny of expert witness testimony continues with additional language in 702(d). That change adds a requirement that “the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.” This change appears to empower courts

to not only examine whether the principles and methods employed were reliable but to go a step further and evaluate whether the expert’s opinion itself is also reliable. As the Advisory Committee noted, the change seeks to ensure an expert “stays within the bounds of what can be concluded by a reliable application of the expert’s basis and methodology.”⁵ Therefore, a proponent of expert testimony needs to now show that both the means and conclusion reached by the expert are reliable.

Taken together, these amendments further empower the court and will necessarily make it more difficult to admit expert testimony than under the prior version of the rule. The new Federal Rule of Evidence 702 places a heavier burden on litigants to demonstrate the reliability of expert testimony. As the Advisory Committee eluded, these changes were prompted in part by the perceived misapplication of the rule fueled by the Supreme Court’s seminal decision in *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), and its progeny. *Daubert* was largely silent on the topic of the appropriate standard to apply to the Rule 702 elements: “And while *Daubert* mentions the standard, *Daubert* does so only in a footnote in the midst of much discussion about the liberal standards of the Federal Rules of Evidence.”⁶ The footnote in question consists largely of a quotation to Rule 104(a) that addresses preliminary questions governing privileges, witness qualification and admissibility of evidence, and it counsels that such threshold determinations are generally to be made by the court.⁷ The footnote concludes with the vague proviso that “[t]hese matters should



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be established by a preponderance of proof.”⁸ Per the Advisory Committee, the amended Rule 702 is intended to clear up any lingering confusion and establish that “admissibility requirements are to be determined by the court under the preponderance standard.”⁹

The focus of the new rule will require further consideration of litigants selecting experts who they believe will meet the now-clarified preponderance of the evidence standard. The new rule will require litigants to ensure their experts are armed with the appropriate methodologies and principles in order to meet this threshold or fear the risk of being stricken by the court applying this heightened standard. Similarly, expert conclusions must now also be shown to be reliable. The new Federal Rule of Evidence strengthens and reinforces the court’s gatekeeping role to ensure experts with unreliable methodologies and principles and unhelpful or unfounded conclusions never reach a jury. The importance of litigants understanding and considering the intricacies of the new rule is vital to the selection and presentation of expert witnesses. The new Federal Rule of Evidence 702 is bound to bring about additional challenges in Oklahoma federal courts to experts who lack the requisite knowledge and expertise in relation to the facts of the given case or who come to court with unreliable opinions.

CHANGES TO OKLAHOMA LAW?

What do the amendments to Rule 702 mean for practice in Oklahoma courts, if anything? The first possibility, of course, is that the Legislature amends Section 2702 to bring it in line

with the new Rule 702. Such a change would be consistent with Oklahoma’s practice of more or less adopting the Federal Rules of Evidence and Federal Rules of Civil Procedure wholesale. Should this occur, presumably the impact would be similar to that on the federal level, with Oklahoma courts imposing more stringent controls on expert qualification and admissibility of opinions.

A second option would be for the Oklahoma Supreme Court to, in an appropriate case, simply adopt the new Rule 702 view absent amendment by the Legislature to Section 2702. After all, Oklahoma’s present expert witness regime is based on federal case law, which itself was at least ostensibly based on Rule 702. At present, Oklahoma courts utilize a framework based on *Daubert* and its progeny – *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999) – as first adopted in *Christian v. Gray*, 2003 OK 10, 65 P.3d 591. Section 2702 is cited only twice in the body of *Christian*, while *Daubert* appears dozens of times. Given its reliance on *Daubert* as opposed to Rule 702 or Section 2702, the court in *Christian* only addressed the appropriate evidentiary standard for admitting expert testimony in passing without expressly adopting a standard the proponent of the testimony must meet.¹⁰ Now that the rule on which *Daubert* was at least in part based is set to change, it would make sense for courts to follow suit and adopt the new Rule 702 standards.

Yet another option would be to declare that the new amendments did not alter the state of Oklahoma law at all. At least one federal appellate circuit has taken the position that Rule 702 always required each element to be met

by a preponderance of the evidence and that the new revisions simply clear up any judicial misunderstanding to the contrary:

On April 30, 2021, the Committee unanimously approved a proposal to amend Rule 702, part of which is motivated by its observation that in “a number of federal cases ... judges did not apply the preponderance standard of admissibility to [Rule 702’s] requirements of sufficiency of basis and reliable application of principles and methods, instead holding that such issues were ones of weight for the jury.” In order to address this “pervasive problem” both of the current draft amendments to Rule 702 would contain the following language in the advisory committee’s notes:

[U]nfortunately many courts have held that the critical questions of the sufficiency of an expert’s basis [for his testimony], and the application of the expert’s methodology, are generally questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a) and are rejected by this amendment.¹¹

Regardless of the path chosen, it seems inevitable that Oklahoma courts will have to eventually acknowledge the revised Rule 702 and respond in some fashion. How and when that occurs are open questions. What is clear though is that the standard for qualification and admissibility of expert witness testimony will likely become more stringent as a result.

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ENDNOTES

1. Supreme Court of the United States, Order (April 24, 2023), <https://bit.ly/49XaW9F>.

2. While not identical to Rule 702, 12 O.S. §2702, like most provisions of the Oklahoma Evidence Code, is modeled on the Federal Rules of Evidence. In present form, 12 O.S. §2702 provides as follows:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if:

1. The testimony is based upon sufficient facts or data;
 2. The testimony is the product of reliable principles and methods; and
 3. The witness has applied the principles and methods reliably to the facts of the case.
3. Comm. on Rules of Prac. & Proc., Report of the Advisory Committee on Evidence Rules (May 2022), <https://bit.ly/47VFtTy>.
4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Daubert*, 509 U.S. 579, 592, n. 10 (1993).
 8. *Id.*
 9. *Id.*
 10. "One federal court has stated that the proponent of an expert's testimony bears the burden of satisfying the test for admissibility of evidence. "The proponent need not prove that the expert's testimony is correct, but she must prove by a preponderance of the evidence that the that

the testimony is reliable." *Christian*, at ¶23, at 603 (citing *Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998, *en banc*)).

11. *Sardis v. Overhead Door Corporation*, 10 F.4th 468, 283 (4th Cir. 2021); see also, *In re Anderson*, No. 15-21681, 2023 WL 2229355, at *3 (W.D. Tenn. Jan. 20, 2023) (taking the position that the revised Rule 702 acts to clarify how the rule should have been applied all along); *Al Qari v. Am. Steamship Co.*, No. 21-cv-10650, 2023 WL 5202311, at *4 (E.D. Mich. Aug. 14, 2023) (asserting the changes "are not substantive, but rather clarify how the Rule was meant to be applied since it was first amended in 2000").

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PUBLIC NOTICE FOR REAPPOINTMENT OF INCUMBENT BANKRUPTCY JUDGE

The current 14-year term of office of Sarah A. Hall, United States Bankruptcy Judge for the Western District of Oklahoma at Oklahoma City, Oklahoma, is due to expire on August 11, 2024. The United States Court of Appeals for the Tenth Circuit is presently considering whether to reappoint Judge Hall to a new 14-year term of office.

Upon reappointment, Judge Hall would continue to exercise the jurisdiction of a bankruptcy judge as specified in title 28, United States Code; title 11, United States Code; and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § § 101-122, 98 Stat. 333-346.

Members of the bar and the public are invited to submit comments for consideration by the court of appeals. All comments will be kept confidential and should be directed to: David Tighe, Circuit Executive at Byron White United States Courthouse, 1823 Stout Street, Denver, CO 80257 or email to hr@ca10.uscourts.gov.

Comments must be received not later than **Tuesday, February 27, 2024.**

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The *McBee* Footnote and Waiving Affirmative Defenses Through Reservations of Time

By Spencer C. Pittman

UPON A CLIENT'S RECEIPT OF A SUMMONS AND PETITION IN OKLAHOMA state court, it is common practice for civil litigators to instinctively file a template special entry of appearance and reservation of time to extend their client's responsive pleading deadline by an additional 20 days. Reserving time to otherwise file a responsive pleading waives certain affirmative defenses, including those relating to jurisdiction, venue, service of process, capacity of a party to be sued and failure to state a claim.¹

Since 1991, legal precedent in Oklahoma has held that filing a reservation of time preserves the listed affirmative defenses so long as it is accompanied by an entry of appearance that is qualified (or special) but not general.² The Oklahoma Supreme Court in *McBee v. Shanahan Home Design*³ cast doubt on this longstanding practice in a footnoted *obiter dictum*. The court's dictum suggested that a statutory amendment by the Legislature in 2002 eliminated this popular practice. This article explores the history and current status of the special entry of appearance and reservation of time statute and the (purportedly) resulting waiver of affirmative defenses resulting therefrom after *McBee*.

THE HISTORY OF OKLA. STAT. TIT. 12 §2012(A)

It is a well-established legal principle that a general entry of appearance by a party to an action results in a waiver of the right to raise jurisdictional defects, such as improper service of process or venue.⁴ When the Oklahoma Pleading Code was first enacted, the drafters included language in §2012(A) consistent with the waiver doctrine:

Within 20 days after the service of the summons and petition upon him, a defendant may file *an appearance* which shall extend the time to respond 20 days from the last date for answering. *The filing of such an appearance waives defenses of paragraphs 2, 3, 4, 5, 6 and 9 of subsection B of this section.*⁵

The Oklahoma Supreme Court first addressed the waiver issue in *Young v. Walton*. In *Young*, the plaintiff argued that the defendants' filings of "special appearances" in response to the petition waived the defenses of improper venue and failure to state a claim under §2012(A). The court found the timely filing of "an appearance" extended the time for the defendants to respond and operated as a waiver of certain defenses, but the waiver of the §2012(B) defenses "applie[d] only to a defendant's *general* or perhaps to an unspecified appearance, not to one that is explicitly qualified."⁶ *Young* teaches that the qualification of the appearance is crucial. By way of example, in *Turpen v. Hamby*,⁷ the defendants filed unqualified "entries of appearance," reserved additional

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time to respond under §2012(A) and then filed a motion to dismiss for failing to state a claim under §2012(B)(6). The trial court granted the motion to dismiss. The Court of Civil Appeals reversed and found that the unqualified entries of appearance waived the defendants' right to move to dismiss for failure to state a claim.

Following the *Young* decision, the Oklahoma Legislature adopted Okla. Stat. tit. 12 §2005.2 in 2002, a statute that mandated the filing of an entry of appearance by counsel or a party pro se in "any civil proceeding in the district courts." This statute also stated, "Filing an entry of appearance as required by this section [did] not waive any defenses enumerated in subsection B of Section 2012 of Title 12 of the Oklahoma Statutes." But §2005.2 conflicted with §2012(A) because 1) the mandatory entry of appearance under §2005.2 did not result in a waiver of §2012(B) defenses, and 2) the filing of "an appearance" under §2012(A) waived certain §2012(B) defenses (as shown in *Young*). The Legislature sought to resolve this



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conflict by changing the statutory language in §2012(A) from the filing of “an appearance” to a “reservation of time.”⁸ The language, current as of 2004, now reads, “A defendant may file a *reservation of time* which shall extend the time to respond 20 days from the last date for answering. The filing of such a *reservation of time* waives defenses of paragraphs 2, 3, 4, 5, 6 and 9 of subsection B of this section.”⁹

Despite the amendments to this statutory language, published cases in Oklahoma have continued to hold – without any analysis of this issue and as recently as 2020¹⁰ – that a qualified/special entry of appearance and reservation of time did not waive §2012(B) defenses pursuant to *Young*. In the past, practitioners have used this practice as an opportunity to effectively extend their client’s responsive pleading deadline from 20 days to 40 days without a waiver of affirmative defenses.

THE OKLAHOMA SUPREME COURT WEIGHS IN: THE MCBEE FOOTNOTE

In *McBee v. Shanahan Home Design*, the plaintiff filed lawsuits against multiple parties pertaining to the design and construction of her residence.¹¹ Summonses were issued and served on the defendants. The defendants each filed special appearances, reserved additional time to answer the plaintiff’s petition and then moved to dismiss based on alleged defects in service of process in August 2020. The plaintiff did not assert a §2012(A) waiver argument, but the Oklahoma Supreme Court still took the opportunity to address the §2012(A) waiver issue as *obiter dictum* in a footnote of the opinion.

In footnote 12 of *McBee*, the court began with the history of §2012(A). The court noted that when *Young* was decided in 1991, §2012(A) provided that a defendant could file “an appearance” together with a reservation of additional time because of the distinction between a “general appearance” (that resulted in the waiver of certain affirmative defenses) and a “special appearance” (that did not waive defenses).¹² The court also acknowledged that the Legislature amended §2012(A) in 2002 by replacing “appearance” with “a reservation of time,” as noted above.¹³ For these reasons, the court found that “the distinction between a special or general appearance would now appear inconsequential, and ostensibly, *any reservation of time* waives the defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of [§2012].”¹⁴

PRECEDENTIAL VALUE OF THE MCBEE FOOTNOTE AND FUTURE CONSIDERATIONS

The plaintiff in *McBee* did not raise the §2012(A) waiver issue, and for this reason, the court did not consider the issue in the holding. Thus, the discussion on waiver based on the reservation of time in *McBee* was dictum and, while persuasive, is not binding.¹⁵ Dicta can have a persuasive force, and “even dicta, once followed in subsequent opinions, can develop strong precedential value.”¹⁶ The court’s pronouncement in footnote 12 of *McBee*, while dictum, provided an unambiguous and thorough historical and statutory interpretation of §2012(A), which suggests the common practice of filing special entries of appearance and reservations of time by litigants in Oklahoma may constitute a waiver of certain affirmative defenses, including failure to state a claim.

Rather than prescribing to the automatic extended 40-day answer date, practitioners should

Rather than prescribing to the automatic extended 40-day answer date, practitioners should now carefully examine the legal aspects of the petition to determine if §2012(B)(2)-(6) or (9) may give rise to a motion to dismiss before filing any reservations of time.

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now carefully examine the legal aspects of the petition to determine if §2012(B)(2)-(6) or (9) may give rise to a motion to dismiss before filing any reservations of time. On the other hand, practitioners receiving a special entry of appearance and reservation of time asserting a non-waiver of the §2012(B) may consider utilizing the *McBee* footnote to move to strike the entry or, in the alternative, to deem the entry a general appearance. And a non-movant that faces a motion to dismiss filed after a defendant has claimed additional time can also assert waiver of that defense in its response brief.

CONCLUSION

Attorneys practicing with an abundance of caution may not be willing to risk their clients' waiver of *in personam* jurisdiction or other affirmative defenses based on the dictum in *McBee*. Whether to satisfy a Rule 2011 investigation or otherwise, a safe alternative to securing additional time to answer or otherwise file responsive pleadings is to request additional time from the court and expressly request the order granting to not constitute a general entry of appearance or a waiver of §2012 defenses. In contrast to the reservation of time, this practice, which may be with or without a motion,¹⁷ requires court approval (and, in some local rules, a statement on whether opposing counsel consents to the requested relief). This action would 1) likely not be considered a demand for affirmative relief, thereby constituting a general appearance and waiver of jurisdiction defenses¹⁸ and 2) per ruling¹⁹ by the Oklahoma Supreme Court, may be done in such a way so as to not waive certain affirmative defenses.

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ENDNOTES

1. Okla. Stat. tit. 12 §2012(A)(1)(b).
2. 1991 OK 20, 807 P.2d 248 (*Young*).
3. 2021 OK 60 (Nov. 16, 2021) (*McBee*).
4. *Chronister v. Payne*, 1977 OK CIV APP 34, 571 P.2d 869, 870.
5. Okla. Stat. tit. 12 (1984) §2012(A)(1)(b) (Emphasis added).
6. *Young*, at ¶4.
7. 2004 OK CIV APP 88, ¶4, 99 P.3d 1203, 1204.
8. The Oklahoma Comments to §2012 in 2002 provided as follows: "The proposed amendments to Okla. Stat. tit. 12, § 2012(A) (1991) are tied to the proposed adoption of Okla. Stat. tit. 12, § 2005.2, which would require the filing of an entry of appearance by all counsel and unrepresented parties as the first document in the case. What was previously the entry of appearance in Okla. Stat. tit. 12, § 2012(A) (1991) is being renamed a 'reservation of time' in order to differentiate it from the new entry of appearance in Okla. Stat. tit. 12, § 2005.2, but no changes are made in the effect of filing it. In contrast to the previous entry of appearance in this section, the entry of appearance in Okla. Stat. tit. 12, § 2005.2 is mandatory and does not waive any defenses in Okla. Stat. tit. 12, § 2012(B) (1991)."
9. Okla. Stat. tit. 12 §2012(A)(1)(b) (emphasis added).
10. *Smith v. Lopp*, 2020 OK CIV APP 24, 466 P.3d 642, fn. 2 (relying upon *Young*, Court of Civil Appeals rejected the plaintiff's argument that the defendants' reservation of time waived the filing of a motion to dismiss for failure to state a claim).
11. See *McBee v. Forth et al.*, (Oklahoma County Case No. Oklahoma County CJ-2017-4515, filed Aug. 9, 2017); *McBee*, Canadian County Case No. CJ-2019-711, was refiled Nov. 19, 2019, pursuant to Okla. Stat. tit. 12 §100.
12. *McBee*, at fn. 12 (emphasis in original) (internal quotations removed).
13. *Id.*
14. *Id.*
15. *Am. Trailers, Inc. v. Walker*, 1974 OK 89, 526 P.2d 1150, 1154 ("Statements in a decision neither necessary to support the conclusion reached nor applicable to the situation are dictum, and not in any way controlling").
16. *Howard v. Webb*, 1977 OK 68, 570 P.2d 42, 45.
17. Okla. Stat. tit. 12 §2006 (B)(1).
18. See, e.g., *Gray v. Gray*, 1969 OK 125, 459 P.2d 181, 185.
19. *Powers v. Dist. Ct. of Tulsa Cty.*, 2009 OK 91, ¶4, 227 P.3d 1060, 1066, as corrected (Dec. 29, 2009).

Use of Focus Group Testing in Early Case Assessment: An In-House Attorney's Perspective

By Jennifer Castillo



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MANY ATTORNEYS, BOTH IN-HOUSE ATTORNEYS and those in private practice, consider focus group testing¹ almost exclusively for the “bet-the-company” cases: those cases that are easily identified as posing the most obvious legal, financial and reputational risk to the client. However, focus group testing is increasingly recognized as potentially useful for every type of case.²

Every case would benefit from the use of a focus group. Even the simplest case has strengths and weaknesses that can be explored. It is a forum for reality testing. It is too easy to become enamored with one’s own version of the case. Believing that jurors share your view of the case is dangerous.³

Focus groups allow in-house attorneys to test various aspects of their cases with a group of people with the attitudes and feelings a layperson may have about the various aspects of a case, including evidence, theme, exhibits and witnesses. “A huge incentive for focus groups is to unravel any latent problems or glitches the case may be hiding.”⁴ Identification of latent problems and glitches can be extremely valuable, especially early in the assessment and/or discovery phases. It provides the

in-house attorney an opportunity to explore and develop ways to present a problematic fact or witness in a more positive and persuasive way. For example, an in-house attorney may see the withdrawal of a regulatory notice of violation as evidence in the client’s favor, while potential jurors could suspect fraud or improper influence obtained with withdrawal rather than the merits of the client’s position. Focus groups also provide insight unique to those living in the venue of your case and evaluate facts from a nonlawyer perspective, both of which are aspects of an effective early case assessment.⁵ As in-house counsel managing a book of litigation, use of a focus group may seem counterintuitive due to the perceived time and cost of typical focus group testing. However,

utilizing a focus group early “can signal what should happen with the case. ... Preparing for the next step can save a client money.”⁶

CONDUCTING FOCUS GROUP TESTING

Focus groups used to determine the strengths and weaknesses of a case are most typically conducted using a “mini mock trial” format. The typical process of a mini mock trial involves the presentation of either a live or videotaped summary of the arguments of each side in the litigation. The participants, aka mock jurors, can also be provided with written documents comprised of a narrative summary of the main facts and a summary of each side’s arguments. Presentations are followed by a facilitated group discussion of the case. It is these

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discussions that often reveal the weaknesses and strengths of a case because they allow lawyers to discover the reasons behind mock jurors' reactions to both strengths and weaknesses. When faced with negative mock juror reactions, the focus group format provides an ideal opportunity to start reframing your case. When provided with positive feedback, the focus group format provides an opportunity to identify additional facts and arguments to strengthen your case.⁷

There are several ways in which a focus group can be conducted. You can pay a professional trial consultant to assemble the participants, organize the details such as location, help with the presentation of your case, provide feedback and analyze the result. You can pay for an online or web-based focus group. Finally, you can conduct a "do-it-yourself" focus group and use your staff to organize the details of the focus group(s) and gather participants while you present the case yourself and analyze results based on the feedback from the participants. If you are willing and able to partner with your outside trial team to conduct the focus group testing, you can lower the overall expense to your client. Because of the various options available, focus group testing can be tailored to meet the specific needs of your case while also staying within budgetary guidelines.

CONFIDENTIALITY IMPLICATIONS

In addition to concerns about the expense of focus group testing, in-house corporate lawyers and their clients often voice concerns about privilege and confidentiality.⁸ "Proper application" of the work-product doctrine⁹ and/or the attorney-client privilege¹⁰ should result in focus group testing being kept confidential.¹¹ Additionally, there are precautions in-house counsel can take to ensure confidentiality is preserved.

- 1) Outside Trial Counsel – The addition of outside trial counsel clearly associates any jury or litigation consultants that may be hired to assist in any way with the focus group to the trial team for purposes of the attorney-client privilege and the work-product doctrine.
- 2) Written Engagement Letters – In addition to written engagement letters for outside trial counsel, engagement letters are also

important for trial consultants. The engagement letter should clearly identify outside trial counsel and trial consultants as representatives of the trial counsel and contain a confidentiality provision requiring the consultants to only share research work product with those approved by outside counsel and/or the client on a need-to-know basis.¹²

- 3) Focus Group Participant Orientation and Confidentiality Agreements – "The best way to maintain privilege and protect the research process is to conduct a thorough orientation of the participants before any case-related information is shared, and to require every participant to execute a written confidentiality agreement. These agreements go to the intent of the parties and counsel and form the basis for arguing any disclosure by a focus group participant is unauthorized."¹³



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- 4) Rigorous Screening – Potential focus group participants should be rigorously and thoroughly screened to match the demographic composition of your trial venue.¹⁴ Potential participants should also be screened to identify participants who would not actually serve as a juror due to eligibility issues or hardship or because of a personal connection to the case.¹⁵ This screening should be done using a written, detailed screener during the recruiting process *and* immediately prior to the focus group exercise to further ensure there are no conflicts.¹⁶
- 5) Location, Location, Location – In most instances, focus group testing is ideally located in the actual trial venue. There may be some cases, however, in which an alternate location is desired or even necessary. For example, it may be difficult to recruit a sufficient sample size of participants who meet all the demographic requirements for a particular matter. Alternatively, the trial venue could be in a remote or relatively rural location in which everyone does business with your corporate client, or there has been a large amount of media coverage about the underlying incident, thus raising concerns about finding enough impartial residents and maintaining confidentiality.¹⁷

LIMITATIONS OF FOCUS GROUP TESTING

Although focus groups can provide the in-house lawyer with qualitative information useful in multiple phases of litigation, the tool does have its limitations. More specifically, focus groups do not accurately predict how individuals on a jury might vote. This is because the number of focus group participants needed to provide a large enough sample is generally not feasible for most litigants, especially in the early case assessment phase. Focus groups cannot tell you how widely a particular attitude or opinion is held in the community of potential jurors – only that an attitude or opinion exists in the venue. Focus groups also cannot establish an accurate value of a particular case.

CONCLUSION

Focus group testing – as part of the assessment, discovery or pre-trial phases – can provide unique information essential to strategy decisions, such as which cases in a litigation portfolio should be settled instead of taking to jury trial. While the expense of focus group testing may be cost prohibitive in many circumstances, there are ways in which the costs and expenses can be controlled, such as a do-it-yourself focus group conducted in partnership with outside trial counsel.

ABOUT THE AUTHOR



Jennifer Castillo is senior attorney and manager of litigation and claims at OGE Energy Corp. in Oklahoma City. She

received her J.D. from the OCU School of Law in 2002 and her LL.M. from the Baylor University School of Law in 2022.

ENDNOTES

1. A focus group can be defined as 1) people 2) assembled in a series of groups 3) possess[ing] certain characteristics 4) provide data 5) of a qualitative nature 6) in a focus discussion. *Uses of Focus Groups in Litigation Research*. As noted by the authors of *Uses of Focus Groups in Litigation Research*, this definition of a focus group, “loosely construed, describe[s] a jury quite well.” Such “simulated juries” can be convened to sit as a jury for a mock trial or for a focus group discussion.
2. *Focus Groups: You Can't Afford Not to Use Them*, Joseph Brophy.
3. *Id.*
4. *Use of Focus Groups*, p. 2.
5. *Effective Uses of “Do It Yourself” Focus Groups*, p. 4; See also, *In re Tex. Prison Litig.*, 191 F.R.D. 164 (W.D. Mo. 2000) in which the court affirmed a settlement agreement that was partly based on the results of focus group. The court also found the focus group to accurately reflect the attitudes and views of a real jury.
6. *Use of Focus Groups*, p. 5.
7. *Use of Focus Groups*, p. 6.
8. “Keeping Secrets – Protecting Privilege in Pretrial Research,” Kacy Miller, *The Jury Expert*, 2009, 21(2), 26-32.
9. The work-product doctrine, governed by a uniform standard in Federal Rule of Civil procedure 26(b)(3), provides that a litigant may not discover documents and tangible things that are prepared in “anticipation of litigation or for trial” by or for another litigant or its representative, including the other litigant’s attorney, consultant, surety, indemnitor, insurer or agent.
10. The attorney-client privilege protects confidential communications between a client and an attorney, or the attorney’s agents, for the purpose of obtaining legal advice or services from that attorney. The privilege belongs to the client and is customarily applied to communications to a lawyer and representatives of the lawyer, such as clerks, paralegals and administrative assistants. The privilege also extends to non-testifying experts, including jury consultants.
11. *In re Jefferson County Appraisal Dist.*, 315 S.W. 3d 229 (Tex. 2010) (holding information about a mock trial, including the jury consultant’s report, “goes to the heart of the work product doctrine and is not discoverable.”).
12. *Id.*
13. *Id.*
14. “Keeping Secrets – Protecting Privilege in Pretrial Research,” Kacy Miller, *The Jury Expert*, 2009, 21(2), 26-32.
15. *Id.*
16. *Id.*, “How to Preserve Confidentiality in Mock Trials or Focus Groups,” Jennifer Nemecek and Patricia Steele, *Litigation Insights*, Nov. 9, 2014.
17. “How to Preserve Confidentiality in Mock Trials or Focus Groups,” Jennifer Nemecek and Patricia Steele, *Litigation Insights*, Nov. 9, 2014.



2024 OBA President Miles Pringle: Welcoming Challenges, Embracing Change and Guiding the OBA into the Future

By Emily Buchanan Hart

GOING ON SIX YEARS, Oklahoma City-based attorney Miles Pringle has served on the OBA Board of Governors, but his involvement in bar committees and sections spans more than a decade – since his first year out of law school in 2010. This year, Mr. Pringle, who currently works as executive vice president and general counsel at The Bankers Bank in Oklahoma City, takes the reins as OBA president – an undertaking he is greatly looking forward to.

Mr. Pringle has already hit the ground running, engaging with and listening to members during his year as president-elect and establishing some major goals for the OBA in 2024.

FAMILY LIFE

Born and raised in Oklahoma City, Mr. Pringle attended preschool and then Westminster School through eighth grade, where he played basketball and volleyball, as well as playing baseball with a traveling team. He then attended Heritage Hall, where he was active on both the basketball and track teams.



Left: Miles as a toddler



Right: Miles and Andrea at 6 years old – the two have known each other since they were in preschool.

Opposite page: Mr. Pringle and his oldest son, Fischer

It was on his preschool T-ball team that he first met the love of his life, Andrea.

“We played T-ball together and went to school together from preschool through eighth grade,” he said.

The two lost touch after eighth grade but serendipitously met again a few years later.

“Andrea and I reconnected in early 2016 at a Preservation Oklahoma Inc. event,” he said. “We both ended up serving on the fundraiser committee. My friend told me I should ask Andrea out on a date. I said, ‘I’ve been wanting to do that since I was 6 years old.’”



Mr. Pringle and his wife, Andrea, dance at their wedding. They were married in 2018 at the Oklahoma Hall of Fame in Oklahoma City.

The rest is history. The couple married in 2018 and now have two young sons, 4-year-old Fischer and 2-year-old Harrison.

“They’re sweet, very fun, and this is a cute age,” Mr. Pringle said of his children. “They’re the best part of life.”

The family enjoys living in Oklahoma City, often walking to breakfast on the weekends, followed by a park or zoo visit.

A LEGACY OF LAWYERS

For Mr. Pringle, family is number one. In addition to his wife and children, he is also very close with both parents, Lynn and Laura Pringle, and his sister, Susanne – all lawyers.

“My sister was not just my older sister and my babysitter, but she was my biggest supporter growing up,” Mr. Pringle said.

Mr. Pringle received his bachelor’s degree from the University of Kansas, where he double majored in political science and history. An avid sports fan and an avowed “Roman history nerd,” he had briefly considered a career as a coach and history

teacher but instead decided to go straight to law school.

“I come from a long line of lawyers, and I have a great respect for the profession,” Mr. Pringle said. “I like to joke I had to go to law school to understand what my family members were all talking about.”



Above: Miles at the University of Kansas, where he was a member of the Phi Delta Theta fraternity

Right: Miles and his parents, Laura and Lynn Pringle, at the BOTAR Organization Ball in Kansas City while he was in law school



Mr. Pringle is a third-generation attorney and the seventh attorney in his family, having the opportunity to attend law school at the same time as his sister – different schools but just a year behind her.

Following his graduation from law school at the University of Missouri – Kansas City in 2010, he considered many job offers. But the one that was most appealing was right back in his hometown of Oklahoma City.

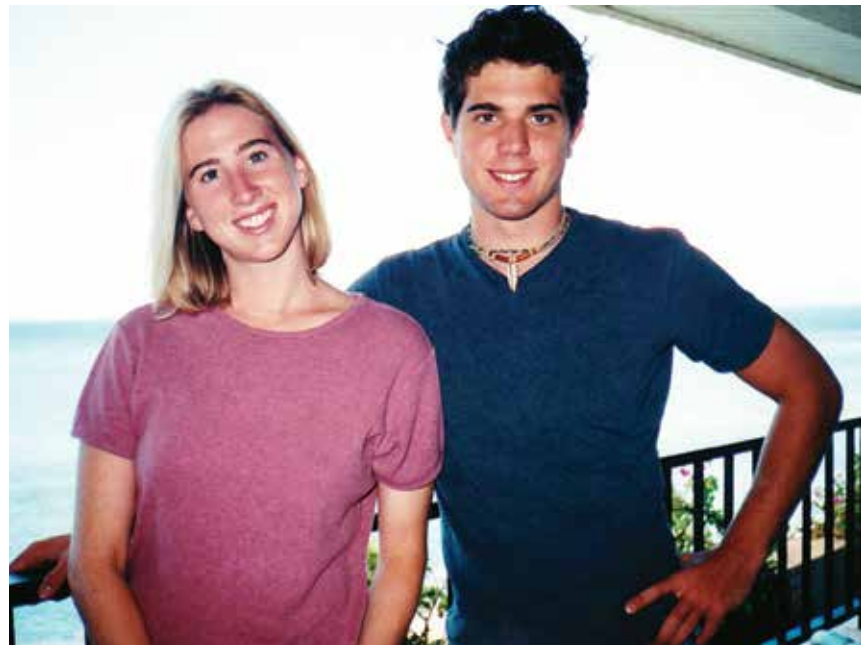
“In 1988, my parents had established Pringle & Pringle,” he said. “Theirs was the best job offer I received, and I worked with them for nine years. I’m very fortunate to have practiced with them.”

It was during his time at Pringle & Pringle that Mr. Pringle also met David Poarch, former OBA president and Norman-based attorney. At the time, Mr. Poarch was working as special counsel to the firm. Alongside Mr. Pringle’s parents, Mr. Poarch served as a mentor and is whom Mr. Pringle credits with encouraging him to get involved with the bar association.



Left: Miles was active on the track team, as well as the basketball team, during his high school years at Heritage Hall in Oklahoma City.

Below: Miles and his sister, Susanne, on summer vacation in 2000



Mr. Pringle at The Bankers Bank, where he serves as general counsel and executive vice president

GIVING BACK

Mr. Pringle has now worked at The Bankers Bank for nearly five years following his nearly decade-long stint at his parents' firm. While finding satisfaction and growth in his work, he has also found it important to give back to his bar association and his community from early on.

Fresh out of law school, he began serving on the OBA Financial Institutions and Commercial Law Section. He went on to serve on many other OBA committees, including the Legislative Monitoring Committee and the Membership Engagement Committee.

Mr. Pringle has also been involved in several other service organizations throughout the years, including his aforementioned service with Preservation Oklahoma, where he met his wife, and as a board member of Rainbow Fleet. He currently serves as a board member of the Rotary Club, the largest and oldest civic organization in Oklahoma.

“Work is a huge part of what we do, but it’s important to find other avenues to contribute,” Mr. Pringle said. “As a lawyer, you can kind of get trapped in a bubble. Serving keeps me connected to other things going on. I’m also pretty social, and being around people makes me happy.”

THE YEAR AHEAD

Mr. Pringle has outlined some major goals for the OBA for the upcoming year – ideas stemming from the results of the member survey conducted during his year as vice president on the Board of Governors, from conversations he’s had with attorneys across the state as well as in response to the changes that occurred during the COVID-19 pandemic.

First, the Annual Meeting this year will be a joint meeting with the Oklahoma Judicial Conference – a significant change that he hopes will be meaningful for OBA members.



The Pringle family enjoying a vacation at the beach, summer 2023.



The Pringle family – Andrea and Miles holding their two young sons, Fischer (left) and Harrison (right)

“I believe this will be an impactful meeting,” Mr. Pringle said. “There will be opportunities to establish good relationships between attorneys who don’t already know each other and give members the opportunity to connect with members of the judiciary. I would love to see some new faces.”

Second, a refreshed strategic plan for the OBA is in the works – this is the first time in nearly 20 years that the OBA has updated its strategic plan.

The third goal is an increase in OBA member dues.

“The last member dues increase was approved in 2004,” he said. “The financial stewardship has lasted a long time, but we need to stay relevant and maintain top talent, position ourselves for the changes coming. We want to make sure the bar is impactful in furthering the administration of justice.”

The final major goal is strengthening meaningful and positive connections with OBA members.

“Our society has become so digital we’ve lost a lot of connection,” he said. “I want us to focus on human connection, healthy engagement. It’s better for our clients, better for our relationships with other attorneys, to meet and talk to people in person.”

Although many significant changes have occurred and more are coming, Mr. Pringle has not shied away from the opportunity to serve. He is embracing these challenges with open arms and is ready for the opportunity to help guide the OBA into the future.

“We may see more changes,” he said. “This is a big moment of change in society, and artificial intelligence will accelerate that change – the legal field is adapting more to digital and technology changes. But while the application may change, as lawyers, our principles don’t.”

Ms. Buchanan Hart is the OBA assistant director of communications.



PRESIDENTIAL Q&A

Background

Born and raised in Oklahoma City. Married to Andrea, two young sons – Fischer and Harrison. Currently working as general counsel and executive vice president at The Bankers Bank in northwest Oklahoma City.

Education

Bachelor's degree from the University of Kansas, double major in political science and history; J.D. from the University of Missouri – Kansas City School of Law in 2010.

Do you have any role models who have influenced your life or work?

My parents, whom I worked with for nine years; past OBA President David Poarch; OBA Governor Angela Ailles Bahm, who is a terrific leader – I admire what she's done throughout her career; and my CEO, Troy Appling, who has taught me a lot about leadership.

Favorite OBA member benefit?

CLE – they put on some great programs.

Are there any other helpful resources the OBA offers that more attorneys should take advantage of?

Ethics Counsel – you have access to a great attorney who helps confidentially through tricky questions and situations.

What are the biggest issues you see facing Oklahoma attorneys today?

Overworked but not always working effectively. We have more tools than ever, but that pulls us in more directions than ever, so we are less focused.

How does the OBA help address these issues?

They are always providing education, articles and in-person CLE.

Best advice for a young attorney or for someone considering taking this path?

Get a good mentor! Having someone to ask questions or talk through problems is the best resource. I was fortunate to have my parents.

Best work-life balance tip for attorneys?

Learn to say no – attorneys want to help, want to feel like they are needed and tend to say yes to everything. You have to say, "I'm not going to answer emails or calls after this time unless it's super important." Also, don't take yourself too seriously.

What are some fun or interesting ways to get involved with the OBA?

You can write for the bar journal, help organize events with a committee, present a CLE session; there are so many ways to be involved.

Why is it important to get involved?

You get out of it what you put into it, and you can get something out of the OBA other than CLE: professional development, developing friendships in every corner of the state and developing your leadership skills.

Volunteers Who Guide Your Association



D. KENYON (KEN) WILLIAMS JR.
President-Elect
Sperry

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

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

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

What are your goals during your service on the OBA Board of Governors? My goal in every level of service for the Tulsa County and Oklahoma Bar Associations has been and remains to communicate to nonlawyers the high level of professionalism I have observed among our members during my 45 years of practice. As many have heard me say, Oklahoma lawyers are some of the finest people I have ever met. I also plan to continue to encourage our members to strive for ever greater professionalism, civility and service in our association and our respective communities.



AMBER PECKIO
Vice President
Tulsa

Background: My hometown is McAlester, but I moved twice a school year from the third grade until the seventh grade. Then, I went to high school in Savanna (south of McAlester), where I graduated. I have lived in Tulsa for the last 20 years.

Education: I graduated from Southeastern Oklahoma State University in 2000 with dual bachelor's degrees in economics and political science. I received my J.D. in 2003 from the TU College of Law and a mini-MBA from TU in 2007.

What are your goals during your service on the OBA Board of Governors? As vice president, I aim to encourage President Pringle to take time for the little moments in his presidency. Additionally, I intend to focus on our profession's mental health challenges and the support available through the Lawyers Helping Lawyers Assistance Program during my term.



BRIAN T. HERMANSON
Immediate Past President
Ponca City

Background: Born in Milwaukee, moved to Oklahoma in 1975. Married Ruslyn in 1981; we have two daughters: Brianna, an illustrator in Northampton, Massachusetts, and Charlcy, the director of music for Community Christian Church who lives

in Stillwater. My family and I raised and bred quarter horses for about 25 years before selling the ranch in 2017.

Education: B.A. in history and political science from Carroll College in Waukesha, Wisconsin; J.D. from the OU College of Law.

What are your goals during your service on the OBA Board of Governors? I would like to continue to stress professionalism and civility in how each of us practices law. While we may be fierce advocates for those we represent, we need to fully understand that we are bound by a code of professionalism and ethics that should guide us in all things we do both in and out of court.



WILLIAM LADD OLDFIELD
Governor – District No. One
Ponca City

Background: I grew up in Osage County. I am a member of the Osage Nation, and I currently serve as the chief judge of the Osage Nation Trial Court. I have a general practice law firm in Ponca City: Northcutt,

Clark, Oldfield & Jech. We are primarily focused on civil litigation, estate planning, probate, real estate, contracts, insurance litigation and corporate law.

Education: I have a bachelor's degree in mechanical engineering from OSU (2002) and a J.D. from the OU College of Law (2005).

What are your goals during your service on the OBA Board of Governors? I am looking forward to serving, meeting as many OBA members as possible and helping in any way I can.



JOHN E. BARBUSH
Governor – District No. Two
Durant

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

Oklahoma for law school, where I had the good fortune to meet my future wife. Moved from Edmond to Durant in January 2022 so that my wife, Judge Amy J. Pierce, could serve the Choctaw Nation of Oklahoma as the chief district court judge. We have two children, Ella and Mac. I serve as an assistant wrestling coach at Durant High School, and I have enjoyed golf and "lake life" since relocating to southeast Oklahoma.

Education: Bachelor's degree in business administration from Ambassador University before attending the OCU School of Law

What are your goals during your service on the OBA Board of Governors? To serve in such a way that the judges and attorneys who mentored and assisted me throughout my legal career would be proud.



S. SHEA BRACKEN
Governor – District No. Three
Edmond

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

and started practicing law. I work with Maples, Nix & Diesselhorst and primarily practice catastrophic injury and medical negligence cases. I have an amazing wife, Lindsay, and two wonderful daughters, Makenna and Teagan.

Education: Bachelor's degree from OSU in 2008; J.D. from the OCU School of Law in 2011.

What are your goals during your service on the OBA Board of Governors? To spread the word of the amazingness of the OBA and get OBA members more involved and engaged



DUSTIN E. CONNER
Governor – District No. Four
Enid

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

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

Education: Bachelor's degree from OSU in 2006; J.D. from the OCU School of Law in 2011

What are your goals during your service on the OBA Board of Governors? My goal this year is to attend as many local bar association events in my district as possible.



ALLYSON E. DOW
Governor – District No. Five
Norman

Background: I live in Norman with my wonderful husband and two sons. I am originally from Tulsa and attended both college and law school at OU. Boomer Sooner! My interests include spending time with family and friends,

cooking, occasionally exercising and playing mahjong.

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

What are your goals during your service on the OBA Board of Governors? This will be my last year to serve on the Board of Governors, and it has been such a fun experience for me. This upcoming year, I hope to get to know the other board members better and serve the attorneys of my district and state in a positive and meaningful way.



PHILIP D. HIXON
Governor – District No. Six
Tulsa

Background: I was born in Stroud (where both sets of my grandparents lived), but I grew up in Edmond. My dad was a barber in Edmond for 50 years before his death approximately a decade ago. My mom has

worked at the child development center at the church I attended as a youth for more than 40 years. I am a first-generation college graduate. I moved to Tulsa in 2001 after completing law school. My wife, Stacie, and I began dating during my tenure as chair of the Young Lawyers Committee of the Tulsa County Bar Association. We married the following year. We have one son and two rescue dogs. Our son began high school this year. The dogs are napping at home. Most of our free time is devoted to shuttling our son to his extracurricular activities and/or attending them.

Education: After graduating as valedictorian of Edmond Memorial High School, I obtained a bachelor's degree in business administration from Central State University. My master's degree in business administration and law degree were earned at OCU.

What are your goals during your service on the OBA Board of Governors? My goals during service on the Board of Governors, as they were during my recently completed year as president of the TCBA, are to improve the qualitative value of bar membership with a focus on interests common to all members, including, without limitation, promoting professionalism, preserving the rule of law and improving our profession's public reputation.



CHAD A. LOCKE
Governor – District No. Seven
Muskogee

Background: I was born and raised in Muskogee. However, I attended high school at Green Mountain Valley School in Waitsfield, Vermont. My dad was an attorney in Muskogee, and my mom worked as a

psychologist at the local Veterans Affairs hospital and outpatient clinic. My younger brother works for Southwest Airlines in Wichita, Kansas. My older brother is an attorney in Oklahoma City. After high school, I was a professional ski bum in Colorado, where I met my soulmate and best friend, Jennifer. We married in Crested Butte, Colorado, in 1999. Jennifer is a fourth-grade teacher at the University School at TU. Our three daughters provide continuous joy, pride and life lessons every day.

Education: After marriage, I graduated from Northeastern State University. I then attended law school at the University of Missouri-Kansas City School of Law.

What are your goals during your service on the OBA Board of Governors? I hope to improve the public perception of Oklahoma lawyers and continue working toward more meaningful, courteous and effective communication amongst members of our profession, both in and out of the courtroom.



NICHOLAS E. THURMAN
Governor – District No. Eight
Ada

Background: I grew up in West Texas but graduated from Weatherford High School in Oklahoma. After that, I attended Southwestern Oklahoma State University, where I played for the varsity basketball team. I

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

Education: I graduated with a bachelor's degree in history from Southwestern Oklahoma State University in Weatherford and then attended the OCU School of Law.

What are your goals during your service on the OBA Board of Governors? I hope to further the community's understanding and knowledge of an attorney's role, especially in a prosecutorial position, in seeking not only justice but a fair and equitable outcome that provides the best result for the victim, the community and the defendant.



JANA L. KNOTT
Governor – District No. Nine
El Reno

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

on appellate litigation. I previously chaired the OBA Appellate Practice Section and have served on the *Oklahoma Bar Journal* Board of Editors.

Education: I spent two years in Vernon, Texas, on a softball scholarship at Vernon Junior College, where I graduated with an associate degree. I finished my undergraduate education at OU and graduated with a bachelor's degree in sociology in 2008. I attended the OCU School of Law, where I earned my J.D. in 2011.

What are your goals during your service on the OBA Board of Governors? Get members involved, not just in the OBA but also in their local bar associations



ANGELA AILLES BAHM
Governor – At Large
Oklahoma City

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

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

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

What are your goals during your service on the OBA Board of Governors? To help educate our membership and the public on a variety of subjects, including the value proposition of our state bar



TIMOTHY L. ROGERS
Governor – At Large
Tulsa

Background: I grew up in Owasso and now live in Tulsa with my wife, Christa, and my two children, Charlie, who is six, and Caroline, who is four. I am an avid fan of Premier League soccer, and when I'm not chasing kids, I

enjoy cheering on the Tottenham Hotspur. We also wear a lot of orange in my house; "Go Pokes" was one of the first phrases uttered by both of my kids, and I've never been prouder. I am a shareholder at Barrow & Grimm and have been with the firm since law school. My legal practice concentrates primarily on business law with an emphasis on the construction industry. I advise and assist companies with litigation, strategy, risk management, contracts and transactions.

Education: I graduated from OSU with a Bachelor of Science in business administration in economics and from the TU College of Law with a J.D.

What are your goals during your service on the OBA Board of Governors? I am looking forward to connecting with members across Oklahoma and being an ambassador for the OBA and the many services it provides to the bar and our state.



JEFFERY D. TREVILLION JR.
Governor – At Large
Oklahoma City

Background: I was born and raised in Tulsa, where I graduated from Booker T. Washington High School. My father was a talented welder, and my mother retired from the City of Tulsa after 30 years of

service. I am the oldest of four – I have one brother and two sisters. I moved to Oklahoma City in 1999 to pursue a career as an accountant. I am married to Shana, and we have two children together: a 20-year-old daughter and a 15-year-old son who is a gifted pianist. Shana is a licensed professional counselor and a vocational rehabilitation counselor for the Department of Veterans Affairs. We are also active in our various social groups and our community.

Education: I majored in accounting, earned a bachelor's degree from Langston University and passed the CPA exam. I decided to make a career change and earned a J.D./MBA from OU.

What are your goals during your service on the OBA Board of Governors? My goals during my service on the Board of Governors include 1) continuing to advocate for access to justice for those who cannot afford legal services, 2) helping to move the needle on electronic filing in all judicial districts and 3) serving wherever I am needed.



LAURA RUTH TALBERT
Governor – YLD Chair
Oklahoma City

Background: I live in Oklahoma City with my partner, Ron Shinn.

Education: I received my bachelor's degree from Texas A&M University-Corpus Christi, my master's from John Jay College of Criminal

Justice in New York City and my law degree from the OU College of Law.

What are your goals during your service on the OBA Board of Governors? My goal during my tenure on the OBA Board of Governors is to continue to get young lawyers more involved in the bar.

What's Online



WANT TO LEARN MORE about your bar association? Visit www.okbar.org, the OBA's online headquarters. The website is a comprehensive and informative destination to manage your membership. Whether you're looking for a CLE program, the next LHL meeting, information about sections and committees or the handy online calendar, it's all there for you.

FOR MEMBERS

The OBA website's member resources include the OBA Classifieds, which were established in 2021 to offer online classified advertising, including judicial vacancies, employment opportunities, services and office space availability. Links to other bar-related news and OBA staff information are additional features.

The website is frequently updated with relevant information such as announcements, new bar journal issues, bar center closures,

CLE programs and much more. The calendar is a valuable resource with up-to-date events posted. It provides the date, time and location of events, and you can even add the event to your calendar directly from the OBA website.

Issues of the *Oklahoma Bar Journal* are also available on the OBA website. This includes issues from the current year, as well as archived issues from previous years. Access to the bar journal is invaluable as it provides helpful information on various areas of the law throughout the years.

The OBA has much more to offer members on the website. View all the member resources at www.okbar.org/members.

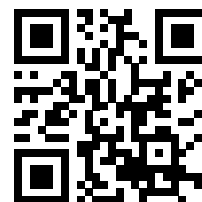
FOR THE PUBLIC

The website is also designed for public use with resources such as Oklahoma Find a Lawyer, a free public directory of Oklahoma attorneys, and Law for People, a page of free information and

resources provided by the Oklahoma Access to Justice Foundation and the OBA.

Resources also include Court Facts, information about the OBA, legal resources, OBA member license status verification and more. Learn more about what the OBA has to offer the public at www.okbar.org/public.

The website also houses portals for popular programs like the Oklahoma High School Mock Trial program and Law Day Contest information for students and teachers. The virtual headquarters for your OBA membership is at www.okbar.org. We are mindful of making it a great, user-friendly experience for you and a repository of the information you are tracking down.



OBA Awards Call for Entries

Make it Your New Year's Resolution to Submit Nominations by March 1

By LeAnne McGill

JUST AS THIS YEAR'S OBA Annual Meeting is moving up to July, the annual call for entries for OBA Awards is moving up for 2024 as well. As is our customary practice, these awards will be presented during the meeting – that means your nominations are being accepted right now.

Each year, the Oklahoma Bar Association proudly recognizes those lawyers who represent the best of the best in our profession, as well as those law-related organizations that support our members and the legal profession. Please help our association continue its legacy of recognition by nominating one of your worthy colleagues for a 2024 OBA Award.

Deserving individuals and entities stand out for their hard work in public service, leadership and service to our

profession. Do you know an outstanding lawyer or organization that exemplifies these ideals? I encourage you to look among your peers, search your legal associations and contact local bar members to seek out those who should be recognized for their efforts. The nomination process is very simple. It only takes a few minutes for you to fill out a nomination form for one of these awards.

The designated awards are listed below, and a historical list of award winners is online at <https://bit.ly/3zYOkFc>. Anyone can submit a nomination, and anyone can be nominated. No specific form is required, and the nominations can be as short as a one-page letter but cannot exceed five single-sided 8 ½ x 11 pages. You can email, fax or mail the nominations to the Awards Committee at the information below. The deadline for the nominations is Friday,

March 1, at 5 p.m. Visit www.okbar.org/awards for more information.

I hope you will make it your New Year's resolution to recognize a deserving Oklahoma lawyer by nominating them for a 2024 OBA Award. Please also resolve to spread the word to your colleagues and friends about the awards process and encourage them to submit a nomination by March 1. We are looking forward to a great group of nominees this year!

ABOUT THE AUTHOR



LeAnne McGill is an attorney in private practice in Edmond. She serves as the Awards Committee chairperson.

NOMINATION RULES AND TIPS

The **deadline is 5 p.m. Friday, March 1**, but get your nomination in EARLY! Nominations, complete with all supporting material, **MUST** be received by the deadline. Submissions or supporting material received after the deadline will not be considered.

Length of nomination is a maximum of five 8 ½ x 11-inch, one-sided pages, including supporting materials and the form, if used. No exceptions.

Make sure the name of the person being nominated and the person (or organization) making the nomination is on the nomination.

If you think someone qualifies for awards in several categories, pick one award and only do one nomination. The OBA Awards Committee may consider the nominee for an award in a category other than one in which you nominate that person.

Submission options (pick one):

- 1) email: awards@okbar.org (you will receive a confirmation reply);
- 2) fax: 405-416-7089;
- 3) mail: OBA Awards Committee, P.O. Box 53036, Oklahoma City, OK 73152.

Visit www.okbar.org/awards for the nomination form if you want to use one (not required), history of previous winners and tips for writing nominations.

AWARDS

OUTSTANDING COUNTY BAR ASSOCIATION AWARD – for meritorious efforts and activities

2023 Winner: Oklahoma County Bar Association

HICKS EPTON LAW DAY AWARD – for individuals or organizations for noteworthy Law Day activities

2023 Winner: Katheryn Bell, Oklahoma City

GOLDEN GAVEL AWARD – for OBA committees and sections performing with a high degree of excellence

2023 Winner: OBA Lawyers Helping Lawyers Assistance Program Committee

LIBERTY BELL AWARD – for nonlawyers or lay organizations for promoting or publicizing matters regarding the legal system

2023 Winner: Phil Frain, Edmond

OUTSTANDING YOUNG LAWYER AWARD – for a member of the OBA Young Lawyers Division for service to the profession

2023 Winner: Dylan D. Erwin, Oklahoma City

EARL SNEED AWARD – for outstanding continuing legal education contributions

2023 Winner: Mark S. Darrah, Tulsa

AWARD OF JUDICIAL EXCELLENCE – for excellence of character, job performance or achievement while a judge and service to the bench, bar and community

2023 Winner: Judge Daman Cantrell, Owasso

FERN HOLLAND COURAGEOUS LAWYER AWARD – to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession

Not awarded in 2023

OUTSTANDING SERVICE TO THE PUBLIC AWARD – for significant community service by an OBA member or bar-related entity

2023 Winner: J. Michael Miller, McAlester

AWARD FOR OUTSTANDING PRO BONO SERVICE – by an OBA member or bar-related entity

2023 Winner: Grant E. Kincannon, Altus

JOE STAMPER DISTINGUISHED SERVICE AWARD – to an OBA member for long-term service to the bar association or contributions to the legal profession

2023 Winner: Waldo Talmage Oden Jr., Altus

NEIL E. BOGAN PROFESSIONALISM AWARD – to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession

2023 Winner: Guy Palmer Clark, Ponca City (posthumous)

JOHN E. SHIPP AWARD FOR ETHICS – to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest ethical standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession

2023 Winner: Jon R. Ford, Enid

ALMA WILSON AWARD – for an OBA member who has made a significant contribution to improving the lives of Oklahoma children

2023 Winner: Bartlett A. Bouse, Woodward

TRAILBLAZER AWARD – to an OBA member or members who by their significant, unique visionary efforts have had a profound impact upon our profession and/or community and in doing so have blazed a trail for others to follow

Not awarded in 2023

INDIVIDUALS FOR WHOM AWARDS ARE NAMED

NEIL E. BOGAN – Neil Bogan, an attorney from Tulsa, died unexpectedly on May 5, 1990, while serving his term as president of the Oklahoma Bar Association. Mr. Bogan was known for his professional, courteous treatment of everyone he came into contact with and was also considered to uphold high standards of honesty and integrity in the legal profession. The OBA's Professionalism Award is named for him as a permanent reminder of the example he set.

HICKS EPTON – While working as a country lawyer in Wewoka, attorney Hicks Epton decided that lawyers should go out and educate the public about the law in general and the rights and liberties provided under the law to American citizens. Through the efforts of Mr. Epton, who served as OBA president in 1953, and other bar members, the roots of Law Day were established. In 1961, the first of May became an annual special day of celebration nationwide designated by a joint resolution of Congress. The OBA's Law Day Award recognizing outstanding Law Day activities is named in his honor.

FERN HOLLAND – Fern Holland's life was cut tragically short after just 33 years, but this young Tulsa attorney made an impact that will be remembered for years to come. Ms. Holland left private law practice to work as a human rights activist and to help bring democracy to Iraq. In 2004, she was working closely with Iraqi women on women's issues when her vehicle was ambushed by Iraqi gunmen, and she was killed. The Courageous Lawyer Award is named as a tribute to her.

MAURICE MERRILL – Dr. Maurice Merrill served as a professor at the OU College of Law from 1936 until his retirement in 1968. He was held in high regard by his colleagues, his former students and the bar for his nationally distinguished work as a writer, scholar and teacher. Many words have been used to describe Dr. Merrill over the years, including brilliant, wise, talented and dedicated. Named in his honor is the Golden Quill Award that is given to the author of the best written article published in the *Oklahoma Bar Journal*. The recipient is selected by the OBA Board of Editors.

JOHN E. SHIPP – John E. Shipp, an attorney from Idabel, served as the 1985 OBA president and became the executive director of the association in 1998. Unfortunately, his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief master. The OBA's Award for Ethics bears his name.

EARL SNEED – Earl Sneed served the OU College of Law as a distinguished teacher and dean. Mr. Sneed came to OU as a faculty member in 1945 and was praised for his enthusiastic teaching ability. When Mr. Sneed was appointed in 1950 to lead the law school as dean, he was just 37 years old and one of the youngest deans in the nation. After his retirement from academia in 1965, he played a major role in fundraising efforts for the law center. The OBA's Continuing Legal Education Award is named in his honor.

JOE STAMPER – Joe Stamper of Antlers retired in 2003 after 68 years of practicing law. He is credited with being a personal motivating force behind the creation of OUJI and the Oklahoma Civil Uniform Jury Instructions Committee. Mr. Stamper was also instrumental in creating the position of OBA general counsel to handle attorney discipline. He served on both the ABA and OBA Board of Governors and represented Oklahoma at the ABA House of Delegates for 17 years. His eloquent remarks were legendary, and he is credited with giving Oklahoma a voice and a face at the national level. The OBA's Distinguished Service Award is named to honor him.

ALMA WILSON – Alma Wilson was the first woman to be appointed as a justice to the Supreme Court of Oklahoma in 1982 and became its first female chief justice in 1995. She first practiced law in Pauls Valley, where she grew up. Her first judicial appointment was as special judge sitting in Garvin and McClain counties, later district judge for Cleveland County and served for six years on the Court of Tax Review. She was known for her contributions to the educational needs of juveniles and children at risk. The OBA's Alma Wilson Award honors a bar member who has made a significant contribution to improving the lives of Oklahoma children.



Oklahoma Bar Association
★ AWARDS ★



★ Nominations due ★

March 1

Fifteen awards to choose from, including those for lawyers, nonlawyers, organizations and bar associations. All nominations and supporting materials must be received by the deadline.

www.okbar.org/awards



JULY 9-12, 2024

— SAVE THE DATE — OBA ANNUAL MEETING

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**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!





The OBA wishes you a safe and happy New Year!

SAVE THESE DATES!

Jan. 19 | Swearing-in Ceremony for new officers
and members of the OBA Board of Governors

Feb. 2 | Legislative Kickoff

March 26 | OBA Day at the Capitol

May 1 | Law Day/Ask A Lawyer Day

July 9-12 | OBA Annual Meeting

Nov. 15 | Leadership Academy Graduation

New Year, Good Intentions

By Janet Johnson

THE BEGINNING OF A NEW year is a natural time for reflection and goal setting. For lawyers, it offers a unique opportunity to approach our practice with renewed purpose and positive intentions. As legal professionals embark on a fresh chapter, setting good intentions can pave the way for a more fulfilling and successful year in this demanding profession.

Cultivating a mindset of empathy and understanding is a powerful intention for any lawyer. In a profession often characterized by rigorous arguments and intricate legal strategies, it's easy to lose sight of the human element. This new year, legal practitioners can resolve to approach each case with empathy, acknowledging the unique challenges and emotions of their clients. By prioritizing compassion, lawyers not only enhance their client relationships but also add professionalism and civility to the profession.

Another valuable intention for the new year is a commitment to professional growth and learning. The legal landscape is constantly evolving, with new precedents, legislation and technologies shaping the practice of law. Lawyers can set the intention to stay abreast of these changes by engaging in continuing legal education and seeking opportunities for professional development. This could involve attending CLE programs or even presenting a CLE program, getting involved with sections and committees or looking for bar leadership opportunities. A dedication to ongoing learning ensures that lawyers



remain at the forefront of the profession and can provide the best possible representation for their clients.

I would be remiss to not stress the importance of work-life balance. Lawyers often face demanding schedules and tight deadlines, leading to burnout and stress. Setting the intention to prioritize well-being and establish a healthy work-life balance is crucial for long-term success. This may involve scheduling regular breaks, taking time for self-care and establishing boundaries to prevent professional obligations from encroaching on personal time. By fostering a balanced lifestyle, lawyers can enhance their overall happiness and effectiveness in their legal practice. If you find yourself needing any assistance in this area, please check out our Lawyers Helping Lawyers Assistance Program.

I will leave you with this: Starting the new year as a lawyer with good intentions involves a conscious

effort to infuse one's practice with empathy, a dedication to continuous growth and a focus on work-life balance. By setting these positive intentions, lawyers can create a foundation for a year marked by professional growth, personal well-being and a lasting impact on the lives of their clients. As the legal community embraces the opportunities of a new year, the ripple effects of these good intentions will undoubtedly contribute to a more resilient, compassionate and effective legal profession. Happy New Year!



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

FROM THE PRESIDENT

(continued on page 4)

We are making physical improvements to the main entrance of the Oklahoma Bar Center so that it is more accessible to those with disabilities. Our CLE Department produces and licenses quality content to keep our members current on legal developments and best practices.

This year, I have set out three main goals to accomplish. First is a robust and meaningful Annual Meeting. Accordingly, we have moved the meeting from November to July to be held in conjunction with the Oklahoma Judicial Conference, and we are promoting a business casual event to make everyone feel comfortable and welcome. This modification means that state court dockets will be clear, so there should be fewer conflicts. Also, joint events between the bar and the judiciary should assist the collegiality and professionalism of everyone involved in the administration of justice. I thank the Supreme Court and the Executive Committee of the Judicial Conference for helping make this change possible.

While remote learning opportunities for CLEs are important, it is essential that professionals meet in person to discuss legal issues and share experiences. We learn more and develop better relationships when we meet in person. According to the Brookings Institution, studies find “that online instruction resulted in lower student performance relative to in-person instruction.”² Affected students reported difficulty concentrating on work and “felt less connected to both their peers and instructors relative to their in-person peers.” Another article, published in the National Library of Medicine, found that “without the face-to-face component, learning and teaching became

a completely different experience for students and teachers.”³

I hope you are able to attend the Annual Meeting this year, which is scheduled for July 9-12 in Norman. If you are unable to attend, I strongly encourage you to attend another professional activity in person. You may get a lot more out of it than a virtual event.

The second goal for 2024 is a new strategic plan for the OBA. The last full strategic plan was adopted in 2005 and updated in 2010. It is time for the OBA to revisit its medium- and long-term plans. The OBA has been working toward a new strategic plan for a while. For example, in 2022, under Jim Hicks’ leadership, we conducted a thorough survey of the membership. Now is the time to put pen to paper.

The third goal is a member dues raise. It has been 20 years since the OBA last increased its dues in 2004. At that time, it was anticipated that the increase would suffice for five to seven years (or 2011). Thanks to the great stewardship of OBA staff leaders like John Morris Williams and Craig Combs, the OBA was able to stretch the need for an increase more than a decade longer than was originally anticipated.

According to online inflation calculators, \$275 in 2004 would equate to approximately \$445 in 2023. To be clear, I am not proposing that size of an increase. The Board of Governors will look at projections and make a decision based on quantitative information. But, like your lives and businesses, the OBA is not immune from inflation. We must retain talented employees, pay vendors and maintain a beautiful (but aging) building.

Additionally, we must plan for the future. As set out above, the OBA has more members over the

age of 80 than under 30. As such, the OBA is going to have to do more with less going forward and grow other sources of revenue, like CLE. However, we are looking at a physical cliff in the coming years. I believe it is necessary to get in front of the issue now rather than wait for it to crash on the organization like a tsunami.

It is a privilege to practice law in this state. That privilege has responsibilities, such as paying OBA dues to help administer, advance and regulate the practice of law. When I talk to other bar presidents around the country and discuss the need to raise dues, the reaction is often met with, “I don’t want to do that in my year as president,” with the connotation being that they will receive a number of attorney complaints. I respond that as leaders, we must do what we believe is necessary. More importantly, I have faith in Oklahoma attorneys. I have faith that they value their profession and want to uphold the high standards of practice in Oklahoma.

These are just some of the highlights of the ongoing issues for the OBA. Please visit the OBA or contact one of the members of the Board of Governors to learn how you can be more involved in your profession. I look forward to a great year in 2024. With your help, we will try to accomplish these goals and meet the responsibilities of the OBA as set out by the Oklahoma Supreme Court.

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Automated Document Assembly is Easy, Right?

By Jim Calloway

DECADES AGO, I ASSUMED that technology would soon advance to the point where automated document assembly would be fully incorporated in most law offices across the country. While great strides have been made in law office technology tools, and tools for automatically generating documents are much improved over what was available decades previously, many law firms still have not fully embraced automated document assembly.

Why is that? I can speculate.

- 1) Using a standard form as a starting point and using copy/paste plus some custom editing to create the final isn't terribly inefficient or error-prone. It is a major improvement from the typewriter age.
- 2) Automated document assembly involves investing time to set up systems that generate documents (or first drafts of documents) in minutes. The hourly billing model applied to minutes does not properly charge clients for the value of the document and is inadequate for the law firm to recover the time and money invested in creating and maintaining the system – not to mention

the responsibility and potential liability associated with any open client file. Flat fees for producing those documents are therefore strongly indicated, but converting to that system involves planning, time and money.

- 3) Creating the tools for automated document assembly for lawyers is more challenging than it might appear. I draw this conclusion from watching practice management solutions incrementally release tools to improve their document assembly processes. Legal documents are typically much more complex than other documents. The only automated doc assembly many types of businesses need is contact information for emailing offers and invoices. Businesses that sell primarily online have their e-commerce tool doing the sales and accounting records.
- 4) Investing in new technology is often a hard sell in law firms because of concerns it may impact revenue.

But AI tools have now changed the expectations. The name ChatGPT is perhaps not as

well-known as the name Taylor Swift, but most people have heard of it and other AI tools. More potential clients will come to expect that lawyers will use appropriate tools to deliver services for less.

I also note that Comment 5 to Oklahoma Rules of Professional Conduct Rule 1.5 on fees ends with the admonition, "A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures."¹ Certainly that rule was not drafted with artificial intelligence tools in mind. But the rationale may apply.

PRIMER: THE BASICS OF DOCUMENT ASSEMBLY

Given the tools available today, here's how document creation should occur within law firms. You need your clients' data set in a digital form that can be exported, as well as document templates to receive the data to create the new document.

The law firm has a collection of client data in digital format.

When documents need to be created, that data set is matched with the template that results in a document with all the client's information correctly inserted. Sometimes, this document is final and only needs to be reviewed by the responsible attorney;



sometimes, this document is a starting point with more editing and drafting needed.

Lawyers who use WordPerfect are sometimes referenced as being behind the times. But in terms of the ability to automatically create documents and save and reuse data for those documents, it was light years ahead of Microsoft Word back in the day. For years after Microsoft Word won the market-share war, Word trainers were doing training on how to use mail merge to automate your documents. Sophisticated automation back then required purchasing a third-party add-on. As Microsoft Word evolved and left behind its “Clippy” phase, it became a much more powerful document assembly tool. But, as always, with power comes complexity.

THE DATA AND THE TEMPLATES

Practice management software tools can assist you in managing all your clients’ information. It is certainly the most logical place to store client data that will be reused. If you don’t subscribe to a practice management solution and are shopping for one, pay attention to its features that can export the data to generate documents.

There is a concept in utilities delivery called “the last mile.” Whether it is electrical service or internet service, if the final link in the data transfer process is weak, then the entire process is weak. For many law firms, the last mile is taking the client data that law firms now hold in digital form and seamlessly utilizing it to create documents – or at least the first draft of documents. Every law firm has a system to create

documents. Some use forms and edit these with this client’s information. Some have a digital system where client information is stored and use copy/paste to put it into the form. Some have Word templates rather than Word documents as a starting point.

Many law firms make good use of Word templates. Others only use the standard template. The data is one part of the equation. Creating the templates that the data will be exported to is also a critical step in the automation process. Luckily, creating basic templates is a fairly simple process in Microsoft Word.

Most readers have a document creation process already in place. But some of the steps are copy/paste, which does allow room for error, although not as much as retyping the data. And copy/paste will require a bit more time.

Creating a Custom Template in Word

If your law practice hasn't created any templates, I suggest you begin with a simple one that will be immediately useful – your stationery or letterhead. While your firm may or may not still purchase printed letterhead for correspondence, much correspondence is created on the computer and is sometimes never printed. Since most people will be looking at copies of the correspondence anyway, more firms are opting to cease or limit purchasing letterhead.

- 1) Open the Word document you wish to use to create the template. In this case, the soft letterhead you use.
- 2) Select *File – Save As* (with some versions, select *Save a copy*).
- 3) Type a name for the new template in the *File Name box*. (It is okay to include the word "template" in the file name.)
- 4) Click on *Word Template* in the *Save as type* list. If your document contains macros, you will instead click on *Word Macro-Enabled Template*.
- 5) Click *Save*

When you open your new template, you will have a new "Document 1," including all the information included in the template. This eliminates the

possibility someone will accidentally edit the form document because you are not using a form.

Microsoft provides good instructions on creating templates.² Editing a simple template is easy. The instructions are at the same link as the above.

These simple templates will speed up starting a new document. But before you can use them in automated document assembly, each item of your data needs to be tagged (e.g., <ClientFirstName>, <ClientLastName>), and a field for each type of data needs to be created in your template. Keeping track of all these labels is important. It is poor practice to use a simple term like *Name* because there will be many different types of names in the system. Somewhere, the firm must maintain a list of every one of these names. Otherwise, two people will use the same variable for different items, and no one will know until a generated document has incorrect information.

I wouldn't want to mislead anyone. Creating powerful templates to be used in automated document assembly can be challenging. It is more like coding than word processing. You need to know about using styles, auto paragraph numbering and spacing, and using paragraph glue coding like "keep with next" and "keep lines together." It requires good planning and a fair amount of time investment.

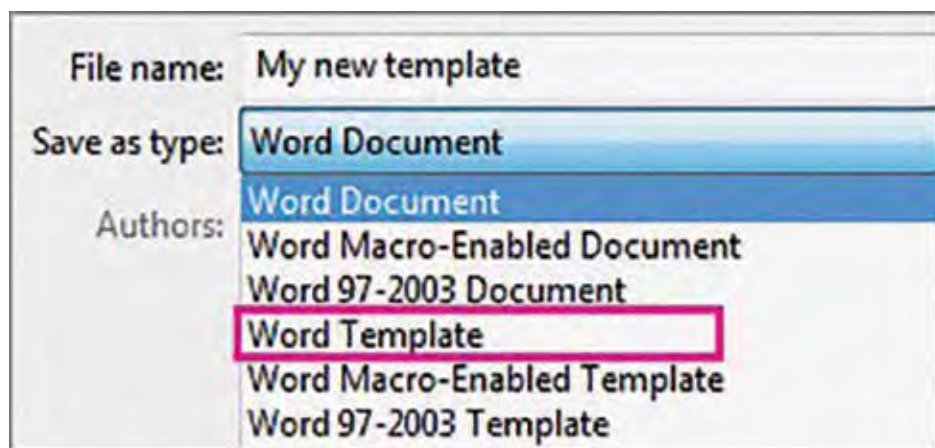
THIRD-PARTY APPS AND TOOLS

Because template design can be challenging, many firms opt to invest in third-party software to assist them. These programs combine the powerful tools in Word that are sometimes challenging to access with some more friendly menus and other assistance.

At the 2023 Solo & Small Firm Conference, Kenton Brice, director of the Law Library at the OU College of Law, did a very impressive demonstration of Doxserá from TheFormTool.³ It builds a table at the bottom of each document with two columns, one for the name of the variables and the other column blank for your data. And once you use it to prepare one document for a client, you can save that data so you can reuse it the next time you need to prepare a document for that client. TheFormTool is affordable with a free limited license or a 30-day trial of Doxserá for \$1.⁴ A lifetime license for TheFormTool PRO is \$89, and Doxserá is \$149 per user for an annual subscription.

TheFormTool's CEO spoke at the 2023 Access to Justice Summit and has been consulting with the Oklahoma Access to Justice Foundation on some automation ideas.

Other well-regarded document automation programs include Woodpecker,⁵ which was acquired by MyCase in 2021, and Lawyaw,⁶ which was acquired by Clio in 2021. While these services will be designed to work well with the parent company's service, they are also available for subscription for those who do not use the PMS. Woodpecker's starter subscription is \$39 per month, and it offers a free trial. Lawyaw is \$67 per month for its Word automation packages and also offers various state court forms to be auto-completed in an additional package. They also offer template design services at \$150 per hour.



DON'T FORGET QUICK PARTS

If the idea of doing the above seems to be something you do not want to commence today, some limited automation can be done using Outlook Quick Parts. Highlight an entire document or just some paragraphs from a document. From the Insert menu, select *Quick Parts* and then *Autotext* and give your quick part a name and save it to the Quick Part Gallery. Then, to insert the text into a document, go to *Quick Parts*, then *Autotext* and select the desired quick part from the drop-down menu. Quick Parts also works in Outlook. More information is provided by Microsoft.⁷

CONCLUSION

- 1) If you have never created a template before, start with the letterhead (aka stationery) on every computer in the office. Make sure everyone knows how it works.
- 2) Appreciate that the change to automated document assembly begins with saving all of your client information in digital format. Your practice management software package is the most logical place for that to be organized. If you have a cloud-based project management software, you likely do not pay extra for tech support. Contact the company for their aid on this automation.

- 3) For those who have not yet taken these steps, it is important to think about organizing your client data digitally to be reused in the future.

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.

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Meeting Summary

The Oklahoma Bar Association Board of Governors met Nov. 1, 2023.

REPORT OF THE PRESIDENT

President Hermanson reported he attended the Southern Conference of Bar Presidents in West Virginia as well as meetings with Executive Director Johnson on pending OBA issues and the Annual Meeting. He also communicated and met with Director of Administration Brumit on Annual Meeting issues, prepared for the Annual Meeting and attended various events in conjunction with the meeting, including the Wednesday morning CLE session and the OU College of Law Luncheon. He worked on appointments, finalized arrangements for the President's Awards and is working on his final column for the December issue of the *Oklahoma Bar Journal*.

REPORT OF THE PRESIDENT-ELECT

President-Elect Pringle reported he worked on appointments, prepared for the Annual Meeting and attended the Southern Conference of Bar Presidents in West Virginia. He chaired a meeting of the Strategic Planning Committee and attended a public hearing for the OBA budget.

REPORT OF THE VICE PRESIDENT

Vice President Williams reported he transmitted the October professionalism moment to all the county bar presidents,

coordinated additional CLE presentations for county bar associations, revised and finalized the Professionalism Committee's written materials for its professionalism CLE at the Annual Meeting, coordinated and hosted the CLE panel's preparation session and assisted in the CLE presentation during the Annual Meeting. He also virtually attended the October Strategic Planning Committee meeting and assisted in finalizing the assigned goal. He supplied President-Elect Pringle with a recommendation from the Tulsa County Bar Association for the Board of Editors and attended the Nov. 1 morning segment of the Annual Meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the Strategic Planning Committee meeting, the Southern Conference of Bar Presidents in West Virginia, the public hearing on the OBA budget and the Audit Committee meeting. She planned and prepared for the Annual Meeting, including attending multiple meetings, and had conversations with attorneys on ongoing litigation involving the OBA. She attended the Annual Meeting and the OCU School of Law Luncheon, where she presented awards to law students.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Hicks reported he attended the Southern Conference of Bar Presidents in West Virginia, the Tulsa County Bar Association Golf Committee meeting and an address by Oklahoma Attorney General Gentner Drummond at OU Health's Schusterman Center in Tulsa.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Bench and Bar Committee meeting, led the Audit Committee meeting and attended the Oklahoma County Bar Association Delegate Caucus meeting, where she heard from the Board of Governors at-large candidates. **Governor Barbush** reported he co-sponsored and presented at the Durant High School Speech and Debate First Annual Ethics Day. He also attended the Lawyers Helping Lawyers Assistance Program Committee meeting at the Annual Meeting.

Governor Bracken reported he helped plan and attended a Military Assistance Committee CLE program and attended a Military Assistance Committee meeting. He also attended a Legislative Monitoring Committee meeting, the OCU School of Law Luncheon, the Annual Luncheon, the Oklahoma Bar Foundation reception and the Diversity Awards Dinner. **Governor Conner** reported he attended the Garfield County Bar Association Meeting and the Audit Committee

Governor Shaffer Siex reported the Access to Justice Committee met with Access to Justice Foundation Executive Director Katie Dilks and said there is an open call for volunteers with many volunteer opportunities available.

meeting. **Governor Dow** reported she attended the Oklahoma County Bar Association Family Law Section meeting, the OBA Family Law Section meeting and the Cleveland County Bar Association monthly meeting. **Governor Hilfiger** reported he attended the Audit Committee meeting and various sessions at the Annual Meeting, including the Law Day Committee meeting.

Governor Knott reported she reviewed articles for the Board of Editors meeting and had coffee with one of the candidates for the at-large position to visit about the Board of Governors' schedule and responsibilities. She also attended the OCU School of Law Luncheon. **Governor Rogers** reported he attended the Clients' Security Fund Committee meeting and the Audit Committee meeting. He attended Oktoberfest and an Oklahoma

City Thunder game with the Tulsa County Bar Association. He also attended the Annual Meeting and the TU College of Law Luncheon. **Governor Smith** reported she toured Marland Mansion with her fellow board members and attended the OBA Diversity Awards Dinner, the OCU School of Law Brennan Lecture and the Health Law Section panel discussion and business meeting at the OBA Annual Meeting. **Governor Thurman** reported by email he attended the OBA Annual Meeting, met with one of the candidates for the at-large position on the Board of Governors to discuss the responsibilities and duties of a member of the Board of Governors and appointed a new treasurer for the Pontotoc County Bar Association. **Governor Vanderburg** reported he conducted a training program on municipal court procedures for Ponca City and

attended the Oklahoma Association of Municipal Attorneys Board of Directors meeting, the Oklahoma Municipal Judges Association Board of Directors meeting and a day-and-a-half seminar for the Oklahoma Municipal Judges Association, where he also gave a training presentation aimed at judges on the implementation of rewritten legislation; the presentation will be used in multiple forums. He also reported on the status of forms related to court-ordered financial obligations. **Governor White** reported he presented the professionalism moment for the Tulsa County Bar Association.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Shaffer Siex reported she attended the Access to Justice Summit, met with Oklahoma Access to Justice Foundation Director Katie Dilks to follow up on the Downward Debt Spiral Study and attended the Annual Meeting. She attended the YLD happy hour for new bar admittees in Tulsa, which was co-sponsored with the Tulsa County Bar Association YLD, reviewed the 2024 YLD Board of Directors election and drafted an article for the December issue of the *Oklahoma Bar Journal*. She also prepared for the presentation of the 2023 Outstanding Young Lawyer Award to Dylan Erwin and worked on the 2023 OBA YLD Board of Directors awards.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported on the status of pending 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.

BOARD LIAISON REPORTS

Governor Shaffer Siex reported the **Access to Justice Committee** met with Access to Justice Foundation Executive Director Katie Dilks and said there is an open call for volunteers with many volunteer opportunities available. Governor Conner reported the **Awards Committee** will meet Nov. 17 to launch the 2024 awards cycle and discussed the accelerated committee timeline due to the summer Annual Meeting next year. Governor Ailles Bahm reported the **Bench and Bar Committee** is involved in planning for 2024. She also said the **Lawyers Helping Lawyers Assistance Program Committee** is continuing to move forward in its work, including making improvements to the LHL hotline to better assist members in crisis. The committee continues to discuss partnering with the LHL Foundation. Governor Barbush said the **Cannabis Law Committee** is developing a joint CLE with the Family Law Section. He also reported the committee has expressed interest in becoming a section. Governor Rogers said the **Clients' Security Fund Committee** met Oct. 18 and is continuing to review a high number of claims. He also said the **Professionalism Committee** held its CLE during the Annual Meeting, and he praised its engaging panel discussion. Governor Smith said the **Diversity Committee** was amid final preparations for the Diversity Dinner to be held the next day. Past President Hicks said the Strategic Planning Committee would be meeting later that day

and had completed its initial task of compiling preliminary reports. Governor Hilfiger said the **Law Day Committee** would meet the following day. Vice President Williams said the **Membership Engagement Committee** would meet the following day. Governor Bracken said the **Military Assistance Committee** would host its CLE later that day. He also said the committee is looking at structural changes to the Heroes program.

PROFESSIONALISM MOMENT

President Hermanson discussed the importance of kindness and graciousness to both members of the bar and nonmembers alike.

REPORT FROM AUDIT COMMITTEE AND PRESENTATION AND APPROVAL OF 2022 AUDIT REPORT BY SMITH CARNEY

The board passed a motion to accept the Budget Committee's recommendation to approve the 2022 Audit Report.

REQUEST TO INCREASE ALTERNATIVE DISPUTE RESOLUTION SECTION DUES

The board passed a motion to approve the section's proposed dues increase.

PRESIDENT-ELECT'S APPOINTMENTS

Oklahoma Bar Journal Board of Editors – The board passed a motion to approve the reappointment of Melissa DeLacerda, Stillwater, to a one-year term as chairperson, expiring Dec. 31, 2024. The board also passed a motion to approve the reappointment of David E. Youngblood, Atoka, District 2, to a three-year term beginning Jan. 1, 2024, and expiring Dec. 31, 2026. The board also passed a motion to approve the appointment of Martha Rupp Carter, Tulsa, District 1, to a

three-year term beginning Jan. 1, 2024, and expiring Dec. 31, 2026.

Board of Medicolegal Investigations – President-Elect Pringle reappoints Angela C. Marsee, Arapaho, to a one-year term, expiring Dec. 31, 2024.

LEGAL INTERNSHIP COMMITTEE RULE CHANGE REQUEST

The board passed a motion to endorse the committee's request to clarify whether a law student may participate in the Licensed Legal Internship Program without being enrolled in a specific internship program. The clarification would be provided by a change to Rule 6.1, which governs the program. The request advances to the Supreme Court for consideration of the rule change.

OBA COMMITTEE REALIGNMENT

The board passed a motion to merge the Member Services Committee with the Membership Engagement Committee.

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 date for the January Board of Governors meeting has changed to Thursday, Jan. 18, and the swearing-in ceremony for OBA officers and new board members will take place Friday, Jan. 19, in the Ceremonial Courtroom, State Capitol, Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in December, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held Thursday, Jan. 18, in Oklahoma City.



ONE ASSOCIATION MANY OPPORTUNITIES

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

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



Meet 2024 OBF President Allen Hutson



Allen Hutson

Law School: Oklahoma City University School of Law

Graduation Year: 2010

Current Employer: Crowe & Dunlevy and as a shareholder in the Labor & Employment Group

Location: I'm from Marlow, so I tell everyone I work in a tall building in downtown Oklahoma City.

Above: The Hutson family attends a Chicago Cubs game at Wrigley Field.

Why did you decide to be a lawyer? I always looked up to my uncle, Doug Jackson, who is an attorney in Enid; I thought it would be neat to follow in his footsteps. Practicing law also seemed like it would be easier than farming. It is most days.

What is one thing you're glad you tried but would never do again? I'm a pretty big chicken, so I generally avoid risky situations or ingesting something too exotic. I will certainly never tube behind a boat driven by some of my college buddies again.

Are there any social norms that completely baffle you? Where do I start? I'm certainly baffled that some kids have never experienced a really good sunburn because they would rather play on an iPad than go outside. Or maybe their parents are just better at monitoring the application of sunscreen.

What is your biggest pet peeve with modern technology? Zoom. Teams. Any other technology that allows folks to avoid one-on-one interaction. I get it. These communication platforms make things more efficient and were certainly necessary during COVID, but I'm afraid we may end up with a generation that can't effectively communicate in person. I really sound like a grumpy old man. Next, I will be telling everyone to get off my lawn.

What is on your bucket list? Well, I hope to spend as much time with my family and friends as the good Lord allows. Outside of that, I would like to go to a Ryder Cup in Europe so that I can chant, "USA! USA! USA!" (perhaps with a cold beer in one hand).

Explain the leadership roles you hold in professional and/or community settings and why these responsibilities are important to you. This is going to sound bad, but I have a 10-, 8- and 5-year-old, so I have limited some of my involvement and focused my attention solely on the good work the Oklahoma Bar Foundation does for the courthouses and people of Oklahoma. The OBF is the best-kept secret in Oklahoma, and it is important to me to help change that.

What would you tell current law students and young associates about the importance of professional and civic responsibility? Being a lawyer has its good days and bad days. But you will never have a bad day when you are using your skills as a lawyer to help someone who needs it. Some of your most gratifying cases will be the ones where you get a hug and a thank you at the end.

What are your goals as the 2024 OBF board president? The OBF is in the best shape it has ever been in. It has nothing to do with me. The executive leadership and Trustees over the last few years have worked tirelessly to ensure the long-term success and viability of the OBF. My goal is to continue the upward trajectory and identify people and programs across Oklahoma that need the OBF's help. The OBF has resources, and we intend to use them to help as many Oklahomans as we can.

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Partners Advancing Justice



Partners Advancing Justice

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



Community Partners for Justice

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



Legacy Partners for Justice

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

More Ways to Support the OBF



Cy Pres

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



Memorials & Tributes

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



Unclaimed Trust Funds

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



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Ringling in the New

By Laura Ruth Talbert

ON BEHALF OF THE OBA Young Lawyers Division, let me be among the first to wish you a happy New Year! It is truly an honor and a privilege to serve as the YLD chair, and I could not be more excited for what the new year holds.

As the curtain falls on the bygone year, we find ourselves standing at the threshold of a new era, ushering in the promise of fresh beginnings and untapped potential. The transition to new leadership invites us to reflect on the accomplishments of the past year while embracing the opportunities that lie ahead. It is a moment to express gratitude for the foundations laid by our previous leaders and to set our sights on an even brighter future in 2024.

The YLD's accomplishments last year leave much to reflect on, thanks to my predecessor's tenacious leadership. If you know Caroline Shaffer Siex, you know she is the very definition of a leader. Caroline simply gets the job done, regardless of what it takes. With Caroline at the helm, the YLD had an excellent 2023. It would take the entire bar journal to recap everything Caroline did throughout the past year, so I'll focus on just a few highlights instead. She was instrumental in coordinating YLD CLE in 2023, something that hadn't been done in several years. Under her leadership, the YLD put on another Wills



Tulsa area YLD members, led by Caroline Shaffer Siex, connect with new admittees during the YLD happy hour event.

for Heroes event, which allowed many first responders and service members and their families to get some much-needed estate planning in place at no cost to them. Caroline also ramped up the YLD's involvement with new lawyers after their admission

ceremony, organizing happy hours and events in multiple locations across the state. All in all, the YLD had a great 2023 because – frankly – Caroline wouldn't have it any other way. From the bottom of my heart, thank you for your outstanding leadership, Caroline.

Last year's accomplishments have provided a sturdy platform for continued growth and progress within the YLD in 2024. While there are several events we're working on and are excited to share with you in the future, there are a few priorities that I would like for the YLD to emphasize and promote throughout the year: tolerance, civility and mental health.

TOLERANCE

At the end of last year, Oklahoma County District Judge Richard Ogden spoke at the OBA Diversity Committee's annual Diversity Awards Dinner about the need for ensuring that the Oklahoma County Bar Association was a welcoming and inclusive organization for its members, and his words stuck with me. I strongly believe that the YLD can play a unique role in promoting tolerance in the bar. Please hear me – being tolerant never means that someone needs to compromise their viewpoints or personal beliefs. To me, tolerance instead means accepting and welcoming people, even when you don't share the same viewpoints or personal beliefs as those people. Regardless of your perspectives, it is troubling that people characterize and demonize those who have viewpoints different from their own. In 2024, let's focus on truly listening before acting. The more tolerant we can be, the better advocates we can be for ourselves, our colleagues and our clients.

CIVILITY

Civility goes hand-in-hand with tolerance, and one way of expressing tolerance is by being civil to everyone – particularly to those with whom you do not agree. I believe that most members of our bar work very hard to exhibit politeness and courtesy in their endeavors with others. But having said that, we are bombarded every day with images of people who seem to suggest that politeness and courtesy are a sign of weakness or that the way to get things accomplished quickly is by being a discourteous "bulldog." Let me suggest that the most effective attorneys are those who can advocate for their clients politely, in an analytical fashion, without the need for histrionics. We've all had bad days and lost our cool at some point, but even when that happens, I appreciate it when my adversary can show me some grace and remain civil, and I strive to do the same when the roles are reversed.

MENTAL HEALTH

Our profession is challenging regardless of how you use your law license. Given those challenges, our mental health is constantly under attack. Thankfully, a lot of the stigmas associated with mental illnesses are fading, but even in the absence of outdated stereotypes about mental health and wellness, keeping yourself mentally healthy is a constant

struggle. I welcome suggestions for how we can promote and encourage mental health among all lawyers, not just those who fall within the YLD.

In conclusion, this new year, like all others before it, marks a significant chapter in the ongoing story of the Oklahoma Bar Association and the YLD. We stand on the shoulders of the achievements of the past, and with optimism in our hearts, we look toward a future filled with possibilities. Embracing these transitions, actively involving the community and fostering a culture of inclusivity, tolerance and civility will form the foundation and allow us to shape a year that reflects the strength of our unity and the richness of our shared aspirations.

Ms. Talbert is a lawyer in Oklahoma City and serves as the YLD chairperson. She may be contacted at lrtaibert@gmail.com.

FOR YOUR INFORMATION

NEW OBA BOARD OF GOVERNORS OFFICERS AND MEMBERS TO BE SWORN IN JAN. 19

Oklahoma Supreme Court Chief Justice M. John Kane IV will swear in Miles Pringle of Oklahoma City as OBA president on Jan. 19 at the state Capitol Supreme Court Ceremonial Courtroom. New officers to be administered their oaths of office will be Vice President Amber Peckio of Tulsa, President-Elect D. Kenyon Williams Jr. of Sperry and Past President Brian T. Hermanson of Ponca City. New board members to be sworn in are Philip D. Hixon of Tulsa, Chad A. Locke of Muskogee, William Ladd Oldfield of Ponca City, Jeffery D. Trevillion Jr. of Oklahoma City and OBA Young Lawyers Division Chair Laura Ruth Talbert of Oklahoma City.

COURT OF CIVIL APPEALS ELECTS 2024 LEADERSHIP

Judge Deborah B. Barnes has been elected to serve as chief judge, and Judge Robert Bell has been elected to serve as vice chief judge of the Court of Civil Appeals of the state of Oklahoma for 2024. The following have been selected to serve as presiding judge for their respective divisions: Barbara Swinton has been elected to serve as presiding judge for Division One of the Court of Civil Appeals, Oklahoma City Division. Jane P. Wiseman has been elected to serve as presiding judge of Division Two of the Court of Civil Appeals, Tulsa Division. E. Bay Mitchell III has been elected to serve as presiding judge of Division Three of the Court of Civil Appeals, Oklahoma City Division. James R. Huber has been elected to serve as presiding judge for Division Four of the Court of Civil Appeals, Tulsa Division. These positions are each one-year terms that began Jan. 1.

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.



FEB. 15 MCLE DEADLINE

The deadline to earn your required credit for 2023 was Dec. 31. The deadline to report your earned credit or a qualified exemption for 2023 is Feb. 15. Unless you are reporting an exemption, the minimum annual requirement is 10 general credits and two ethics credits, for a total of 12 credits. All credit

must be OK MCLE approved. Please let us know how we can help you. Visit www.okmcle.org for more information.

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, Jan. 15, for Martin Luther King Jr. Day and Monday, Feb. 19, for Presidents Day.



THE BACK PAGE: YOUR TIME TO SHINE

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

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

Are you 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.



OBA INDIAN LAW SECTION ANNOUNCES G. WILLIAM RICE MEMORIAL SCHOLARSHIP WINNERS

The Oklahoma Bar Association Indian Law Section has awarded a total of \$18,000 in scholarships to six law students through the annual G. William Rice Memorial Scholarship awards. The 2023 winners are:



*Roselin Buckingham,
OCU School of Law*



*Mekko Factor,
OU College of Law*



*JoAnne Lee,
University of California,
Davis School of Law*



*Alexa Old Crow,
OCU School of Law*



*Madison Perigo,
TU College of Law*



*Cael M. Staton,
OCU School of Law*

G. William Rice was an Indian law practitioner, professor and co-director of the Native American Law Center at the TU College of Law, who passed away in 2016. Two awards of \$5,000 and four awards of \$2,000 were presented at the Indian Law Section's annual meeting held Nov. 1 during the OBA Annual Meeting. The scholarships are intended to defray the costs of bar examination preparation. Recipients must demonstrate academic merit and a commitment to practicing Indian law in Oklahoma.



LHL DISCUSSION GROUP HOSTS FEBRUARY MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Feb. 1 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Feb. 8 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet Feb. 22 at the first-floor conference room of the Oil Center, 2601 NW Expressway.

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.

**NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT
OF LYNDON C. TAYLOR, SCBD # 7550
TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION**

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., ch. 1, app. 1-A, that a hearing will be held to determine if Lyndon C. Taylor should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **WEDNESDAY, JANUARY 10, 2024**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

**NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT
OF KIM REED, SCBD # 7552
TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION**

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., ch. 1, app. 1-A, that a hearing will be held to determine if Kim M. Reed should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **FRIDAY, JANUARY 12, 2024**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF AMY LYNN MCTEER, SCBD # 7575 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., ch. 1, app. 1-A, that a hearing will be held to determine if Amy Lynn McTeer should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **WEDNESDAY, JANUARY 24, 2024**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

LEGAL INTERNSHIP RULE AMENDMENT 6.1(E)

By Trent Baggett, Chair, Legal Internship Committee

February 2018 Rule 5.1(d) and Interpretation 98-3 were amended to show that a Licensed Legal Intern only needed to be participating in an approved law school internship instead of enrolled in an approved law school internship to meet eligibility requirements.

An intern questioned an inconsistency found in Rule 6.1(e) which stated that enrollment in an approved internship was required to avoid termination. On September 20, 2023, the Legal Internship Committee voted to amend Rule 6.1(e) and Interpretation 2022-1 to bring the rules into agreement. The OBA Board of Governors approved the change on November 1, 2023. The Oklahoma Supreme Court issued an order on December 11, 2023, approving the amendments.

RULE 6 Term of Limited License

Rule 6.1 Termination of the Limited License

The limited license shall terminate automatically when:

- (e) For any reason a Licensed Legal Intern is no longer enrolled **participating** in an approved law school internship program without having completed the requirements for graduation. ~~A Licensed Legal Intern need not be enrolled in such a course for summer sessions or vacation periods.~~

Interpretation

2022-1 For the purposes of Rules 2.1(a), 2.1(e), 4.2, and 5.1(d)(1), **and 6.1(e)** while each law school may impose more stringent requirements than these rules, the only “enrollment” required for certification of law student participation in an approved law school internship program is academic enrollment in a law school program leading to a Juris Doctor Degree.



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ON THE MOVE

Taylor A. Burke and **Nicole Mathews** have joined the Tulsa law firm of Baum Glass Jayne Carwile & Peters. Mr. Burke practices in the areas of complex estate, trust and business litigation, probate, guardianships, estate planning, family law and political-related matters. He has a statewide practice and has been involved in many notable cases in state and federal court during his 17-year career. He received his J.D. from the TU College of Law in 2006 and is active in the Hudson-Hall-Wheaton American Inn of Court and numerous other community-, education- and church-related volunteer positions. Ms. Mathews was admitted to the bar in September and has since been admitted to each Oklahoma federal district court and the 10th Circuit Court of Appeals. She is a member of the Council Oak/Johnson-Sontag American Inn of Court. Ms. Mathews earned her J.D. with highest honors in 2023. She practices in the areas of contract litigation, business transactions, probate, medical malpractice and other complex litigation with an emphasis on research and writing.

John Settle was selected as general counsel for the Oklahoma Department of Veterans Affairs. Starting in 2018, he served as a chief assistant attorney general at the Office of the Oklahoma Attorney General. Early in his career, he served as an Oklahoma assistant district attorney in two Oklahoma prosecution districts. He also served on the OBA YLD Board of Directors for several years before he and his wife, Paula, moved their family to Pawnee County, Kansas, to manage one of his family member's community newspapers. In July 1995, Mr. Settle was appointed by Kansas Gov. Graves as the county attorney of Pawnee County, where he served the community as its chief law enforcement officer and county counselor for 24 years. In January 2017, he moved to Hutchinson, Kansas, where he served as the senior assistant district attorney of Reno County, Kansas, until he accepted the position with the Oklahoma Attorney General's Office.

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 March issue must be received by Feb. 1.

James Franklin Davis of Oklahoma City died Sept. 20. He was born March 7, 1933, in Eufaula. He graduated from OU, where he was a member of Phi Gamma Delta, with his bachelor's degree in accounting. Mr. Davis received his J.D. from the OU College of Law in 1957. **He enlisted in the Oklahoma National Guard and served in the Judge Advocate General's Corps in Fort Smith, Arkansas, for 18 months during the Berlin Crisis.** Mr. Davis practiced at the law firm of Andrews Davis for more than 50 years in the areas of estate and tax. He served on the OU Bizzell Memorial Library board and the OU College of Law Board of Visitors and was a deacon, elder and trustee at Westminster Presbyterian Church. He was a founding board member of Westminster Day School, a founding board member of the Westminster Church Foundation and a member of the 100 Club, which supports families of fallen policemen and firemen. Memorial contributions may be made to the OU College of Law, the Westminster Presbyterian Church Foundation or the Westminster Day School.

Larry L. Field of McKinney, Texas, died March 24, 2022. He was born Aug. 20, 1937, in Liberal, Kansas. Mr. Field earned his bachelor's degree from OSU and his J.D. from the OU College of Law in 1963. He practiced in Guymon for 42 years, starting with Grester LaMar, which later became Tryon, Field, Sweet & Petty. In 1985, he established his own firm, Law Offices of Larry L. Field PC, where he practiced until his retirement in 2006.

Charles S. Holmes of Sag Harbor, New York, died March 28. He was born Dec. 29, 1944, in Bayshore, New York. Mr. Holmes graduated from Pennsylvania State University and received his J.D. from the TU College of Law. He began his career at Cities Service Co. in Tulsa as a research engineer and patent lawyer. He eventually became a partner at Doyle, Holmes, Gasaway, Green & Harris in Tulsa and was a member of the American Bar Association. Mr. Holmes collaborated with his brother in the chemical and refining industries to form CHART Industries Inc., which was honored as Best in State in the *Plain Dealer* 100 in 1997. He was named Ernst & Young's Ohio Entrepreneur of the Year in 1996 and served on the Stony Brook Southampton Hospital board and the Harvard Medical School Endocrinology Advisory Board. He was a member of the Southampton Bath & Tennis Club, Westchester Country Club, East Hampton Golf Club and Metropolitan Club. Memorial contributions may be made to the Michael J. Fox Foundation for Parkinson's Research.

Robert Lewis Jackson of Kirkwood, Missouri, died Feb. 11, 2023. He was born Sept. 18, 1940. He received his bachelor's degree from Yale University and his LL.M. from Yale Law School and the New York University School of Law. Mr. Jackson taught tax law at the NYU School of Law, clerked for Judge William Fay of the U.S. Tax Court and practiced tax law in St. Louis for more than 50 years. He also operated a cattle ranch in Oklahoma. Memorial contributions may be made to The Nature Conservancy, the Ethical Society of St. Louis or a charity of your choice.

William G. Kerr of Oklahoma City died July 4. He was born Oct. 18, 1937. He received his J.D. from the OU College of Law. Mr. Kerr was chair emeritus and a founding trustee of the National Museum of Wildlife Art in Jackson, Wyoming. Memorial contributions may be made to the National Museum of Wildlife Art.

Gerald G. Knight of McLoud died April 10. He was born Sept. 18, 1929, in Dill City. **He was drafted during the Korean War in 1951 and served in the U.S. Army for two years until 1953, serving at Fort Hood, Texas; Fort Knox, Kentucky; Fort Bliss, Texas; and Fort Sill.** He graduated from OCU with his bachelor's degree in 1955. Mr. Knight briefly worked at an accounting job with U.S. Gypsum Co. in Sweetwater, Texas, before moving back to Oklahoma. He received his J.D. from the OCU School of Law in 1960. Mr. Knight worked as an insurance adjuster for Farmers Insurance for five years. He opened his own law practice in 1966, practicing for more than 50 years. Additionally, he was involved in real estate as a broker and founded his own oil and gas company. Mr. Knight was a member of the American Legion for more than 50 years and, with his wife, cofounded Christian Friends to Others and associated with missionaries in the Philippines, India, China and Mexico. He assisted in legal work for many new churches and ministries in several states. Memorial contributions may be made to any local church.

James Ellwood McCright of Oklahoma City died Nov. 6. He was born Oct. 6, 1943, in Walker, Iowa. He graduated from the University of Northern Iowa in 1968. **Mr. McCright was inducted into the U.S. Army after graduation and completed basic training at Fort Bliss, Texas. He served as a personnel specialist/personnel clerk for the 573rd Personnel Service Company, processing between 500-600 soldiers returning from overseas each day. He was promoted to specialist E-5 less than a year after being inducted and was honorably discharged at the rank of E-5 on Feb. 20, 1970. Mr. McCright received the Army Commendation Medal for meritorious service while stationed at Fort Bragg. He enlisted in the U.S. Army Reserve in Waterloo, Iowa, serving two years before transferring to Fort Snelling, Minnesota, where he served as a personnel service specialist. He was honorably discharged at the rank of E-6 on April 29, 1981, having served eight years in the reserves. Mr. McCright earned his J.D. from the OCU School of Law in 1993 and practiced for 40 years before working at OSU as a risk management specialist for three years. He then returned to practice law and coach. He coached various sports for more than 40 years throughout his career, including basketball, track, football and baseball.**

Joe Bailey McMillin Jr. of Rancho Mirage, California, died Sept. 24. He received his J.D. from the OU College of Law in 1968.

William G. Odell of Denver died July 18. He was born Aug. 15, 1931, in Sapulpa. He graduated from the OU College of Law in 1954 and began working at Humble Oil Co. in Denver. He was a founding partner of the law firm of Poulson, Odell & Peterson and became integrated into the oil and gas industry in Denver. His proudest honors included being named Landman of the Year by the Denver Association of Professional Landmen and being inducted into the Western Energy Alliance's Rocky Mountain Hall of Fame in 2014. Memorial contributions may be made to the Alzheimer's Association or a charity of your choice.

Alan Albert Pason of Oklahoma City died Aug. 29. He was born June 4, 1942, in New York City. His family moved to Tulsa, and he went on to graduate from TU. **Mr. Pason served in the U.S. Army Armored Division in Fort Knox.** Following his service, he received his J.D. from the TU College of Law in 1969. He began his career at the Department of Justice in the Antitrust Division. He worked on several high-profile antitrust cases and served as chief of the Dallas Field Office until his retirement in 2002. Mr. Pason dedicated his life to public service and charitable causes.

Gary George Prochaska of Oklahoma City died June 28. He was born Aug. 8, 1951, in Berwyn, Illinois. He graduated with a bachelor's degree in chemistry from Carroll University in Waukesha, Wisconsin, where he had an athletic scholarship in wrestling. He received his J.D.

from the OU College of Law in 1976. He began his legal career at the Oklahoma Attorney General's Office and practiced in the area of worker's compensation. Since 2010, he worked at the law firm of Laird Hammons Laird. Memorial contributions may be made to the ALS Association of Oklahoma.

Charles Harold Purdy of San Antonio died Oct. 27. He was born Nov. 12, 1931, in San Antonio. He graduated from Baylor University with his master's degree in economics. **Mr. Purdy joined the U.S. Air Force and was stationed in Montana.** After his service, he graduated from the University of Texas School of Law in 1960 and worked for Phillips Petroleum Co. for 30 years.

Joseph William Streatly of Oklahoma City died Oct. 12. He was born Feb. 15, 1953, in Oklahoma City. He graduated from OU, where he became involved in politics and served as the student body president during his sophomore year. He received his J.D. from the OU College of Law. Mr. Streatly began his career at Pritchett and Schnetzler, practicing in the area of employment law. In 1995, he joined the Oklahoma Department of Human Services in the Office of the General Counsel. He retired in 2016 after serving for 21 years. He remained involved in his community, leading a group to prepare and serve spaghetti at his church, volunteering with Oklahoma Lawyers for Children and reading to children in an afterschool program.

William B. Thompson of Hillsboro, Texas, died Sept. 15. He was born July 8, 1941, in Oklahoma City. Mr. Thompson attended OU on an academic scholarship and was a member of Pi Kappa Alpha. He received his J.D. from the OU College of Law in 1965. He served as a lieutenant detailed to the Judge Advocate General's Corps at Fort Holabird, Maryland, until 1967. He practiced law for 44 years with licenses in Oklahoma, New York, Michigan, Illinois, Hawaii and Texas. He worked for a Wall Street law firm and as legal counsel for corporations including S.S. Kresge (later Kmart Corp.), Pullman Inc. and Robert Bosch Corp. He later worked in small business litigation and on civil rights cases in state and federal courts. Mr. Thompson was a member of the University Club of Chicago and the Economic Club of Chicago. Since 1990, he developed the "Loophole Bill" brand promoting brief, amusing summaries of oddball law cases. Memorial contributions may be made to the Boys & Girls Club of Hill County or a charity of your choice.



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When Inns of Court, Mindfulness and Our Obligations Intersect

By Collin Walke

SHE WAS A HOMELESS 14-year-old living at a shelter. After sitting through a 45-minute class on mindfulness with only a few outbursts, she asked if she could speak with me when we were done. After the supervisor assented and walked out of the room, the young lady began to tell me of the abuse she had experienced at the hands of her parents. It was an absolutely horrific account of something none of us should ever have to live through. And yet, here was a young teenager who should have been out experiencing the world and instead was experiencing years of trauma.

This chance encounter was a result of a local nonprofit tour sponsored by the Ruth Bader Ginsburg American Inn of Court, of which I have been a member for

more than a decade. Each year, our inn collects donations for charities, and this year, our chosen organization was a local nonprofit that houses homeless youth. When we dropped off our donations, the executive director gave us a tour and added at the end, “We’re always looking for volunteers.”

I started publicly preaching the benefits of mindfulness in 2019 after training for nearly 20 years. While I had worked with traumatized participants before, they were all adults. I had never considered offering such training to youths. To be fair, this was due in part to the fact that mindfulness requires a certain amount of discipline that many young people lack – or at least I did at that age (my teacher has been a monk since he was 11, so obviously, I may have been the problem).

Sure enough, after I had called to suggest the possibility of spending the summer working with their youth, the counselor advised, “We’d be happy to try, but we’ve tried that before, and it didn’t work very well. These aren’t the type of children who sit still well.”

“Aha! Not a problem at all!” I responded. You see, many people confuse *mindfulness* with *meditation*. They are not the same thing. Moreover, many people are under the misconception that meditation is required to be mindful. It’s not. Meditation just helps us to learn to be mindful. And so I was able to spend this past summer working with 8-14 youths every week on mindfulness – and the longest they ever spent “meditating” was five minutes (and they did it quite well, I might add).

My point is the world is hungry for our gifts and skills, whatever they may be. Inns of court are fantastic ways to share our unique bailiwicks with our colleagues, but we can’t forget that our sphere of influence doesn’t end at the courthouse. So the next time your inn gets involved with an organization that has a need, don’t hesitate to reach out and see what you can do to be part of the solution.

Mr. Walke is an attorney and mediator in Oklahoma City.



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