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THE OKLAHOMA BAR Journal

Volume 95 — No. 2 — February 2024



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THE OKLAHOMA BAR Journal

contents

February 2024 • Vol. 95 • No. 2

THEME: ESTATE PLANNING

Editor: Evan Taylor

FEATURES

- 6 CORPORATE TRANSPARENCY ACT: WHAT IT IS AND HOW IT AFFECTS ESTATE PLANNING ATTORNEYS
By CHANTELE HICKMAN
- 12 LAID TO REST: MAKING A CLEAR PLAN FOR HOW YOUR CLIENT'S REMAINS ARE TO BE DISPOSED
By DARCY N. WORTH
- 16 PLANNING FOR PEOPLE WITH SPECIAL NEEDS
By TRAVIS SMITH
- 22 LONG-TERM CARE PLANNING FOR OKLAHOMA'S FARMERS AND RANCHERS
By TYLER R. BARRETT

PLUS

- 28 OKLAHOMA'S AGRICULTURAL LAW
By BRENDON S. ATKINSON
- 34 2024 OBA OFFICERS AND NEW BOARD MEMBERS TAKE OATHS
- 36 LEGISLATIVE MONITORING COMMITTEE PREPARES FOR NEW SESSION
By SHANDA MCKENNEY
- 38 OBA LEADERSHIP ACADEMY: SHAPING THE NEXT GENERATION OF BAR LEADERS
By LORI RASMUSSEN
- 40 APPLICANTS FOR FEBRUARY 2024 OKLAHOMA BAR EXAM

DEPARTMENTS

- 4 FROM THE PRESIDENT
- 44 FROM THE EXECUTIVE DIRECTOR
- 46 LAW PRACTICE TIPS
- 50 ETHICS & PROFESSIONAL RESPONSIBILITY
- 52 BOARD OF GOVERNORS ACTIONS
- 56 OKLAHOMA BAR FOUNDATION NEWS
- 58 YOUNG LAWYERS DIVISION
- 60 FOR YOUR INFORMATION
- 62 BENCH & BAR BRIEFS
- 64 IN MEMORIAM
- 67 EDITORIAL CALENDAR
- 72 THE BACK PAGE



PAGE 28 – Oklahoma's Agricultural Law



PAGE 34 – New Officers and Board Members Take Oaths

We Want You!

By Miles Pringle

WHETHER OR NOT YOU TAKE ADVANTAGE of everything, you get a lot out of your OBA membership. The CLE Department puts on high-quality programming. The communications team and Board of Editors create and curate high-quality publications. The practice management professionals negotiate discounted rates on great services that can help you run your law office. Just to name a few.

First and foremost, however, admission to the OBA grants the privilege of practicing law in Oklahoma. Perhaps we take it for granted from time to time, but that is an awesome and time-honored opportunity we all have worked hard to earn. It benefits us, our clients, our families and hopefully our communities and our systems of justice and governance as well.

Hard work goes into administering the practice of law. The OBA general counsel and her team investigate all matters of alleged misconduct or incapacity

of any lawyer reported. The MCLE Department maintains members' continuing legal education records. The OBA ethics counsel answers ethics questions for members and monitors the Diversion Program.

Bar associations are an integral part of the legal system in the United States. In the mid-1800s, bar associations were formed to help eradicate unprofessional attorney behavior, address local government corruption and create higher educational guidelines for lawyers. Our Oklahoma Bar Association was originally created in 1904 by the merger of the Oklahoma Territory and Indian Territory bar associations.

While the OBA has talented employees to run day-to-day operations, the OBA has always needed the help of its members to effectively

carry out its mission. Remember, the OBA is much more than a recordkeeping entity or a prosecutor's office. As set out by the Oklahoma Supreme Court, the OBA has many more obligations, such as maintaining the practice of law, high ideals of integrity, learning, competence and public service.

Those tasks need the participation and support of OBA members. So, I ask you, are you contributing? In exchange for your ability to practice law, are you actually working to improve the practice of law for the public interest?

I will note that this does not necessarily mean participation in OBA groups – although I hope it does to some extent. The Supreme Court was clear in its rules creating and controlling that part of the OBA's mission is "to encourage the formation and activities of local bar associations." This is one of the reasons the OBA Board of Governors endeavors to visit with local bar associations around the state. I also believe this includes organizations like inns of court or helping in other capacities.

The OBA does need your participation. There are so many ways to get involved. There are more than 20 committees and 30 sections. We would love to see you at an event – particularly the Annual Meeting this July 9-12 at the Embassy Suites in Norman.

Perhaps it is your time to join the Board of Governors. There are four governor positions open as well as the role of president-elect, which must be filled by a lawyer from Tulsa County. Please note that because the Annual Meeting is moved up this year, leadership nominating petitions are due earlier – Wednesday, May 8.

In sum, the OBA wants you. Your voice and your talents are being requested. Are you going to answer the call?



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Corporate Transparency Act: What It Is and How It Affects Estate Planning Attorneys

By Chantelle Hickman

AS ESTATE PLANNING ATTORNEYS, we are tasked with helping people consider what options they have for passing their legacy on to their loved ones. We all know that every client is different and has specific needs and goals. For example, some clients may come to you with interesting family dynamics, such as a child with special needs, a child with a drug addiction problem or a family that cannot get along. Maybe the client has a significant amount of money in an individual retirement account, and you must advise them on the income tax consequences their loved ones may face when they inherit that account.

One particular issue that we may face as estate planning attorneys is planning for clients who own a business. These clients may need assistance passing their business on to the next generation as they are ready to retire, or they may need assistance planning to help their family avoid probate and be able to continue to run or sell their business easily if they pass away. Furthermore, you may be creating different types of business entities, such as a limited liability company or family partnership, as a part of an estate planning strategy for a client. However, a new federal law, the Corporate Transparency Act, will affect the services we provide when dealing with these clients and their entities.

The Corporate Transparency Act (CTA) was effective as law in January 2021.¹ However, the law did not become fully implemented until Jan. 1, 2024.² The overall purpose of the law is to require businesses to report to the Financial Crimes Enforcement Network of the United States Department of the Treasury (FinCEN) about who has an ownership interest in a business. Many business owners are going to be required to file a report with FinCEN. This is of particular importance to estate planning attorneys who may be creating business entities for clients or assigning business interests to trusts they are creating because this will trigger a need to file a report with FinCEN.

HISTORY

The CTA was included within the National Defense Authorization Act, so many of us may not have realized that this law was coming down the pipeline.³ U.S. Representative Mike Rogers, the lead Republican of the House Armed Services Committee, stated the National Defense Authorization Act is a “bipartisan and bicameral agreement that makes the investments our military needs to maintain overmatch with China – from boosting deterrence to securing our supply chain this legislation demonstrates strength in the face of China’s threats.”⁴ According to FinCEN’s fact sheet about the CTA:

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Illicit actors frequently use corporate structures such as shell and front companies to obfuscate their identities and launder their ill-gotten gains through the United States. Not only do such acts undermine U.S. national security, they also threaten U.S. economic prosperity: shell and front companies can shield beneficial owners' identities and allow criminals to illegally access and transact in the U.S. economy, while disadvantaging small U.S. businesses who are playing by the rules.⁵

The editorial notes on the CTA also reference money launderers layering business structures "much like Russian nesting 'Matryoshka' dolls."⁶ From these comments surrounding the passage of the CTA, one can see that the intent behind the legislation is to provide FinCEN with beneficial ownership information so that it can investigate if a company is merely a shell company engaging in illegal activity. Therefore, access to information submitted to FinCEN is limited to federal and law enforcement agencies for civil or criminal investigations.⁷ Entities may also authorize the release of the information to financial institutions to assist with customer due diligence requirements.⁸

Although the CTA went into effect in January 2021, there were still many questions that needed to be answered about whether reporting beneficial ownership information to FinCEN would actually work and what would be required to be reported. After a comment period, FinCEN released the final rules for the CTA on Sept. 30, 2022, which answered a lot of questions.⁹ These are a great reference if you

want to dig deeper into the CTA. However, this is just one of "three reporting rulemakings planned to implement the CTA."¹⁰

As part of the CTA, FinCEN was also required to design a reporting form and a Beneficial Ownership Secure System (BOSS) to securely store the beneficial ownership information.¹¹ The reporting form must be submitted online. You can either fill out the PDF form available online to later submit online or use the online filing system FinCEN has created.¹²

REPORTING REQUIREMENTS: WHOSE INFORMATION GETS REPORTED?

The main point of the CTA is to provide FinCEN with information on beneficial owners of companies and company applicants. Although this seems like a simple requirement, one must carefully analyze who is required to report, who is considered a beneficial owner of the reporting company and company applicant for the reporting company, what information you must report on the beneficial owner and company applicant, and what triggers the need for additional reporting.

Reporting Companies

If you are advising estate planning clients who own a business entity or advising clients to create certain types of entities, it is important to determine whether their entity is considered a "reporting company" under the CTA and required to make a report to FinCEN. The CTA includes many different types of entities in the definition of a reporting company. Specifically, the CTA defines a reporting company as:

A corporation, a limited liability company, or other similar entity that is—

- (i) created by filing if a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or
- (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.¹³

Based on this definition, there will be numerous entities nationwide that will be required to report to FinCEN. There are many different types of business entities that are formed with the secretary of state: corporations, limited liability companies, nonprofit corporations, limited liability partnerships and limited partnerships.¹⁴

However, there are 23 listed entity types that are not required to file a report with FinCEN.¹⁵ The exceptions are primarily types of entities in areas of business that are already reporting to and monitored by other government agencies, such as insurance producers that are "subject to supervision by the insurance commissioner or a similar official agency of a State; and has an operating presence at a physical office within the United States,"¹⁶ entities registered with the Securities Exchange Act of 1934,¹⁷ credit unions,¹⁸ etc.

In its final rule, FinCEN declined to delve deeper into defining reporting companies. For example, one commenter raised concern that a sole proprietor filing a document

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If you are advising estate planning clients who own a business entity or advising clients to create certain types of entities, it is important to determine whether their entity is considered a ‘reporting company’ under the CTA and required to make a report to FinCEN.

with the secretary of state to obtain a “doing business as” or other trade name could be subject to the rule’s reporting requirements.¹⁹ In response to concerns, FinCEN reiterated that the “only relevant issue for the purposes of the CTA and the final rule is whether the filing ‘creates’ the entity.”²⁰ FinCEN went on to state that it may consider issuing further guidance in the future if necessary.²¹ If you are assisting clients with forming entities as part of your estate planning practice or strategies, it will now be important for you to consider whether you 1) need to create an entity under the secretary of state and 2) if you do create an entity with the secretary of state, whether you have triggered the need to file a report with FinCEN. Furthermore, if you are assisting probate or trust administration clients where an asset of the estate or trust is a business entity, you will need to consider if there is a change in beneficial ownership that triggers the need to make a new report. The rest of this article will take a deeper dive into these issues.

Beneficial Ownership

After determining whether an entity is considered a reporting company under the CTA, one must next determine who is a beneficial owner of the reporting company so that you can gather the necessary information on each beneficial owner for the FinCEN report. The CTA defines a beneficial owner as someone who directly or indirectly “exercises substantial control over the entity” or owns at least 25% of the entity.²² The final rules put out by FinCEN give four factors for determining if someone exercises substantial control over a reporting company: 1) the person “[s]erves as a senior officer of the reporting company;” 2) the person “[h]as authority over the appointment of any senior officer or a majority of the board of directors (or similar body);” 3) the person “[d]irects, determines, or has substantial influence over important decisions made by the reporting company;” and 4) the person “[h]as any other form of substantial control over the reporting company.”²³

When a trust owns an interest in an entity, a deeper analysis is required to determine who is the beneficial owner. Thankfully, the final rules give guidelines on determining this. The final rules specifically state that a trustee of a trust or other individual with the authority to remove assets is a beneficial owner.²⁴ Furthermore, a beneficiary of a trust will be considered a beneficial owner if the beneficiary:

- (i) Is the sole permissible recipient of income and principal from the trust; or
- (ii) Has the right to demand a distribution of or withdraw substantially all of the assets from the trust[.]²⁵

According to the final rules, a grantor or settlor of a trust will also be considered a beneficial owner if they “ha[ve] the right to revoke the trust or otherwise withdraw assets of the trust[.]”²⁶

When assigning business interests in entities to a trust, it will be important to consider which individuals in the trust will now be considered beneficial owners of the entity who will need to be reported to FinCEN. Although this analysis might be simpler for a revocable trust, it could become a complicated analysis when an irrevocable trust owns an interest in a business entity. It will be crucial to review the trust document and the FinCEN final rules to determine who may meet the requirements of being a beneficial owner.

Questions about beneficial ownership may also arise when a major life event occurs that shifts who is managing an interest in an entity or creates a change in ownership. Does the beneficial owner change if a person becomes incapacitated and their guardian or agent named

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in a power of attorney manages the ownership interest? Does the death of someone that triggers an inheritance of the entity by a different individual or trust change who the beneficial owner is? What if the beneficiary inheriting the entity is a minor child or a trust established for a minor child? The final rules answered some of these questions by laying out five exceptions to exclude certain individuals from the definition of a beneficial owner:

- (i) A minor child ... provided the reporting company reports the required information of a parent or legal guardian of the minor child;
- (ii) An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- (iii) An employee of a reporting company, acting solely as an employee;
- (iv) An individual whose only interest in a reporting company is a future interest through a right of inheritance;
- (v) A creditor of a reporting company.²⁷

Despite these exceptions clearing up some of these questions, it will be important to advise clients that some of these exceptions are not indefinite. Although a minor child does not need to be reported as a beneficial owner, the final rules expressly state that the child reaching the age of majority is an event that will trigger the need for a new FinCEN report to be made.²⁸ Furthermore, when an estate is settled, a new report must be filed because there are new beneficial owners at that point.²⁹ Because these sorts of events trigger new reporting requirements, it will be important for attorneys

representing clients with entities or representing probate or trust administration clients to clearly state in engagement letters if the law firm will assist with FinCEN reporting or if the client will be responsible for keeping up with events that trigger the need for a new report.

Company Applicant

For entities formed after Jan. 1, 2024, the FinCEN report must include who the company applicant was.³⁰ The company applicant is defined as the individual that “directly files the document that creates ... the reporting company” and the individual who is “primarily responsible for directing or controlling such filing if more than one individual is involved in the filing.”³¹

The final rule explanations specifically provide an example of who to report if a law firm is filing an entity with the secretary of state. If a paralegal or legal assistant files an entity with the secretary of state, the paralegal or legal assistant *and* the attorney directing the filing will need to provide their information as the company applicant on the FinCEN form.³² Due to this requirement, law firms may wish to include filing the FinCEN report in their engagement letters to simplify entity creation for the law firm and its clients.

REPORTING REQUIREMENTS: WHAT INFORMATION GETS REPORTED?

Reporting Company

In the initial report to FinCEN, a reporting company must report the “name of the reporting company,” “any trade name or ‘doing business as’ name of the reporting company,” the address of the reporting

company or the primary location where business is conducted if the reporting company does not have a principal place of business, the state of formation of the reporting company and the taxpayer identification number issued by the IRS.³³

Beneficial Owners and Company Applicants (for Entities Formed After Jan. 1, 2024)

When filing a report, reporting companies must provide the following information about every beneficial owner in the company and about company applicants for entities formed after Jan. 1, 2024: “[t]he full legal name of the individual,” “date of birth,” residential address and “a unique identifying number.”³⁴

However, if the company applicant forms entities in the course of its regular business, you may submit the company applicant’s company address instead of the applicant’s residential address.³⁵ This is a particularly important exception for law firms or other companies that may provide FinCEN filings as part of their services so they may protect their employees’ confidential information. A unique identifying number may be a passport, driver’s license or some other identification document issued by the state, local government or Indian trust.³⁶ A photo of the document containing the unique identifying number must also be submitted.³⁷

Individuals who may be the subject of several reports can also apply to FinCEN to receive a FinCEN identifier to provide in lieu of submitting all their information in each reporting form.³⁸ If a law firm will likely be filing multiple reports, it could be beneficial to have its employees apply for FinCEN identifiers to save time.

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DEADLINES: WHEN ARE REPORTS DUE?

Initial Reports – One Year or 30 Days

If an entity was formed prior to Jan. 1, 2024, a FinCEN report must be filed within one year (so no later than Jan. 1, 2025).³⁹ Keep in mind that there is no grandfather exception for entities. Even if entities were created 30 years ago, they will be subject to this same one-year deadline as an entity that was formed one year ago.

For entities created after Jan. 1, 2024, the report must be filed within 30 days.⁴⁰ A careful reading of the CTA and FinCEN's final rules will be necessary when dealing with any business entity moving forward to ensure you meet these filing deadlines.

Updated Reports – 30 Days From the Time of Change

If there is any change in who is a beneficial owner in a reporting company or any change in the information reported for a beneficial owner, the reporting company is required to file an updated report within 30 days.⁴¹ Keeping up with these changes could be very tedious for beneficial owners. If a beneficial owner moves into a new home, this will trigger the need for an updated report.⁴² As attorneys, it will be important to develop best practices within your firm to alert clients about these triggers for filing updated reports and clearly lay out in engagement letters who is responsible for making these supplementary reports.

Corrected Reports – 30 Days

If there are errors in any report submitted to FinCEN, a corrected report must be submitted to FinCEN within 30 days of learning about the error.⁴³

PENALTIES

The CTA states that it is unlawful to “willfully fail to report complete or updated beneficial owner information to FinCEN.”⁴⁴ It is also unlawful to “willfully provide, or attempt to provide, false or fraudulent beneficial ownership information.”⁴⁵ And the fines for failing to make these reports or provide fraudulent information in a report are steep. Individuals may be fined up to \$500 per day, not to exceed \$10,000, and/or imprisonment for up to two years.⁴⁶ Because these penalties are potentially so high, it will be important to properly advise clients if a report is required, analyze whether a triggering event has occurred requiring an updated report to be filed, and be clear in your engagement letters who will be responsible for reporting to FinCEN.

CONCLUSION

The CTA is now fully in effect and will change the way we advise clients handling business entities moving forward. When forming entities with the secretary of state, attorneys and other advisers must now analyze whether a report to FinCEN will also be required and analyze whose information to gather as the beneficial owner of the entity. Furthermore, it will be crucial to advise clients on when supplemental reports must be filed with FinCEN if beneficial ownership changes for some reason.

ABOUT THE AUTHOR



Chantelle Hickman is originally from northwest Oklahoma and moved to Oklahoma City to pursue a business degree at the University of Central Oklahoma then a law degree at the OCU

School of Law. Ms. Hickman is now a partner at Alleman Law Firm in Oklahoma City, where she focuses her practice on estate planning, elder law, probate and guardianships.

ENDNOTES

1. 31 U.S. Code §5336.
2. *Id.*
3. H.R. 6395 – 116th Congress (2021): National Defense Authorization Act of 2021, H.R.6395, 117th Cong. (2021), <https://bit.ly/3U5bcy2>.
4. House Armed Service Committee. <https://armedservices.house.gov/ndaa>.
5. Beneficial Ownership Information Reporting Rule Fact Sheet (Sep. 29, 2022), <https://bit.ly/424B1Ai>.
6. Pub. L. 116–283, div. F, title LXIV, §6402, Jan. 1, 2021, 134 Stat. 4604.
7. 31 U.S.C. 5336(c)(2)(A).
8. 31 U.S.C. 5336(c)(2).
9. 87 FR 59498.
10. Beneficial Ownership Information Reporting Rule Fact Sheet (Sep. 29, 2022), <https://bit.ly/424B1Ai>.
11. *Id.*
12. Financial Crimes Enforcement Network. <https://boiefiling.fincen.gov/fileboir>.
13. 31 USC 5336(a)(11)(A).
14. Oklahoma secretary of state. www.sos.ok.gov/corp/filing.aspx.
15. 31 USC 5336(a)(11)(B).
16. 31 USC 5336(a)(11)(B)(xii)(I)&(ii).
17. 31 USC 5336(a)(11)(B)(i), (vii), (viii) & (ix).
18. 31 USC 5336(a)(11)(B)(iv).
19. 87 FR 59498.
20. *Id.*
21. *Id.*
22. 31 USC 5336(a)(3).
23. 31 CFR 1010.380(d)(1).
24. 31 CFR 1010.380(d)(2)(iii)(C)(1).
25. 31 CFR 1010.380(d)(2)(ii)(C)(2).
26. 31 CFR 1010.380(d)(2)(ii)(C)(3).
27. 31 CFR 1010.380(e).
28. 31 CFR 1010.380(a)(2)(iv).
29. 31 CFR 1010.380(a)(2)(iii).
30. 31 CFR 1010.380(b)(2)(iv).
31. 31 CFR 1010.380(e)(3).
32. 87 FR 59498.
33. 31 CFR 1010.380(b)(1).
34. 31 USC 5336(b)(2)(A).
35. 31 CFR 1010.380(b)(1)(ii)(C)(1).
36. 31 CFR 1010.380(b)(1)(ii)(D).
37. 31 CFR 1010.380(b)(1)(ii)(E).
38. 31 CFR 1010.380(b)(4).
39. 31 CFR 1010.380(a)(1)(iii).
40. 31 CFR 1010.380(a)(1)(i)&(ii).
41. 31 CFR 1010.380(a)(2)(i).
42. 31 CFR 1010.380(a)(2)(i).
43. 31 CFR 1010.380(a)(3).
44. 31 USC 5336(h)(1)(B).
45. 31 USC 5336(h)(1)(A).
46. 31 USC 5336(h)(3)(A).

Laid to Rest: Making a Clear Plan for How Your Client's Remains Are To Be Disposed

By Darcy N. Worth

THE GOAL OF A CLIENT'S ESTATE PLAN should be to leave a roadmap, not a mess, for their loved ones after they are gone. Traditional estate plans include rules for the treatment and disposition of a person's money, real estate and physical property. One thing often missing from estate plans is a form that allows the client to indicate how they want their remains to be treated after they are gone. Such a form would avoid disputes surrounding the treatment of a person's remains and give a clear path to the survivors over how to honor a person once they have passed. These types of disputes are becoming more of a regular occurrence after people's deaths – creating a frenzy of fighting over what to do, leading to increased pain and cost after a loved one has died.

Disputes over the right to control remains are often over a few key issues: if the person is to have a body burial or be cremated, where the body is to be buried, how cremated ashes are to be dispersed or even if the body should be embalmed. The importance levied on these disagreements is made heavier by the fact that decisions on human remains, once dealt with, are hard to undo. The bodies can be irreversibly changed upon a decision, scattered and unable to be retrieved or buried in a formal cemetery. When a formal burial is performed, exhuming and moving remains is a bureaucratic nightmare to perform due to the laws

regarding human remains.¹ All of these factors make planning for your client's loved ones who survive them that much more important.

Luckily, the state of Oklahoma provides a clear path for estate planners to give this additional service to their clients,² but many do not know about it, or for one reason or another, it is not included in the traditional estate plan package. A disposal of remains document should be standard practice in any Oklahoma estate plan as it avoids disputes and provides clarity to the loved ones left behind.

THE ISSUE

In estate planning, we regularly hear amusing ideas from a party on how they want to be buried. No matter how witty the funeral or burial ideas are, if the client's desires are not recorded in the correct manner, then the ideas they have for their memorial or final resting place might not be realized. Even worse, the desires a client may have are often flowing through the grapevine and lack a clearly articulated plan, which can cause infighting or an eventual lawsuit over simply how to honor your client's wishes. This is what happened in many of the disputes discussed in this article.

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Infamous Disputes

While the matter of how remains are disposed of may initially seem trivial, it is an area of the law that is continually growing. A prime example of this dispute comes from a fellow Oklahoman and national treasure, Jim Thorpe,³ a member of the Sac and Fox Nation of Oklahoma⁴ who lived an accolade-filled life. The connections to Oklahoma and his native roots were foundational in Mr. Thorpe's life, and he had hoped they would be as well in his death. After Mr. Thorpe passed away, his children began following the verbal wishes he had expressed to them for his burial to be in Oklahoma following the traditions of his tribe.⁵ Unfortunately, this is not what occurred.

At the time of Mr. Thorpe's death, he was married to his third wife, Patsy Thorpe, who had often shown disapproval for Mr. Thorpe's pursued connection with his Native American ancestry.⁶ While Mr. Thorpe's burial rituals were being performed by his tribe in the presence of his family, Patsy stormed in with police officers and took his body away from his funeral.⁷ His wife then had a Catholic funeral mass performed and began shopping for the location of Mr. Thorpe's final resting place.⁸ Patsy wanted his funeral to be paid for by someone else and for a memorial to be set up surrounding his burial place. After the state of Oklahoma let her know they did not have the funds

to do so, she moved his body to the highest bidder – a town in the state of Pennsylvania, where Mr. Thorpe had no real connections.⁹

Since this decision by Patsy, Mr. Thorpe's family members have filed multiple lawsuits in an attempt to have their father buried in Oklahoma, where they believe he would want to be buried. To date, they have been unsuccessful.¹⁰ Whatever thoughts you might have on how things ended for Mr. Thorpe, it is clear there have been years of heartache over his death relived by the family members and hundreds of thousands of dollars spent in the court systems fighting a decision made by a family left with no legally binding instructions.

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Jim Thorpe's story isn't the only one of its kind; there have been many more public figures whose families or loved ones have disputed these types of issues in the public sphere. Baseball legend Ted Williams' family fought over where and how he was to be buried, leading to hundreds of thousands of dollars in litigation costs;¹¹ socialite Anna Nicole Smith,¹² baseball star Kirby Puckett¹³ and musician James Brown¹⁴ all had public disputes over how their bodies were to be treated after their death as well. All these disagreements could have been avoided had the deceased left clear and binding directions.

While this may sound like the type of story that only happens to professional athletes or celebrities, it occurs to regular people every day. In fact, our firm recently had a case where the children and the spouse of the deceased disagreed on what they thought the deceased would have desired (burial or cremation), which resulted in a delay of the ceremony, higher legal costs and further division and hurt in an already grieving family. There are countless other stories of ordinary families who have been torn apart or further hurt by disputes over how to give proper burials to their loved ones.

As estate planners, we have the ability to help families avoid these conflicts with a simple form added to our estate planning packages, providing better services to our clients by arming them with a clear plan to avoid increased costs and hurt.

THE SOLUTION

Fortunately, Oklahoma provides individuals with the ability to declare how their bodies should be treated after their death by statute and case law.

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Oklahoma Statutes

In Oklahoma, the applicable statute that provides how a person may direct how their remains are treated is found at 21 O.S. 2011 §1151. The statute gives a clear outline of a person's right to choose how their remains are handled, how a person should make these decisions, as well as a punishment for those who choose to go against the clearly stated wishes of the deceased.

Specifically, in Oklahoma, a person has the right to choose how to have their remains disposed of and may do so by leaving a clear sworn affidavit outlining what they would like done with their remains and, most importantly, who they would like to carry out those wishes.¹⁵ If these steps are fulfilled, they will comply with the requirements of the statute, and there will be an enforceable declaration for how the decedent is laid to rest.

Oklahoma Case Law

Beyond the statutes, case law in Oklahoma clarifies how to effectively use this language.

In re Estate of Downing. *In re Estate of Downing* involved a common-law wife and the children of the deceased fighting over whether the deceased should be buried

or cremated.¹⁶ The common-law wife wanted to have the deceased cremated, and the children wanted a bodily burial.¹⁷ The children alleged that the fact that the deceased had purchased a burial plot 50 years before and that he had given verbal statements during his life against cremation proved it would have been his intention to be buried at the end of his life.¹⁸

However, the children never proved that there was a written contract evidencing the purchase of a burial plot.¹⁹ Though the children purported that the decedent had bought a burial plot, to fulfill the requirements of Section 1151(A), there must have been further proof, like a written contract for the plot or a contract for prepaid funeral services.²⁰ Thus, the court held that testimonial evidence of the purchase of a burial plot does not fulfill the requirements of 21 O.S. 2011 §1151(A) and §1158(1) for one's ability to direct the disposal of one's body and, therefore, was not proof enough to show his intention for burial.²¹

The court, in its ruling, stated:

Section 1151(A) does not provide any precise guidance for how such directive is accomplished; however, 21 O.S. 2011 § 1158(1)

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fills in this gap by setting forth specific requirements. Section 1158 reads as follows:

The right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services vests in ...

1. The decedent, provided the decedent has entered into a pre-need funeral services contract or executed a written document that meets the requirements of the State of Oklahoma;²²

Such requirements by the state of Oklahoma are for the document to be executed in a sworn affidavit, clearly stating the assignment of the rights and the name of the person or persons to whom the right to dispose of the body has been assigned.

Foresee v. Foresee. Another case providing guidance is *Foresee v. Foresee*, where the court held that a will, in order to suffice for instruction for how a person wants their body disposed of, must clearly state that the executor (or another individual) is assigned the explicit and clear right to dispose of the body.²³ *Foresee*²⁴ was similar to *Downing*,²⁵ where the deceased only made oral wishes for after his death. Specifically, his will instructed his personal representatives to pay debts associated with the deceased's "last illness, funeral, and burial."²⁶ Through his oral instructions and this portion of the will, the personal representatives believed they were the ones who had the right to dispose of the deceased's body.²⁷ However, when

the deceased's estranged wife challenged this, the court held that by not explicitly stating who would serve in the role to dispose of his body in the will or otherwise, he left behind inadequate instructions to fulfill the requirements of 21 O.S. 2011 §1151.²⁸

These two cases provide guidance that verbal desire or instruction alone will not suffice for legally enforceable instructions nor will vague appointments of who should carry them out.

CONCLUSION

Given the increased disputes between family members regarding a loved one's remains, it is increasingly more important in estate planning to create and implement a form that declares, premortem, how your clients wish to be buried once they are deceased. At the very least, in an effort to avoid potential postmortem disputes, estate planning attorneys should have a conversation with clients providing their options. Given the unique Oklahoma statutes, the options and application of these forms in estate planning practices can alleviate additional costs and conflicts for clients and their families in an already difficult time right after they have lost a loved one.

ABOUT THE AUTHOR



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Ms. Worth received her law degree from the Ohio State University Moritz College of Law and her undergraduate degree from OSU.

ENDNOTES

1. Raymond Louis Brennan, *The Law Governing Cemetery Rules and Regulations* 66 (2d ed. 1951).
2. 21 O.S. §1151.
3. *Thorpe v. Borough of Jim Thorpe*, 770 F.3d 255 (2014).
4. Kurt Streeter, "The Spirit Of A Legend," ESPN (2016), <https://bit.ly/48WkHUD> (last visited Oct. 28, 2023).
5. *Thorpe v. Borough of Jim Thorpe*, 770 F.3d 255 (2014).
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7. *Id.*
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13. "Fiancée says Kirby Puckett wanted ashes spread on ball field," *The Times of Northwest Indiana*, May 16, 2006, <https://bit.ly/3vclw8b> (detailing a dispute between Mr. Puckett's children and his fiancée over the possession and disposition of the cremated ashes).
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15. 21 O.S. §§1151, 1158(1) and (2).
16. *In re Estate of Downing*, 2021 OK 17, 489 P.3d 9.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Foresee v. Foresee (In re Estate of Foresee)*, 2020 OK 88, 475 P.3d 862.
24. *Id.*
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26. *Id.*
27. *Id.*
28. *Id.*

Planning for People With Special Needs

By Travis Smith

“HOW DO I ENSURE THAT MY CHILD’S NEEDS ARE MET?” is a question all parents of children with special needs have, whether their child is 3 or 30. **“What happens to my child with special needs after I’m gone?”** is a question that keeps parents of older children awake at night. Fortunately, there are several things families can do to alleviate their worries.

Special needs planning is doubly important if the person with disabilities needs means-tested benefits, such as Supplemental Security Income (SSI) and Medicaid (SoonerCare). Means-tested benefits do not include Social Security or Medicare, which are insurance programs and not subject to income or asset limits. A minor can get SSI benefits because they are disabled but cannot get Social Security disability benefits because they are disabled.

Social Security, SSI and Medicaid are all part of the Social Security Act, which is complicated, to say the least. As the U.S. Supreme Court noted, “The Social Security Act is among the most intricate ever drafted by Congress. Its Byzantine construction, as Judge Friendly has observed, makes the Act ‘almost unintelligible to the uninitiated.’”¹

This article is designed to help lawyers spot the issues. It contains the basics, with many statements

having an exception or needing more explanation to fully understand their applications. It mostly addresses financial issues and not guardianship and living arrangements. Except where noted, the numbers in this article are for Jan. 1, 2024. The numbers go up a little every year, except for the \$2,000 asset limit for SSI and most categories of Medicaid eligibility.

SUPPLEMENTAL SECURITY INCOME

SSI is the best entry point into planning because most people with special needs get SSI at some point, and its rules form the basis of Medicaid eligibility rules.

SSI is a payment from the Social Security Administration (SSA) that pays a maximum of \$943 per month to people who are over 65 or disabled and whose countable assets are \$2,000 or less.² It is for people who have not worked enough to get a Social Security

check or whose Social Security is less than \$943 per month.

SSI disability is available to individuals of any age up to their “full retirement age.” At full retirement age, benefits are switched to retirement, which has the same income and asset rules as SSI disability. For those under 18, some income and all assets of a parent living with the child are counted when determining the child’s eligibility.³ At age 18, parents’ income and assets no longer count.⁴

SSI INCOME

For an adult (18 or older), the SSA deducts all but \$20 of unearned income from the maximum payment. Unearned income includes another person supplying cash, food or shelter. Shelter includes payment of rent or mortgage, property taxes and insurance required by a lender, and natural gas, electricity, water, sewer and trash.⁵ Unearned income does not include

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someone else paying directly to the vendor for everything else, including a car, car expenses, internet access, cable TV, entertainment, travel, cellphone or insurance that is not required by a lender or landlord.⁶ For earned income, the SSA deducts \$65 from the gross, divides it by two and deducts the rest from the \$943 monthly payment.⁷

There is a limit on how much the SSA will deduct from an SSI check if the recipient is receiving free food or shelter. The most the SSA will reduce the SSI payment is one-third of the \$943 maximum. If the SSI recipient is paying their pro rata share of household expenses, there is no reduction in payment.⁸

For *minor beneficiaries*, the rules are the same, except that the SSA counts the income of a parent the child lives with. However, not all income of a child's parents is counted when calculating a child's SSI payment.⁹

SSI ASSETS

Everything you think of as an asset¹⁰ counts as an SSI asset, except a home; household goods, clothing and jewelry; one vehicle of unlimited value; an irrevocable prepaid funeral with no cap on cost; prepayment of burial plots,



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headstones and grave openings and closings; assets in a (d)(4)(A) or (d)(4)(C) trust; assets in a third-party trust; and money in an Achieving a Better Life Experience (ABLE) account.¹¹ Regardless of age, there is a \$2,000 cap on countable assets. The assets of a parent who lives with a child are deemed to the child when determining asset eligibility.¹²

Trusts

42 U.S.C. §1396p(d)(4)(A).

Assets of a trust are countable assets if the trust was established by or for a disabled person and funded with their assets.¹³ There are two exceptions. The first is that the assets of a trust complying with 42 U.S.C. §1396p(d)(4)(A) are not countable for SSI or Medicaid.¹⁴ A (d)(4)(A) trust must be established for the benefit of a person under 65 who is disabled, as determined by the SSA; be established by the disabled person, their parent, grandparent, guardian or a court; contain only assets owned by the disabled beneficiary; be irrevocable; be unamendable without the agreement of the Department of Human Services (DHS) or the Oklahoma Health Care Authority (OHCA); and the trust's assets and income must be used for the sole benefit of the disabled beneficiary. Money left in the trust at the beneficiary's death goes to pay back Medicaid for all expenditures made during the person's life. Theoretically, a family or charity can receive assets of a (d)(4)(A) or (d)(4)(C) trust (see below) after Medicaid has been reimbursed, but this happens very rarely. Almost without exception, Medicaid's reimbursement claim is more than trust assets remaining at the beneficiary's death.¹⁵

A person with disabilities who receives SSI and/or Medicaid should *never* directly inherit money. If they inherit, the only way they can stay on benefits is to establish a (d)(4)(A) or (d)(4)(C) trust, which will almost never be able to be passed on to family or charity when the beneficiary dies.

A (d)(4)(A) trust can have an individual or corporate trustee. If the trustee of a (d)(4)(A) trust gives the beneficiary cash or makes payments for items that count as income, the SSI payment is reduced accordingly. Therefore, it is in the beneficiary's best interest to pay for "income" items with their SSI payment and for the (d)(4)(A) trust to pay for items that are not treated as income.

A thing to keep in mind when drafting a (d)(4)(A) trust is that the beneficiary may outlive the trustee, or the trustee may decline to serve. Therefore, include a provision in the trust that allows the assets of the trust to be paid over to a (d)(4)(C) trust. Also, drafting should include a provision that trust assets can be deposited in an ABLE account.

42 U.S.C. §1396p(d)(4)(C). The second exception to counting a self-funded trust as an asset is found at 42 U.S.C. §1396p(d)(4)(C), known as a "pooled trust."¹⁶ It is created and operated by a nonprofit, which forms a master trust. The nonprofit accounts for individuals' money separately but pools the money for investment.

Joinder agreements are executed to establish an individual account, which are supplied by the trust. An account must be established by the disabled individual, their parent, grandparent, guardian or a court.¹⁷ The person who establishes the individual account appoints someone close to the beneficiary to advise the trustee on disbursements. When the beneficiary dies, the nonprofit may retain up to 30% of what remains in the trust, and the rest goes to repay Medicaid.¹⁸

Like a (d)(4)(A) trust, if the trustee of a (d)(4)(C) trust gives the beneficiary cash or makes payments for items that count as income, then the SSI payment is reduced accordingly. Therefore, it is in the beneficiary's best interest to pay for "income" items with their SSI payment and for the (d)(4)(C) trust to pay for items not treated as income.

Third-party trusts. A third-party trust is established by someone other than the beneficiary or their spouse and funded with assets the beneficiary never had the right to have in their hands.¹⁹ Assets of

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a third-party trust do not count against the SSI and Medicaid asset limits. It is income if the trustee gives the beneficiary cash or pays directly for food or shelter. As with (d)(4)(A) or (d)(4)(C) trusts, it is in the beneficiary's best interest to pay for income items with their SSI payment and for the trustee to pay for items that are not income. An advantage of a third-party trust is that when the beneficiary dies, the remaining assets can be directed to family members or charities.

ABLE Accounts

An ABLE account can be established by or for a person who became disabled before age 26.²⁰ In 2026, the age goes up to 46.²¹ Up to \$18,000 of the disabled person's money, or money belonging to another, can be put into the account each year. If the ABLE account accumulates money and, when added with all other countable assets, is more than \$100,000, SSI will be suspended until the total is less than \$100,000.²² Medicaid has no such cap.

An ABLE account can pay for anything that is for the sole benefit of the beneficiary and – unlike a (d)(4)(A), (d)(4)(C) or third-party trust – can pay for food and shelter without it counting as income for SSI and Medicaid.²³ Therefore, it is good to put a paragraph in a (d)(4)(A) trust that allows the trust to fund an ABLE account. You will have to talk to the nonprofit operating a (d)(4)(C) trust to see if it is possible for the trust to fund an ABLE account. Like a (d)(4)(A) trust, when the beneficiary dies, any money left in an ABLE account goes to repay Medicaid.²⁴

MEDICAID

Medicaid is a federally authorized and partially federally funded health insurance program that provides

services to certain categories of people who are unable to afford health care.²⁵ Although shorter, the Medicaid Act will remind you of the Internal Revenue Code in its complexity.

Medicaid is known as SoonerCare in Oklahoma. OHCA is the designated Medicaid agency, which contracts with DHS to determine eligibility for people who are over 65 or who have been determined to be disabled by the SSA.²⁶ Medicaid has asset and income limits. It mostly, but not entirely, uses SSI rules to determine income and assets.

There are about 55 ways to be eligible for SoonerCare, with five broad categories. The category we are interested in is Aged, Blind and Disabled (ABD).²⁷ Within ABD are a couple of dozen ways to be eligible. The most common categories for people with disabilities are:

- SSI recipients: An individual who receives at least \$1 of SSI per month is eligible for Medicaid.²⁸
- Disabled, living in the community: A person with disabilities not living in an institution is eligible for Medicaid if their countable income is up to \$1,215 per month, and countable assets are up to \$9,090.²⁹ The income and assets of parents living in the home with a minor are counted when determining the minor's eligibility, except when the minor is receiving services through a developmental disability waiver.³⁰
- Developmental disability waivers: DHS operates two programs for people who are developmentally disabled and have intellectual disabilities and who are not members of the Homeward

Bound class.³¹ The asset limits are the same as for someone living in a nursing home – \$2,000 in “countable” assets.³² The “countable” income limit is \$6,833 per month the same, but any income above \$2,742 is not available to the SoonerCare recipient.³³ The income and assets of a parent of a minor do not count when determining eligibility.³⁴ These waiver programs used to have a years-long waiting list, but thanks to a large additional appropriation by the Legislature, the waiting list is being eliminated. The In-Home Supports Waiver provides services costing up to \$29,914 for adults and \$19,283 for minors.³⁵ There are many types of services available.³⁶ The most common is a habilitation training specialist (HTS), who helps the disabled person learn life skills. The Community Waiver, sometimes known as the “big waiver,” provides the same services without a cost cap.³⁷ The Community Waiver also has residential services available, with three waiver participants living in a home where the roommates receive services 24/7.³⁸

OTHER STRATEGIES

Inheritance

A person with disabilities who receives SSI and/or Medicaid should *never* directly inherit money. If they inherit, the only way they can stay on benefits is to establish a (d)(4)(A) or (d)(4)(C) trust, which will almost never be able to be passed on to family or charity when the beneficiary dies.

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If relatives want to leave money to a family member with disabilities, it should be done through a third-party trust, whether living or testamentary. If the grantor does not have a suitable trustee available, most nonprofits that operate (d)(4)(C) trusts also act as trustees of third-party trusts.

True Link Card

A True Link card is a prepaid debit card. A trust or SSA payee can put money on the card and determine how the card can be used. It is an excellent way to give a person with disabilities some control over their life without interfering with SSI or Medicaid. It is also an excellent way to keep the parent/guardian/trustee/payee from having to be involved with every purchase or payment.

Limits on use are set by the parent/guardian/trustee/payee, not the person with disabilities. The limits include how much can be used a week or month; what the card can be used for, such as car-related expenses or clothing; what the card cannot be used for, such as gaming, food and utilities; when the card can be used, such as only between 8 a.m. and 5 p.m.; and where the card can and cannot be used. The website is www.truelinkfinancial.com.

42 U.S.C. §1396p(c)(2)(B)(iv) trust. When an individual needs to enter a nursing home, they often have to “spend down” assets, without giving them away, before they are eligible for Medicaid payment. The general rule is that if assets are given away within five years of Medicaid application, the applicant is disqualified for a day for every \$224.60 given away.³⁹ The disqualification period only starts when the applicant has less than \$2,000 of

countable assets – thus, not having enough money to private pay while ineligible for Medicaid.⁴⁰

One exception to the penalty for giving away assets is putting assets in a trust for the “sole benefit” of a person with disabilities, as authorized by 42 U.S.C. §1396p(c)(2)(B)(iv). The person with disabilities does not have to be a relative but must have been found disabled by the SSA. The trust will be a normal third-party trust with one difference: The trust has to contain language that ensures the trust will be depleted during the beneficiary’s expected life according to the actuarial tables for the general population.⁴¹ The trust does not have to distribute an even amount every year and can contain language that asset expenditures are expected to be greater the older the beneficiary gets. If the beneficiary dies before the trust is exhausted, the remainder can go to family or charity with no Medicaid repayment required.

Excess Income

As emphasized above, an SSI or Medicaid recipient should avoid having so much income that it reduces or eliminates benefits. However, all is not lost if it happens occasionally. For example, an SSI recipient owns their home and can pay for food and utilities out of their monthly income but cannot afford to pay property taxes. If another individual or a trust pays the taxes, it counts as income and would probably be enough to eliminate or reduce SSI and Medicaid benefits for the month of payment.

For SSI, the individual (or payee) is required to report income that reduces or eliminates payment in the first 10 days of the next month.⁴² Eventually, the beneficiary (or payee) receives a letter from the SSA saying

the beneficiary was overpaid in the month of excess income and to please pay it back. If not paid back, the SSA will reduce the beneficiary’s SSI check by 10% per month until repaid.⁴³ To avoid payment reduction, an individual, a third-party trust or a (d)(4)(A) trust can pay the SSA directly because payment of the overpayment is not for food or shelter. A (d)(4)(C) trust might or might not be able to repay the overpayment depending on the terms of the master trust and joinder agreement.

For Medicaid, the beneficiary is supposed to report anything to DHS that results in a loss of benefits within 10 days of the event.⁴⁴ When the report is made, the person/trustee who made the excess income expenditure should submit a letter saying the expenditure was a one-time event and will not be repeated in the following months. Eventually, the beneficiary will get a letter saying they were overpaid in the excess income month and to please pay back all Medicaid expenditures for that month. An individual or a trust can repay Medicaid, but nothing happens if no payment is made. The beneficiary won’t be sued, Medicaid benefits will not be reduced, and the beneficiary will not lose waiver or nursing home services.⁴⁵

Trust Homeownership

The income problem with the SSI recipient owning a home could be avoided if a (d)(4)(A) trust owns the home. The SSI recipient is considered the “beneficial owner” of the home by the SSA and DHS and does not receive income by living there for free.⁴⁶ The trust, as the actual owner, can pay property taxes and insurance without it counting as income to the beneficiary. However, it still counts as income if the trust pays for basic utilities.

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Disabled Adult Child

Although not a planning technique, it is worth knowing about because it comes up quite often. If a person becomes disabled before their 22nd birthday, they can draw Social Security disability benefits from their parent's earnings record if the parent is deceased, entitled to Social Security disability benefits or entitled to Social Security retirement benefits.⁴⁷ This person is known as a "disabled adult child." They are also eligible for Medicare after being eligible for Social Security disability benefits for two years.⁴⁸

The amount of Social Security disability benefits the disabled adult child receives will usually be greater than the SSI \$943 monthly payment. If not, then SSI pays the difference between the SSI maximum and the Social Security payment. If their Social Security payment is greater than the SSI maximum, they lose SSI but not necessarily Medicaid. If their income and assets remain below the Medicaid maximums, they keep their Medicaid benefits.

Even if the adult disabled child has income or assets greater than the limits for their Medicaid category, if they have no more

than \$1,215 per month and assets up to \$9,090, Medicaid will pay their Medicare premiums, deductibles and co-payments. However, to retain Medicaid payment for health care services, including DDS waiver services, countable assets must remain below the maximum for their category of eligibility.

ABOUT THE AUTHOR



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ENDNOTES

1. *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981).
2. 42 U.S.C. §1382a(a); 42 U.S.C. §1382c(a)(1); SSA Programs Operations Manual System (POMS) SI 1110.03(A)(2). The POMS is the SSA's non-APA

materials that are accorded Skidmore deference. The POMS is useful because it discusses each issue in light of relevant SSI statutes and rules – and gives examples. This is especially true in light of the relative paucity of Medicaid regulations for determining financial eligibility. The POMS is found at <https://bit.ly/47nDMh2>.

3. 20 C.F.R. §416.1161; 20 C.F.R. §416.1202(b).
4. 20 C.F.R. §416.1165.
5. 20 C.F.R. §416.1133(c); POMS SI 835.465(D).
6. POMS SI 810.005(A)(1).
7. *Id.*
8. 20 C.F.R. §416.1131; 20 C.F.R. §416.1140.
9. 20 C.F.R. §416.1165.
10. The SSA uses the term "resource" to describe what the rest of the world thinks of as an asset. 20 C.F.R. §416.1201(a).
11. 20 C.F.R. §416.1203 – 1204, 1210-1216 and 1245.
12. 20 C.F.R. §416.1202(b); POMS SI 1330.200(A).
13. 42 U.S.C. §1382b(e).
14. 42 U.S.C. §1382b(e)(5).
15. 42 U.S.C. §1396p(d)(4)(A); Oklahoma Administrative Code (OAC) 317:35-5-41.6(6)(A).
16. 42 U.S.C. §1382b(e)(5).
17. 42 U.S.C. §1396p(d)(4)(C).
18. OAC 317:35-5-41.6(6)(C)(viii).
19. 42 U.S.C. §1382b(e); 42 U.S.C. §1396p(d)(3).
20. 26 U.S.C. §529a(e)(1)(A).
21. P.L. 117-328, §124.
22. POMS SI 1130.740(C)(3).
23. POMS SI 1130.740(B)(8) and (9).
24. 26 U.S.C. §529A(f).
25. *Oklahoma State Medical Association v. Corbett*, 2021 OK 30, ¶3. To complicate things, each state is given a number of options to choose from so that no two states have Medicaid programs that are the same. See 42 U.S.C. §1396a(a). To further complicate things, the secretary of Health and Human Services has the authority to waive provisions of the Medicaid statutes. 42 U.S.C. §1396n(c). The result is that a state may have a Medicaid Program component that has rules that are in seeming conflict with federal statutes.
26. 63 O.S. §5009.
27. OAC 317:35-5-2.
28. OAC 317:35-7-38(a)(2).
29. DHS Appendix C-1, Schedule VI.
30. OAC 317:35-5-42(a)(3); OAC 317:35-9-68(c).
31. OAC 317:40-1-1.
32. OAC 317:35-9-68.
33. *Id.*; DHS Appendix C-1, Appendix VIII.
34. OAC 317:35-9-68(c).
35. OAC 317:40-1-1(c)(2).
36. OAC 340:100-40-5.15, *et seq.*
37. OAC 317:40-1-1(c)(3).
38. OAC 317:40-1-2.
39. 42 U.S.C. §1396p(c)(1); DHS Appendix C-1, Schedule VIII(B).
40. 42 U.S.C. §1396p(c)(1).
41. State Medicaid Manual (SMM) §3258.1(6). The SMM is non-APA guidance promulgated by the Centers for Medicare and Medicaid Services (CMS) and which is entitled to Skidmore deference.
42. POMS SI 2301.100(B)(6).
43. POMS SI 2220.016(A)(1).
44. OAC 340:65-5-1(a).
45. The authority for this statement is the lack of law or rules that give DHS the power to take any of these actions.
46. POMS SI 1120.200(F).
47. POMS RS 203.001(A)(1)(e).
48. POMS HI 801.100(A).

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Long-Term Care Planning for Oklahoma's Farmers and Ranchers

By Tyler R. Barrett



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ACCORDING TO GOVERNMENT ESTIMATES, 70% of adults who survive to the age of 65 will receive some form of long-term care before death.¹ That care does not come cheap. In 2021, the annual median cost of a home health aide in Oklahoma exceeded \$58,000; the cost of a semi-private room in a nursing home facility was over \$65,000.²

Given these figures, incapacity can derail even the most well-thought-out estate plans. And the risk is more acute for certain types of clients. One such client is the farmer and rancher.

Oklahoma ranks fourth in the nation for number of farms, and our state exports \$1.8 billion in agricultural products every year.³ While farming is big business, it continues to be a family one: upwards of 97% of farms are family owned.⁴ And many of these farms have been in the family for ages, conceivably even dating to the Land Run of 1889. Estate planning for farmers and ranchers thus entails both great opportunities as well as considerable risk. Many practitioners rightfully focus on tax minimization, fiduciary selection and distribution to the next generation. Frequently overlooked, though, is the possibility that the family patriarch or matriarch will become incapacitated – a ticking time bomb with the potential to

derail a legacy built through decades of toil and perseverance.

WHY LONG-TERM CARE PLANNING IS CRITICAL FOR FARMERS AND RANCHERS

Oklahoma's beloved Will Rogers once quipped: "The farmer has to be an optimist, or he wouldn't still be a farmer." Agriculture is not only hard work but also is subject to a larger number of variables than almost any other industry. The weather. Commodity prices. Recessions. International conflicts (*e.g.*, Russia's invasion of Ukraine). For the family farmer, it all matters. If that were not enough, agriculture is extremely cost-intensive, particularly in times of higher inflation. Total expenditures by U.S. farms – not including Hawaii and Alaska – reached \$452.7 billion in 2022, a 15.2% increase from the previous year.⁵

As they would tell you, our state's farmers and ranchers operate on tight margins. How is this relevant to estate and long-term

care planning? It is not unusual for family-owned farms to carry values in the millions of dollars – if not tens of millions of dollars – representing the bulk of the client's net worth. Yet, owing to their high operating costs, the agribusiness client might lack the liquidity to absorb long-term care expenses in the event of incapacity.

What's more, owners of family businesses tend to prioritize succession planning. These clients may have a child who works in the business and is slated to one day assume ownership and control of it. However, if the client ends up in a nursing home, the family could be faced with selling the farm to pay for it. One option is long-term care insurance. Unfortunately, long-term care insurance is outside the reach of many clients stemming from age or health conditions.

Luckily, with careful planning, we can still help our farming and ranching clients avoid the worst-case scenario. Although

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each situation is unique, clients typically have a seemingly contradictory objective of safeguarding assets while retaining management, custody and control of them. As we will see, there is a way to bridge that gap.

IRREVOCABLE TRUSTS: A TIME-TESTED TOOL FOR PROTECTING ASSETS FROM LONG-TERM CARE

Traditionally, estate planning and elder law attorneys have utilized irrevocable trusts to protect assets from long-term care expenses. The reason? They work! If designed properly, irrevocable trusts are largely unreachable by creditors. Significantly, irrevocable trusts can also position the client to qualify for Medicaid and/or veteran's benefits. With these goals in sight, the trust must possess a few key features.

First, it should be irrevocable because a revocable living trust will not adequately protect the assets for the following reasons. Revocable living trusts offer no creditor protection for the grantor. That is because a revocable living trust allows the grantor to alter, amend or revoke the instrument. Likewise, Oklahoma law is clear that the principal of a revocable living trust is an available resource to the grantor for Medicaid purposes.⁶ So, while a revocable living trust offers other benefits like probate avoidance, they are ineffective in Medicaid planning.

Second, trusts designed to insulate assets from long-term care expenses must forbid the grantor from accessing the corpus (or principal) of the trust. The Oklahoma Administrative Code, which contains our state's Medicaid eligibility rules, provides as follows:

In the case of an irrevocable trust, *if there are any circumstances under which payments from the trust could be made to or for the benefit of the individual, the portion of the principal of the trust, or the income on the principal, from which payment to the individual could be made is considered available resources.* Payments from the principal or income of the trust is considered income of the individual. Payments for any other purpose are considered a transfer of assets by the individual and are subject to the sixty (60) months look back period. Any portion of the trust from which, or any income on the principal from which no payment could under any circumstances be made to the individual is considered as of the date of establishment of the trust (or if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of the asset transfer rules and are subject to the 60 months look back period.⁷

Mindful of the "any circumstances test," the careful drafter will prohibit the trustee from electing unitrust status or adjusting between income and principal. The trust instrument should further restrict principal distributions to the grantor's spouse. In *Daily v. State ex rel. Oklahoma Dept. of Human Services*, the Oklahoma Court of Civil Appeals considered an irrevocable trust wherein the grantor's wife received all the net income and principal of the trust in 48 monthly installments.⁸ Any funds remaining in trust at the wife's death were to be distributed according to her will. The *Daily*

court held that the entire trust was a countable resource for the grantor's Medicaid eligibility.⁹

Finally, to prevent an argument that the grantor can alter the trust, neither the grantor nor their spouse should serve as a trustee. The author is unaware of any reported cases in Oklahoma denying Medicaid eligibility on this basis. Nevertheless, in dealing with Medicaid, it is prudent to exercise caution.

BEWARE THE FAMILY DYNAMICS

Apart from satisfying technical legal requirements, a skillful planner will contemplate the family dynamics. Does everyone get along? Are the client's decision-makers capable and reliable? How comfortable is the client in relinquishing control? It is this last factor that calls for additional planning tools beyond irrevocable trusts. For reasons both personal and practical, agribusiness clients will likely seek to maintain at least some control over the family farm and its operations. In a lot of instances, the kids are too young or inexperienced to assume managerial responsibilities. Crop subsidies and tax breaks might be lost if the farm is transferred to an irrevocable trust. And due to their rigidity, irrevocable trusts are usually poorly suited to operating a business. Accordingly, one should consider coupling an irrevocable trust with a family limited liability company.

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THE USE OF FAMILY LIMITED LIABILITY COMPANIES IN LONG-TERM CARE PLANNING

Most of us are familiar with the limited liability company structure. Maybe you set one up for a client with rental properties. Perhaps your own law firm is an LLC. Why have an LLC? Two words: asset protection. Under Oklahoma law, a charging order is the exclusive remedy available to an LLC member's judgment creditor.¹⁰ As a result, the judgment creditor has only the rights of an assignee and cannot obtain a membership interest in the LLC or pursue a foreclosure.¹¹

A family limited liability company (FLLC) is simply an LLC formed by members of the same family to operate a business, which, in our example, is a farm. To begin with, the client would transfer the farm to the FLLC.

The FLLC is, in turn, owned by the client's irrevocable trust.¹² Because the client has no right to invade the principal of the irrevocable trust or serve as its trustee, the FLLC membership interest is, therefore, uncountable for Medicaid purposes. The FLLC operating agreement governs management of the farm. The client wishing to retain control would name themselves as manager of the FLLC. Additionally, the client can engage in succession planning by designating successor managers and including provisions like rights of first refusal to increase the likelihood of the farm staying in the family following the client's death. Lastly, to ensure that the client can continue living on the farm, the irrevocable trust should include a right of occupancy for the client/grantor.¹³

OTHER CONSIDERATIONS: THE FIVE-YEAR LOOKBACK

Preferably, clients would request our counsel on asset protection and long-term planning when they are healthy and young. But we know that does not always happen. The planning described above is most effective well in advance of the client applying for Medicaid. That is because, in addition to determining whether a Medicaid applicant meets the income and asset guidelines,¹⁴ the Oklahoma Department of Human Services (OKDHS) looks back five years to see if the applicant has made any uncompensated transfers of assets. If so, OKDHS can delay the applicant's benefits for a period of months or even years, depending on the amount transferred.¹⁵

How, then, do we help the client who has an imminent need for care? Of most relevance to the



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instant topic is the use of promissory notes. In *Lemmons v. Lake*, the plaintiff sold her farm (as well as an Edward Jones account) to her son in exchange for a promissory note.¹⁶ Twelve days later, the plaintiff applied for Medicaid benefits – which OKDHS denied. Finding for the plaintiff, the United States District Court held that a promissory note was neither a countable resource for Medicaid eligibility nor a violation of the rules pertaining to uncompensated transfers so long as the note: 1) has an actuarially sound repayment term, 2) provides for equal payments with no balloon or deferral payments and 3) prohibits cancellation of the note upon the death of the lender.

While Oklahoma case law supports certain crisis planning tools, such as promissory notes, the limitation of this strategy is significant. For one thing, the client's children often lack the financial means to make continuing payments on the note. Worse yet, the client loses control of the assets transferred pursuant to the note. If established in advance of incapacity, an irrevocable trust and family limited liability avoid these outcomes.

PLANNING AHEAD TO PRESERVE A LEGACY

Among the hardest conversations are those in which we confront our own mortality. By shifting the discussion to legacy, we illustrate to our clients how planning can be an opportunity and not a burden. And using the right tools, we can help our clients honor their values, their life's work and the land that we all love.

ABOUT THE AUTHOR



Tyler R. Barrett is the founder and attorney at The Law Office of Tyler R. Barrett PLLC in Norman. Mr. Barrett's

practice focuses on estate planning and asset protection, elder law and probate and trust administration. He is a 2011 graduate of the OU College of Law, where he served as an articles editor for the *Oklahoma Law Review*.

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2. Genworth 2021 Cost of Care Survey, available at <https://bit.ly/3TFBewX>.
3. Oklahoma Department of Agriculture, "Agribusiness Quick Facts," <https://bit.ly/48CR9Lp>.
4. Oklahoma Farm Bureau, "Family Farms," available at <https://bit.ly/3U6ULBg>.
5. United States Department of Agriculture, U.S. Farm Production Expenditures 2022, available at <https://bit.ly/47ISoxC>.
6. OAC 317:35-5-41.6(5)(c)(ii).
7. OAC 317:35-5-41.6(5)(c)(ii) (emphasis added).
8. 2009 OK CIV APP 107, 228 P.3d 1199.
9. *Id.*
10. 18 O.S. §2034.
11. *Id.* Some commentators have suggested that charging order protection is illusory as to single-member LLCs. See Steven P. Cole, "Charging Order Protection for a Single Member LLC May Still be Illusory," *OBJ* Vol. 81, No. 7 (2010). However, if that sole member is an irrevocable trust – itself also protected from creditors – the author believes these concerns are mitigated.
12. The irrevocable trust should contain provisions permitting it to own closely held business interests.
13. When drafting the right of occupancy, the attorney must exercise great care so that it is not deemed to be a life estate, which are a countable resource under Oklahoma's Medicaid rules. See OKDHS 10-1-5(d)(1), available at <https://bit.ly/41Q60jl>.
14. As of the date of this article, a single applicant must have less \$2,000 in countable assets and \$6,833 in monthly income. See OKDHS Appendix C-1, available at <https://bit.ly/48KkwLX>.
15. See OAC 317:35-19-20(5).
16. Case No. CIV-12-1075-C (W.D. Okla. March 21, 2013).

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Oklahoma's Agricultural Law

By Brendon S. Atkinson

THERE'S NO SUCH THING as agricultural law." It has been 15 or 20 years ago now, but I can still hear those words as though they were spoken earlier today. "It's contract law and torts, the same as anything else," scoffed the attorney regarded by many, including myself, as *the* attorney for all things agriculture. It was a position I halfheartedly adopted as my own for some time thereafter. After all, as usual, he wasn't wrong. The elements of liability for negligence are the same, regardless of whether the fact pattern involves a Corvette or a combine; a grain contract requires an offer, acceptance and consideration – just like a contract to sell a house or an employment agreement.

At this point, you may be asking, what about the Plant Variety Protection Act, the Packers and Stockyard Act, Chapter 12 of the Bankruptcy Code, etc. – aren't those agricultural law? There is no question that each was developed and has evolved to deal with issues in agriculture. I would not begin to argue against those who choose to place those areas of law under the umbrella of "agricultural law." However, you would be hard-pressed to find an Oklahoma farmer or rancher looking for legal services to patent a new plant species they've developed. I don't

know of any "family farmers" who *want* representation in search of relief under the Bankruptcy Code. I think our position that "agricultural law" didn't exist was founded upon a mindset or belief that neither these nor any other *special* laws affected average, day-to-day agricultural operations. However, representing farmers, ranchers and agricultural entities in those 15 or 20 years since, I realized somewhere along the way that maybe we weren't *entirely* correct.

As recent as 2015, Oklahoma was the third-largest producing state in the United States for winter wheat and the second-largest producing state for beef cattle.¹ During the same time period, 76% of Oklahoma's land area was used for agricultural purposes, and one in every eight jobs in Oklahoma had a direct tie to agriculture.² With these statistics in mind, it should come as no surprise that over time, law has arisen that directly affects Oklahoma's agricultural industry on a regular basis. In fact, these "agricultural laws" are not only not typical "contract law" or "tort law," but in some cases, Oklahoma's agricultural law alters the applicability of other areas of law to the state's agricultural industry. Though not an exhaustive list, this article will discuss a few of

Oklahoma's agricultural laws that practitioners should keep in mind if they represent clients involved in and/or affected by agriculture in Oklahoma.

AGRICULTURAL ENTITIES

A good place to start this discussion is the agricultural law that dictates who can or, maybe more precisely, who cannot engage in farming and ranching in the state of Oklahoma. Over the last several years, entities, especially corporations and limited liability companies, have become popular tools in farming and ranching operations as a means to limit liability, transition management and ownership, etc. However, "corporate" farming has not always been permitted in Oklahoma. In fact, though rarely scrutinized, there are limitations on which entities may engage in farming and ranching in Oklahoma.

Article 22, §2 of the Oklahoma Constitution explicitly prohibits corporations from "buying, acquiring, trading, or dealing in" rural real estate. For a time, this prohibition was understood to also be a prohibition on farming and ranching by a corporate entity. However, in *LeForce v. Bullard*,³ the Oklahoma Supreme Court stated, "The intention of the framers of the Constitution was not to prevent

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private corporations from owning land, but to prevent land companies from buying rural land and further to prevent private corporations from buying more rural land than necessary and proper for their operation, so as to encourage private rural home ownership.” The *LeForce* court went on to remind the Legislature that, should it desire, it had “ample” power to limit any potential abuses of corporate ownership of rural real estate. A few years later, in 1971, the Legislature did that by adding 18 O.S. §§951 through 954, and again in 1978 by adding 18 O.S. §§955 and 956.⁴

Section 951 declares the prohibition of foreign farming and ranching corporations to be the public policy of this state⁵ and further establishes the requirements for domestic farming or ranching

corporations. Likewise, §955 adds requirements for the engagement in farming or ranching by trustees of trusts, partnerships and limited liability companies and restates the requirements for corporations. Without going into the details for each entity structure, these provisions essentially restrict who may hold interests in the entity, limit how many interest holders each entity may have and the minimum percentage of gross receipts that must be derived by each entity from farming and ranching activities.

So who enforces these requirements? Section 951 states that certificates of incorporation are to be approved by the State Board of Agriculture prior to being filed with the secretary of state. Though the same requirement has been inferred for other entity

structures, §955 does not specifically provide the requirement for pre-approval. Once upon a time, the organizational papers for an entity whose name even remotely suggested a connection to farming and ranching were required to bear the stamp of approval from the State Board of Agriculture before the secretary of state’s office would begin to process them. Today, I’m not sure that is still the case. Nevertheless, the Oklahoma Department of Agriculture, Food and Forestry (ODAFF) website does provide a link to an attestation form to be used in seeking the State Board of Agriculture’s approval.

Following formation, the State Board of Agriculture is directed to “initiate and prosecute civil or criminal actions to enforce the provisions of this code.” Again,

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this directive clearly applies to corporations, but its application to other entity structures is not as clear. That said, violation of the farming or ranching requirements for any entity carries the possibility of a \$500 fine and the possibility of misdemeanor charges. Ultimately, though, it is the citizens of this state who have been empowered to oversee the use of legal entities for farming and ranching.

Both farming and ranching require the use of real estate, and Oklahoma uses a lot of real estate for those purposes. Assuming then that a farming or ranching entity requires real estate to operate, it is only logical that §956 was included to ensure compliance with the entity requirements. If an entity is in violation of the requirements of §956 and owns real estate, any resident of the county in which that real estate is held may file a district court action for the divestment of the real estate. With this in mind, if the decision is made to utilize entities in farming and ranching operations, those entities should be reviewed on a regular basis to ensure continued compliance with the farming and ranching entity requirements. Otherwise, this agricultural law could make continued operations a little difficult.

DAMAGES FROM PESTICIDE APPLICATIONS

A common agricultural practice is the application of pesticides to crops and growing plants in order to protect them from insects, weeds and numerous other pests. The application of pesticides⁶ in Oklahoma is governed by the Combined Pesticide Law (CPL), which is found under the Agricultural Code at 2 O.S. §3-81 *et al.* and is regulated and enforced

by ODAFF through its Consumer Protection Services Division. The CPL sets forth several requirements that must be met for persons and entities to become certified applicators of pesticides in this state and the criteria by which the applicators and their applications of pesticides will be reviewed. In addition to the requirements imposed on the pesticide applicators, the Legislature also included requirements in the CPL that must be met by those who claim to have been damaged by pesticide applicators. Specifically, the CPL provides at 2 O.S. §3-82(D)⁷ that:

DAMAGES – 1. Prior to filing an action against an applicator for damages to growing crops or plants, any person alleging damages to growing crops or plants shall:

a. within ninety (90) calendar days of the date that the alleged damages occurred or prior to the time that twenty-five percent (25%) of the allegedly damaged crops or plants are harvested, whichever occurs first, file a written complaint statement with the Department regarding the alleged damages, and

b. between the date of filing of the written complaint pursuant to subparagraph a of this paragraph and the date harvesting or destruction of the allegedly damaged crops or plants occurs, allow the applicator and the representatives of the applicator reasonable access to the property to inspect and take samples of the

allegedly damaged crops or plants during reasonable hours. The representatives of the applicator may include, but not be limited to, crop consultants, bondsmen, and insurers. Nothing in this subparagraph shall limit in any way the harvesting or destruction of the allegedly damaged crops or plants in the ordinary course of business and practice.

2. Any person failing to comply with paragraph 1 of this subsection shall be barred from filing an action for damages against the applicator.

Probably the best explanation of the purpose and effect of this statute was given by the Oklahoma Supreme Court in *Olmstead v. Reedy*.⁸ *Olmstead* was a case involving alleged damages to plants and crops as a result of pesticides drifting onto the plaintiff's property after having been applied to an adjoining property. In that case, the Oklahoma Supreme Court stated, "The language of the statute (2 O.S. 3-82) seems clearly to provide that the filing of the written statement of damages is a condition precedent to the right to commence the action."⁹ "The statute appears to us not to have been intended to terminate or limit the rights of one whose property is damaged by an applicator of pesticides but to prevent undue delay in reporting any alleged damages."¹⁰ "Another purpose of the statutory requirement apparently was to afford defendants an opportunity to investigate the circumstances while the claimed damages were fresh and prior to change and to preserve evidence for their defense."

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Pesticide damage claims come in many forms. They result from both direct applications of pesticides and drift, *i.e.*, movement of pesticides from their intended targets. As you might imagine, causes of action in these matters range from breach of contract and simple negligence to trespassing and everything in between. However, 2 O.S. §3-82(H) does not differentiate between types of claims or causes of action. Instead, it unequivocally provides that the “failure to file a written statement of damages pursuant to the statute is certainly fatal to a plaintiff’s lawsuit.”¹¹

Should you ever find yourself with a client who believes that their crops or growing plants were damaged by pesticides, you should determine if a written complaint statement has been filed with ODAFF, and if it hasn’t, one must be filed immediately. Fortunately, ODAFF provides two online sources for accomplishing this. By visiting ag.ok.gov/pesticides, an online statement can be submitted directly to ODAFF, or a

pesticide complaint statement can be downloaded with directions for filling out and filing with ODAFF. On the other hand, in defense of an applicator, a request to ODAFF under the Open Records Act¹² will reveal whether the §3-82(H) defense is available, as well as the results, if any, of any investigations performed by ODAFF in response to a written complaint statement.

RESTRAINT OF DOMESTIC ANIMALS

I’m sure we all have that one thing that, “If I had a nickel for every time that I’ve heard [fill in the blank], I’d be rich.” For me, it would be that “Oklahoma is an open-range state.” Well, it’s not and hasn’t been since “Grazing in Open Range Counties” was repealed in 1966. What I think those well-intentioned but uninformed souls are referring to is the perceived lack of liability for damage that may result from the escape of their animals from their fencing or other restraints. That, however, is not entirely correct either.

One of the best examples of the effect of Oklahoma’s agricultural law on other areas of the law may be the duties and requirements associated with the restraint of “domestic animals.”¹³ Not only is Oklahoma not an “open range state,” but 4 O.S. §98 requires that “all domestic animals shall be restrained by the owner thereof at all times and seasons of the year from running at large in the State of Oklahoma.” When those domestic animals escape restraint, though, that’s when things get interesting.

Anyone who has been involved with animal husbandry for any length of time knows that some, if not most, animals seem to think the grass is always greener on the other side of the fence. No matter the amount of sustenance and comfort provided, they seem to think better pastures exist. The duty of care required in ensuring the restraint of those animals is determined by the damage resulting from their escape.

In *Shuck v. Cook*,¹⁴ the Oklahoma Supreme Court held that it was the

I’m sure we all have that one thing that, ‘If I had a nickel for every time that I’ve heard [fill in the blank], I’d be rich.’ For me, it would be that ‘Oklahoma is an open-range state.’ Well, it’s not and hasn’t been since ‘Grazing in Open Range Counties’ was repealed in 1966.

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intent of the Legislature for 4 O.S. §98 to protect growing crops, not persons traveling by automobile down the highway. With *Carver v. Ford*,¹⁵ the court acknowledged the strict liability effect of §98 for damages to crops and grazing lands by an escaped animal but stated clearly that in order to recover for any other type of damage, it must be shown that the animal was either intentionally or negligently allowed to “run loose.” The result: If farmer A’s bull decides to go in search of greener pastures, they are strictly liable to farmer B for all of farmer B’s corn that is destroyed by the trespassing bull. But if that same bull then proceeds to cross the highway where it is struck by a traveler, in order to recover from farmer A, the traveler must show that the bull’s escape was a result of an intentional act by farmer A or that the bull escaped restraint due to farmer A’s negligence – same agricultural law, two completely different proceedings.

CONCLUSION

Most Oklahoma attorneys would not consider agricultural law to be a part of their practice. If you are ever presented with a matter involving farming or ranching in any way, I would suggest exploring it. It is just contract law and torts, the same as anything else, unless Oklahoma agricultural law says it isn’t.

ABOUT THE AUTHOR



Brendon S. Atkinson is a solo practitioner with The Atkinson Law Firm PLLC in Enid. He has been representing farmers, ranchers and agricultural entities in the region for more than 20 years. Prior to entering private practice, he was a staff counsel for the Oklahoma Department of Agriculture, Food and Forestry. A native of Sweetwater, Mr. Atkinson obtained his J.D. from the OU College of Law and his B.S. in agricultural economics from OSU.

ENDNOTES

1. Department of Agricultural Economics Division of Agricultural Sciences and Natural Resources Oklahoma State University: (2015) *Contribution of Agriculture to Oklahoma’s Economy* [Fact Sheet]. <https://bit.ly/3TR6uUs>.
2. See endnote 1.
3. 1969 OK 14, 454 P.2d 297.
4. 18 O.S. §954 was enacted in 2000 to add an exemption for Production of Nursery Stock.
5. Exemptions to this prohibition are provided in both 18 O.S. §§954 and 954.1.
6. As used in the CPL, “pesticide” means a substance or mixture of substances intended for defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria, weeds or other forms of plant or animal life or viruses that the Board of Agriculture declares to be a pest, except viruses on or in humans or animals. 2 O.S. §3-81(34).
7. On Nov. 1, 2023, 2 O.S. §3-82(H) was redefined as 2 O.S. §3-82(D).
8. 1963 OK 268, 387 P.2d 631.
9. *Id.*
10. *Id.*
11. *Brown v. Rocky Farmers Co-op, Inc.*, 2005 OK CIV APP 52, 118 P.3d 214; *citing McArdle v. Stewart*, 1968 OK 153, 446 P.2d 379.
12. 51 2 O.S. §24A.1, *et seq.*
13. 4 O.S. §98 defines “domestic animals” as including “cattle, horses, swine, sheep, goats, exotic livestock and all other animals not considered wild” but does not include domestic house pets.
14. 1972 OK 25, 494 P. 2d 306.
15. 1979 OK 26, 591 P. 2d 305.



SHOW YOUR CREATIVE SIDE ON THE BACK PAGE

We want to feature your work on "The Back Page" of the *Oklahoma Bar Journal*! Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry, photography and artwork are also welcomed.

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



2024 OBA Officers and New Board Members Take Oaths

ON FRIDAY, JAN. 19, THE new OBA officers and board members took their oaths of office. The swearing-in was held in the Oklahoma state Capitol Courtroom. Administering their oaths of office was Oklahoma Supreme Court Chief Justice M. John Kane. Officers sworn in were:

- President Miles Pringle, Oklahoma City
- President-Elect D. Kenyon Williams Jr., Sperry
- Vice President Amber Peckio, Tulsa

Also taking oaths as members of the OBA Board of Governors were:

- Immediate Past President Brian T. Hermanson, Ponca City
- William Ladd Oldfield, Ponca City, District One (three-year term)
- Philip D. Hixon, Tulsa, District Six (three-year term)
- Chad A. Locke, Muskogee, District Seven (three-year term)

- Jeff D. Trevillion, Oklahoma City, Member at Large (three-year term)
- Laura R. Talbert, Oklahoma City, Young Lawyers Division Chairperson (one-year term)

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

Right: 2024 OBA President Miles Pringle takes the oath of office.

Bottom left: President-Elect D. Kenyon Williams Jr. takes his oath. Also pictured are Immediate Past President Brian T. Hermanson and Vice President Amber Peckio.

Bottom right: President Pringle is joined by his family for the swearing-in ceremony. From left oldest son, Fischer; wife, Andrea; and youngest son, Harrison.





Top: From left Philip D. Hixon, Willaim Ladd Oldfield, Jeff D. Trevillion, Laura R. Talbert, Chad A. Locke, Brian T. Hermanson and Amber Peckio take their oaths, administered by Oklahoma Supreme Court Chief Justice M. John Kane (front).

Top left: President Pringle's wife, Andrea, and oldest son, Fischer, place his presidential lapel pin.

Bottom left: During the ceremony, President Pringle addressed the Oklahoma Supreme Court justices and the crowd, emphasizing his focus this year on deepening human connection as well as positioning the bar association to effectively face upcoming changes and challenges.

Right: Friends, family and colleagues filled the Supreme Court Courtroom at the Oklahoma state Capitol to witness new OBA officers and board members take their oaths.

Legislative Monitoring Committee Prepares for New Session

By Shanda McKenney

HAPPY NEW YEAR! As an initial matter, I would like to extend a huge “thank you” to Miles Pringle, who served as co-chair of this committee last year and is now the OBA president. His rather large shoes are being filled by Teena Gunter, who is a longtime committee member and serves as general counsel at the Oklahoma Department of Agriculture, Food and Forestry. Welcome aboard, Teena! By the time you read this, we will have just completed our Feb. 2 Legislative Kickoff program. Details of that program will be provided after its conclusion for those who were unable to attend. Thanks so much to all the attorneys who spent their valuable time and effort bringing our membership helpful information about this year’s legislative agenda!

The deadline for filing bills and joint resolutions in both chambers was Jan. 18, and the *first day of session is Feb. 5*. Your committee is working hard, as always, to compile a list of bills that might be of interest to the OBA membership, and portions of that list will be included in next month’s journal once it is finalized. There are literally thousands of bills and joint resolutions that need to be sifted through, reviewed and categorized, so if any of you are currently aware of bills that may be of particular interest to the membership at large



or any particular practice group, please do not hesitate to send them to the committee through the OBA Communities page. While you’re at it, make sure to sign up for the Legislative Monitoring Committee Communities page so that you receive all our updates. You can find all these links on your MyOKBar page on the OBA website.

For anyone interested in searching introduced bills and/or tracking specific legislation, there are a number of very useful tools to assist with this process that are *free* to the public for personal use. We are fortunate to have a Legislature that prioritizes informing the public through its website, www.oklegislature.gov. This website allows you to read the various versions of bills, track specific bills by number and register for email

alerts when there are updates or changes. There is also a private service available with some free services at www.legiscan.com. If you are interested in a deeper dive or more detailed monitoring functionality, LegisScan has reasonably priced annual subscriptions starting at \$25.

Our committee is looking forward to a productive and informative year, and we always welcome input from OBA members as to issues of broad importance that merit watching. If you are interested in becoming an active member of the committee, which plans our presentations, our next meeting will be held later this month at the Oklahoma Bar Center – keep your eyes peeled for the date and time. We look forward to serving you!

Author’s Note: Any views or opinions expressed herein are those of the author individually and are not intended to reflect those of Christina D. Stone & Associates or of any State Farm Insurance company.

ABOUT THE AUTHOR



Shanda McKenney is a co-chair of the Legislative Monitoring Committee. She is a practicing attorney with Christina D. Stone & Associates, employees of State Farm Mutual Automobile Insurance Co.



Oklahoma Bar Association
DAY AT THE
CAPITOL
Tuesday, March 26

Agenda coming soon!

Visit www.okbar.org/dayatthecapitol for updates

Shaping the Next Generation of Bar Leaders

By *Lori Rasmussen*

THE EIGHTH CLASS OF THE OBA Leadership Academy is officially underway after its members met for the first time in January. Over the course of this year, these program participants will become equipped with the skills and connections to become leaders within the bar as well as their local communities.

The 16 members of the class were selected for their demonstrated commitment to the profession and community impact. Through this program, which originated from the OBA's Leadership Conference in 2007, participants will learn about OBA governance, special considerations for attorneys in public service, networking skills and effective communication.

"Leadership is a talent that needs to be honed and developed," said

Gigi McCormick, director of OBA Educational Programs. "As attorneys, we often find ourselves in leadership positions, either because of our own goals and ambitions or because of the public's perception that attorneys inherently make good leaders. The future of our association and our state depends on the intentional development of these talents."

During the first meeting, participants were welcomed by OBA President Miles Pringle. They also took a tour of the Oklahoma Bar Center and met with staff to learn more about the association and how its various departments function. Later, they heard from Lawyers Helping Lawyers Assistance Program Committee Chair Scott Goode, who spoke about

LHL programs aimed at addressing the mental health and substance abuse challenges those in the legal profession may encounter. The following day, the group attended the swearing-in ceremony for OBA officers and new members of the Board of Governors.

The class will meet bimonthly in 2024 and conclude with a graduation celebration in November.

ABOUT THE AUTHOR

Lori Rasmussen is the OBA Director of Communications.



Left: Members of the Leadership Academy meet with the Oklahoma Bar Foundation during their tour of the Oklahoma Bar Center.

Above: LHL Committee Chair Scott Goode presents on mental health and substance abuse challenges within the bar during the afternoon session.





The eighth class of the OBA Leadership Academy meets for the first time on Jan. 18. Participants are (front row from left) Rachel Hartman, Norman; Melissa Martin, Yukon; Courtney Driskell, Tulsa; Elissa Stiles, Tulsa; Alyssa Amundsen, Norman; (back row from left) Thomas Grossnicklaus, Oklahoma City; Sherry Erb, Muskogee; Tracy Smith, Tulsa; Kinder Shamhart, Bartlesville; Tim Beets, Oklahoma City; Melissa Brooks, Oklahoma City; Brett Stavin, Edmond; Shannon Taylor, Oklahoma City; Brian Candelaria, Norman; and Calandra McCool, Norman. Not pictured is Taylor Wallner, Oklahoma City.



Above: OBA President Miles Pringle discusses the association's leadership structure during the Thursday morning welcome session.



Right: OBA Leadership Academy Class Eight gets underway.

Applicants for February 2024 Oklahoma Bar Exam

THE OKLAHOMA RULES OF PROFESSIONAL CONDUCT impose on each member of the bar the duty to aid in guarding against the admission of candidates unfit or unqualified because of deficiency in either moral character or education. To aid in that duty, the following is a list of applicants for the bar examination to be given Feb. 27-28.

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

EDMOND

Rehma Kamal Amil
Mary Louisa Deter-Billings
Griselda Michelle Garcia
Eastman Grady Holloway
Katelyn Darr Kirk
Trevor Richard Mendez
Elizabeth Lynn Munoz
Garrett Thomas Schraad
Zachary James Scott
Hope Riley Serfontein

NORMAN

Megan Kaylee Buchanan
Dalton Benjamin Burlie
Joshua Itzaeh Castro
Kyle Blair Cummings
Dimitri James Flowers
Reagan James McGuire
Jack Alan Rockmore Newhouse-Velie
Taylor Noelle Ruffa
Evelyn Irene Spaulding
Benjamin Asmamaw Tesema
Stephen Daniel Wolfe

OKLAHOMA CITY

Briana Grace Acuff
Eric Masterson Alspaugh
Benjamin Rey Aranda
Kennedy Brooke Baker
Amanda Michelle Barlow
Adelaide Jane Bell
Alexander Oscar Bonano-Cruz

Krystal Brooke Browning
Katelyn Marie Conner
Sarah Elizabeth Coughlon
Madeline Grace Craig
Ishaq Saleem Dotani
Jess Quinton Eddy
Sina Nickdel Farzaneh
Hannah Flores

Kailey Ann Griffiee
Mark Conner Harris
Chase Hunter Harvick
Joshua Darnell Hillard
Hiba Jameel
Daniel Terah Eliakim Kines
William Dale Lewis
Lisa Leigh Lopez
Brenda Cristela Lozano
Tresa Diann Lupton
Haidee Macedo
Siobhan Ann Mahnken
Lauren Nichole Martin
Julisa Amalia Martinez
Julieta Mendoza
McKenna Riley Merrell Murphy
Elizabeth Opuko-Afrifa Mintah
Haley Claire Mock
Christy Elizabeth Montenegro
Jaron Tyler Moore
William Christopher Mullen
Isaac Fredrick Onaolapo
Luciana Perez
Carlos Alberto Pimentel
Daniela Dolores Rodriguez

Genia Lee Shipman
Bailey Renee Smith
Sean Anthony Stonecipher
John Allee Switzer
Kristina Elaine Tipton
Lexy Lee Vela

TULSA

Elissa Marie Andrews
Olutomi Olatide Aroso
Leland Dwayne Ashley Jr.
Tosha Wonte Birmingham
Gavin Robert Boone
Bria Renee Brehm
Cecelia Reva Brissenden
Paul William Brock
Kylie Morgan Campbell
Zander Bartholomew Chonka
Jordan Lee Clapp
Zachary Wade Curtis
Cheyenne Cheri Donatello
Contesa Jeree Duncan
James Jeffrey Elias
Jeffrey Blake Foshee
Brian Steven Gattis
Grayson Cole Glover
Candace Michell Hamilton
Jordyn Christine Hand
Nicholas Nathaniel Hartman
Michael James Kidman
Gregory David Loeffler
Michael Richard Long
Paige Elizabeth LoVoi

William Martin McCollum
Cheyenne Renee McKee
Kathryn Anne Morris
Macullen Brian Nadurak
Brett Lael Palmer
Stetson Burdette Payne
Jacob Nicholas Popp
Josiah Gordon Robinson
James Edward Russell IV
Sydney Denise Scott
Zachary James Sinclair Stegman
Hannah Genean Stidman
William Sheldon Stringer
Ariel Elizabeth Subourne
Daniel Patrick Summers
Jatelyn Michelle Taylor
Megan Elizabeth Wagner
Maci Lynne Wallace
Clarkson Shad Wehrli
Lawrence John White Jr.
Zane Michael Wilkinson
Lauryn Jo Wilson
Preston Lyle Wiruth

OTHER OKLAHOMA CITIES AND TOWNS

Ashton Brett Ballard, Wagoner
Coleman Carlin Bandy, Coweta
Alexis Benitez, Springer
Joseph Tali Byrd, Park Hill
Jaime Erik Calderon, Jenks
Alexandra Elizabeth Calzaretta,
Stillwater
Brett Lassetter Clark, Stillwater
Anthony Eugene Coker, Arcadia
Weston Sean Cox, Broken Arrow
Madelynn Miles Dancer, Soper
Elizabeth Litton Elliott Reim, Douglas
Ashleigh Nicole Fixico, Sapulpa
Mackey Andrews Gammill, Davis
Sadie Jayne Gardner, Broken Arrow

Efrem Sayon Gibson, Broken Arrow
Anna Delaney Hairston, Midwest City
Justin Adam Hairston, Moore
Claire Elizabeth Hale, Jenks
Amy Hernandez, Broken Arrow
Nada Nassar Higuera, Yukon
James Christian Holmes, Broken Arrow
Victoria Sue LeftHand, Dewey
Christopher Brian Lewis, Claremore
Garret Arlo Maxey, Claremore
John Thomas Nelson, Chickasha
Ashley Inde Nuckolls, Lawton
Sheridan Hadley Patterson, Warner
Shayla Breanna Powers, Idabel
Aubrie Cathleen Quinley, Owasso
Garrett Thomas Reynolds, Claremore
Jansen Luke Rigney, Broken Arrow
Sicily Bel Shannon Orth, Guthrie
Rylee Slade Simon, Vian
Robert Paul Stout, The Village
Amy Rene Sullivan, Noble
Collin Andrew Swander, Blanchard
Jami Lyn Treantafeles, Bixby
Brittany Morgan Trent, Durant
Jacob Osten Vanderslice, Mustang
Dathan Jon Wade, Claremore
John Wesley Watson, Claremore
Cindy Samantha Williams, Ardmore
Taryn Nicole Williams, Chichasha
Megan Leslie Willingham, Ardmore
Caleb Charles Wofford, Pryor
Dalton Shane Woodring, Yukon

OUT OF STATE

Steve Tenkamenin Awuyah Addae,
Bronx, NY
Cheyenne Dawn Barnard,
Moscow, ID
McKensi Rae Burks, Bremen, AL
Jonathan Kingsley Butts, Boston, MA
Cameron Jaci Claytor, Plano, TX

Fallon Julia Cochlin,
College Station, TX
Annmarie Akerley Daniel,
Arlington, TX
William Robert Dewalt, Truckee, CA
Sarah Leslie Falen, Cheyenne, WY
Dylan Joseph Gros, Manhattan, KS
Amanda Guillen, San Antonio, TX
Rodney Lee Hall, Houston, TX
Abigail Evelyn Heath,
Douglassville, TX
Francisco Samuel Herrera
Chinchilla, Leander, TX
Austin Dale Hogan, Orlando, FL
Jasmine Alexis Majesty House,
Dallas, TX
Rosekate Ibe, Richmond, TX
Stephen Mark Jacks, Cedartown, GA
Harriet Day Blackwell Jett,
Peachtree City, GA
Kameron Marks Jynes, Cedar Hill, TX
Joanie Ynez Kelley, Celina, TX
Mahshid Koroni, Houston, TX
Paige Alexis Lynne, Dallas, TX
Addie Marie Martin, Fort Smith, AR
Lawrence Jacob Mason, Little Rock, AR
Leland Anthony McGee, Fresno, CA
Kelsey Lauren McLaughlin, Paris, TX
Steven Foy Miller, Pottsboro, TX
Jacob Charles Morton, Fayetteville, AR
Joseph Canan Nelms, Paris, TX
Alane Christine Rooks,
Healdsburg, CA
Amber Allison Davis Smith, Katy, TX
Erin Eleanor Snyder, Omaha, NE
Hannah Sieka Tiesenga, Elmhurst, IL
Tahj Anthony Walker, Mesquite, TX
Desiree Lauren Watkins,
Texas City, TX
Jacob William Weideman,
McKinney, TX

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE OKLAHOMA INDIGENT DEFENSE SYSTEM BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract (“Offers”) to provide non-capital trial level defense representation during **Fiscal Year 2025** pursuant to 22 O.S. 2001, ‘1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2025 (July 1, 2024 through June 30, 2025) in the following counties: **100% of the Oklahoma Indigent Defense System caseloads in THE FOLLOWING COUNTIES:**

HASKELL / LEFLORE / MAYES / MCINTOSH / MUSKOGEE

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board’s consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor, traffic, youthful offender and wildlife cases in the above counties during FY-2025 (July 1, 2024 through June 30, 2025). Offers may be submitted for complete coverage (100%) of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m.

The deadline for submitting sealed Offers is 5:00 PM, Thursday, March 7, 2024.

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

FY-2025 OFFER TO CONTRACT
_____ **COUNTY / COUNTIES**

TIME RECEIVED:
DATE RECEIVED:

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to **OIDS, FY-2025 OFFER TO CONTRACT, 111 North Peters, Suite 100, OK 73069**. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at **111 North Peters, Suite 100, Norman, OK 73069**. Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 PM, THURSDAY, March 7, 2024 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 8, 2024, beginning at 10:00 AM, and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Non-conforming Offers will be rejected on Friday, March 8, 2024, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 15th, 2024**, at *a place to be announced*.

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

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

FY-2025 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2020, FY-2021, FY-2022, FY-2023 and FY-2024 together with a 5-year contract history for each county listed above. The request form below may be mailed to **OIDS OFFER-TO-CONTRACT PACKET REQUEST, 111 North Peters, Suite 100, Norman, OK 73069**, emailed to **brandon.pointer@oids.ok.gov** or submitted by facsimile to OIDS at (405) 801-2661.

REQUEST FOR OIDS FY-2025 OFFER-TO-CONTRACT PACKET

Name _____ OBA # _____

Street Address _____ Phone _____

City, State, Zip _____ Fax _____

County / Counties of Interest _____

Lessons from Lincoln: Make Your Word Your Bond

By Janet Johnson

PRESIDENTS DAY IS celebrated in February, and I thought it would be ripe to reflect upon one of the most revered presidents of the United States, who was also a fellow lawyer. As our 16th president, Abraham Lincoln left behind a legacy that extends far beyond politics. There was much more to his leadership than the Civil War and his role as a statesman. In fact, lawyers can draw valuable lessons from Lincoln's life and career.

One of the key lessons lawyers can learn from Lincoln is the importance of resilience and determination. Lincoln faced numerous setbacks and failures throughout his life, both personally and professionally. Despite facing defeats in elections and experiencing personal tragedies, he persevered. Lawyers often encounter challenges in their legal careers, such as losing cases or facing criticism. Lincoln's ability to bounce back from adversity serves as a testament to the power of resilience in the face of obstacles. Dare I say he also did so with extreme professionalism and civility.

Integrity and honesty were integral to Lincoln's character, and these virtues remain crucial for lawyers. Known for his honesty and straightforwardness, Lincoln earned the nickname "Honest Abe." Lawyers, as officers of the



Executive Director Johnson displays in her office artwork honoring President Lincoln.

court, are held to high ethical standards. Lincoln's commitment to honesty and integrity serves as a guiding principle for legal professionals, emphasizing the importance of maintaining trust and credibility in the legal field.

Lincoln's leadership style is another aspect that can inspire

lawyers. He was known for his ability to bring together individuals with differing opinions and unite them toward a common goal. Lawyers often find themselves dealing with diverse perspectives, whether working with clients, colleagues or opposing parties. Lincoln's skill in navigating

complex relationships and fostering cooperation can serve as a model for lawyers seeking to build effective partnerships in the legal arena.

The Gettysburg Address, one of Lincoln's most famous speeches, offers a timeless lesson in effective communication. Lawyers must often convey complex legal concepts to clients, judges and juries. Lincoln's concise and powerful rhetoric in the Gettysburg Address showcases the impact of clear and compelling communication. Lawyers can benefit from honing their communication skills to convey their arguments persuasively and make a lasting impression.

Additionally, Lincoln's commitment to the rule of law is a foundation that lawyers should embrace. Despite his many personal and professional challenges, Lincoln maintained a commitment to constitutional principles and the rule of law. Lawyers play a crucial role in upholding the legal system and ensuring justice. Lincoln's dedication to the rule of law serves as a reminder of the lawyer's responsibility to uphold and defend the principles that form the foundation of the legal system.

These lessons have been something I have tried to remind myself of since law school, as evidenced by a piece of art that I have had hanging in my office since

about 2008. President Abraham Lincoln's life and lessons offer valuable insights for lawyers. From resilience and integrity, professionalism and civility, to effective communication and commitment to the rule of law, Lincoln's legacy extends beyond his presidency. Lawyers can draw inspiration from Lincoln's character and leadership, applying these lessons to navigate the complexities of the legal profession with honor and purpose.



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

A Time of Great Change Caused by Artificial Intelligence Developments

By Jim Calloway



monticello - stock.adobe.com

ARTIFICIAL INTELLIGENCE development dominated discussions of technological advancement in 2023.

Judge Scott Schlegel from Louisiana was a speaker at the 2023 Oklahoma Access to Justice Summit. Last year, I noted his conviction that both courts and law firms should embrace text message reminders to reduce failure-to-appear issues.¹ Lawyers want to make certain their clients, especially potential new clients, do not miss their scheduled appointments as well as any court appearances.

“Embracing AI in the Legal Sphere: A Necessity, Not a Choice,”² was the title of Judge Schlegel’s recent post on his Substack account. He explains the inevitability of AI adoption quite well:

If there was any lingering doubt about the pervasive role of AI and generative technologies in our professional lives, Microsoft’s recent move to integrate an AI button into their keyboards should dispel it. This is not just a fleeting trend; it’s a clear signal of a future where generative AI is seamlessly woven into nearly every product we use, especially in the practice of law.

As lawyers and judges, the temptation to view AI as a distant, abstract concept may be strong. However, it’s crucial to acknowledge that AI is not just a passing fad. We must recognize that the genie is out of the bottle and that AI will reshape the landscape of numerous industries, including our own, over the next few years. Microsoft’s addition of an AI button to its keyboard is a testament to the increasing integration of AI in everyday tools, heralding a future where AI’s presence is ubiquitous.

For the legal profession, this evolution brings both challenges and opportunities. The shift towards AI-enhanced tools is not just about adopting new technologies; it’s about fundamentally rethinking how we approach our work. AI has the potential to make the justice system more efficient, effective, and accessible, but it requires us to be proactive learners so we can understand its capabilities and limitations. We cannot bury our heads in the sand.

Anyone interested in how technology can be used in the judicial system should subscribe to Judge Schlegel’s Substack account³ to receive his posts by email. Despite the well-publicized ethical issues by lawyers who used AI to draft briefs without attempting to read the cases it quoted (which did not exist), AI will reshape many things in society, including the legal profession and the legal system.

MORE CHANGE AHEAD

Why are so many predicting great change for the legal profession and legal systems because of this particular technological advance? We’ve survived the advent of many new technology tools, from faxing to the internet and email. Simply put, these new AI tools do what lawyers do. They receive input in a conversational format and give output in well-written, persuasive text. Certainly, AI does not just impact lawyers. Do you know how many internal corporate memos are completed and communicated each day? I don’t either. But most of these memos are drafted by humans, and that will not be the case in a relatively short period of time. Knowledgeable employees

will not lose their jobs. Someone will be needed to proofread the AI's work product. I would estimate I could proofread and revise 10 memos in the time it takes to draft one or two. So someone's employment will be ultimately endangered. But, in many situations, AI usage will just allow workers to shift their focus to more high-level work and reduce time spent on the more mundane.

Memos that are just reports based on information in the company's system will be the first to be automated with no human review.

The flood of new AI tools over the past year is very impressive. But adopting new technologies is a process that does take some time. Famed legal futurist Richard Susskind has opined that we are probably overestimating the short-term impact of AI while underestimating the long-term impact.

These changes will be stressful and challenging. Change management is challenging, especially for those who have been doing things in a similar manner for years. But there is simply no avoiding the changes caused by AI adoption in the legal profession.

AI ROUNDTABLE DISCUSSION IS NOW AVAILABLE

In December 2023, I hosted a video roundtable on the ethical challenges of using generative AI in the legal field for the ABA Legal Technology Resource Center. The panel featured four experts: Damien Riehl, Ivy B. Grey, Jayne Reardon and Kenton Brice. We discussed the evolution and impact of AI on the legal profession, the benefits and limitations of AI tools, the ethical implications and regulations of AI and the integration of AI in law schools. The roundtable was summarized by Zoom's AI companion, which demonstrates the potential of AI. You can watch the

video and read the summary on *Law Technology Today*,⁴ which is outside of the ABA members-only paywall.

MICROSOFT RELEASES COPILOT FOR THE REST OF US

If you are ready to subscribe to a powerful AI tool, Microsoft made a mid-January announcement that Copilot was available for the rest of us to subscribe. The 300-seat requirement for firms has now been dropped, and individuals can now subscribe. *The Verge* broke the story⁵ and reminded us there are three versions of Copilot:

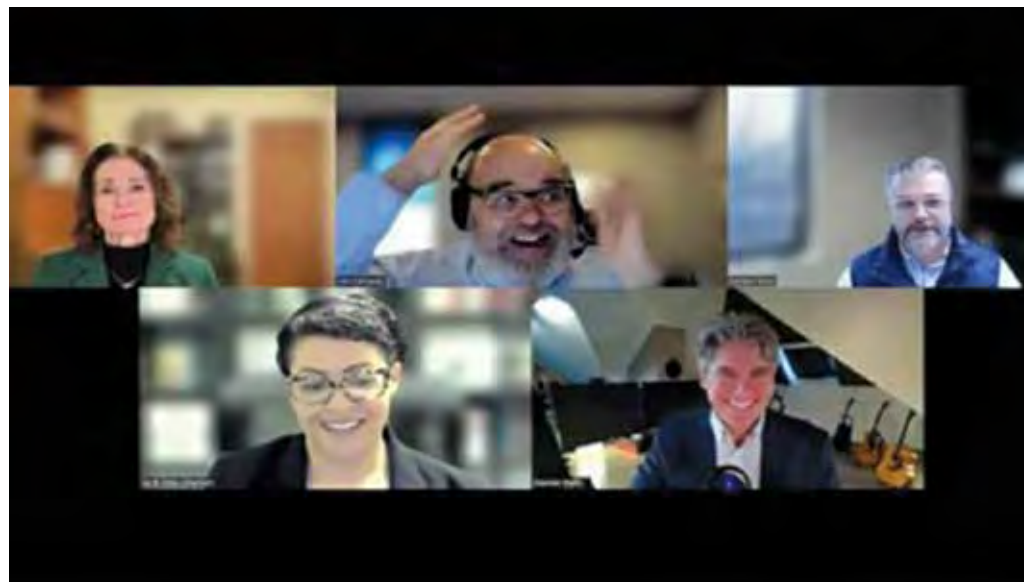
Microsoft now has three different versions of Copilot. There's the regular Copilot that's available free of charge to both consumers and businesses, which is essentially a chatbot much like ChatGPT. Then, there's the new Copilot Pro option that's launching for consumers today for a \$20 per month premium, offering AI-powered Copilot features inside Office apps and elsewhere. Microsoft now

also offers the same premium subscription with more features to businesses in the form of Copilot for Microsoft 365 at \$30 per user per month pricing.⁶

Since this just launched at the deadline for bar journal submission, I don't have all the details available, but the pricing seems to depend on your Microsoft 365 plan, with home users paying \$20 per month for fewer features than the \$30 version offered to business package subscribers. Using AI to quickly create PowerPoints from text will be a popular feature. For those of us who don't have graphic design skills, creating graphics from text will be useful as well, even if you mainly use this for personal projects.

OTHER AI DEVELOPMENTS

LexisNexis is now offering Lexis+ AI, touting the service as "the fastest legal generative AI with conversational search, drafting, summarization, document analysis and linked hallucination-free legal citations."⁷ Currently, a free trial is available.



Jim Calloway moderates the December 2023 AI Roundtable Discussion. Top row, from left Jayne Reardon, OBA MAP Director Jim Calloway and Kenton Brice. Bottom row, from left Ivy B. Grey and Damien Riehl

Thomson Reuters has announced Westlaw Precision now includes generative AI. The company notes, "Simply ask a question in everyday language and get a relevant answer with links to trusted Westlaw authority in moments." A free trial is available.

Microsoft Bing now offers a very useful AI-powered tool with Bing Chat. It is free, easy to use and quite powerful.⁸ For example, some questions it suggests include "Give me a list of new hobbies I could pursue with limited free time," and "What should I pack for a 10-day trip in a mountainous region?" If you haven't tried AI yet, Bing Chat would be a good starting place. It is powered by GPT-4, which is an improved version of ChatGPT. This new Bing chatbot is the only way to access GPT-4 for free, according to the company. For more information see the post "Access ChatGPT 4 Using Bing AI with Ease."⁹

Microsoft Copilot chatbot is accessed via the Microsoft Edge browser.¹⁰

Bard is Google's entry into the browser-based AI category.¹¹ It is free. I asked Bard which features distinguished it from other AI tools. The response included: "Focus on factuality and grounding in the real world, emphasis on safety and responsible AI, multilingual capabilities and the ability to generate texts in many creative formats such as poems, code, scripts, musical pieces, email and letters."

We first saw ClearBrief¹² at ABA TECHSHOW 2022. ClearBrief is a Word add-on for checking your brief (or opposing counsel's) for misstating the facts or law. It also is used to easily assemble a table of authorities. But it has since been improved and can now integrate facts from discovery or other documents right into the first draft of your brief. Subscriptions start at \$125 per month per user.

Spellbook is an AI contract drafting software that has been trained on thousands of business contracts as well as other data. I would encourage you to watch the four-minute video at www.spellbook.legal. I believe that in a few short years, it is possible most contracts will be drafted using AI contract drafting tools.

Copy.ai¹³ is not for legal writing. But it is a great tool for writing for an audience, whether it is a blog post or website copy. The free version is limited to writing 2,000 words per month. The pro version is \$36 per month for up to five users and has priority tech support.

The above list is far from comprehensive, and new AI developments seem to be announced almost daily.

Other types of AI tools will have wide-ranging impacts.

Volkswagen is adding ChatGPT into their new cars to allow drivers to have conversations with their cars.¹⁴ The second quarter of 2024 is when they are expected to be available. "Sorry, officer, I was distracted by an in-depth discussion with my car."

Augmental is developing tongue-controlled mouse pads that users wear inside their mouths. This will likely be a major development for those with disabilities.¹⁵

CONCLUSION

I have shared several AI tools that a lawyer may use. Readers likely will not have time to preview all of these tools, so pick one or two to give a test drive. More variations will continue to appear.

If you haven't settled on an AI tool yet, you are encouraged to consider Microsoft Copilot. While an additional \$360 per year is not a small investment, the number of ways it can be used is impressive. Having a database of all the documents the firm or lawyer

has created for the AI to use is powerful. But the PowerPoint and graphics creation tools are also something that many lawyers may use as well.

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

ENDNOTES

1. "Text Message Reminders: An Important Tech Tool for Lawyers," January 2023, *OBA*, <https://bit.ly/48ZPvnn>.
2. Jan. 5, 2024, <https://bit.ly/48xljz5>.
3. <https://substack.com/@judgeschlegel>.
4. "Roundtable: AI and Legal Ethics," <https://bit.ly/3vLXKov>.
5. "Microsoft's new Copilot Pro brings AI-powered Office features to the rest of us," *The Verge*, Jan. 16, 2024, <https://bit.ly/3TYqrJ9>.
6. "Microsoft unlocks Copilot AI inside Office apps for all businesses," *The Verge*, Jan. 15, 2024, <https://bit.ly/48TCoDX>.
7. <https://bit.ly/47H5HsC>.
8. <https://binged.it/3O7a2y5>.
9. <https://bit.ly/48Vb0Wi>.
10. <https://bit.ly/3tZwL8C>.
11. <https://bard.google.com/chat>.
12. <https://clearbrief.com>.
13. www.copy.ai.
14. <https://bit.ly/47Ai8WZ>.
15. <https://bit.ly/3Hp4oUt>.

A New Duty to Self-Report Certain Convictions

By Richard Stevens

LAWYERS HAVE GENERALLY had a limited duty to self-report ethics violations, but a recent Oklahoma Supreme Court case expands that duty. In *State Ex Rel. Oklahoma Bar Association v. Reedy*,¹ the court found an implicit duty to self-report in certain instances.

THE DUTY TO SELF-REPORT UNDER THE ORPC

In the Oklahoma Rules of Professional Conduct, there is no explicit duty to self-report violations of the ethics rules. ORPC 8.3 (a) provides:

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Section (c) of 8.3 excepts confidential information from mandatory disclosure. Section (d) exempts information learned by lawyers working as OBA ethics counsel, an agent of lawyers or judges assistance programs or the OBA Management Assistance Program. Section (d) provides further:

Any such knowledge or evidence received by lawyers acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable rule and Rule 1.6.

THE DUTY TO SELF-REPORT UNDER THE RGDP

Rule 7.7 of the Rules Governing Disciplinary Hearings contains the only explicit self-reporting provision for Oklahoma lawyers. Rule 7.7 (a) states:

It is the duty of a lawyer licensed in Oklahoma to notify the General Counsel whenever discipline for lawyer misconduct has been imposed upon him/her in another jurisdiction, within twenty (20) days of the final order of discipline, and failure to report shall itself be grounds for discipline.

The reason for the rule is that individual instances of lawyer misconduct in other jurisdictions may not be easily discovered by the OBA general counsel. This rule helps ensure that the Oklahoma Supreme Court may impose discipline upon Oklahoma lawyers who have committed violations in other jurisdictions.

REEDY – THE FACTS

In *Reedy*,² the respondent was a member of both the OBA and the Alabama State Bar. While traveling to Alabama in 2016, the respondent drove his truck into a bicyclist, causing the bicyclist's death. The respondent was arrested after he failed a field sobriety test.

Shortly after his arrest, the respondent consulted the OBA ethics counsel about his duty to report. He was (rightly, I believe) told that he had no duty to report the incident to the OBA. He was also informed that he should seek counsel to represent him in the disciplinary matter.

In April 2017, the respondent was indicted in Alabama. In February or March 2018, the respondent attempted to resign from the Alabama State Bar. He later learned that he had been placed on voluntary inactive status. Later, in March of that year, the respondent pleaded guilty to manslaughter, a felony under Alabama law.

Subsequently, the respondent returned to work in Oklahoma for the Oklahoma Indigent Defense System. He had not disclosed the conviction to the OBA, the Alabama State Bar or OIDS. In 2022, the respondent's conviction was reported to the OBA. OIDS found out about the conviction, and the respondent resigned.

The respondent again contacted OBA ethics counsel and inquired about a duty to self-report. He was told (again, I believe, rightly) that he had no duty to self-report because no discipline was imposed in Alabama. The court ultimately suspended the respondent for two years and a day.

REEDY AND THE DUTY TO SELF-REPORT

At the Professional Responsibility Tribunal hearing, the OBA stipulated (again, rightly, I believe) that the respondent did not have a duty to report his conviction to the OBA. The court, in examining the facts, stated:

Rule 7.2 requires an Oklahoma court clerk to report lawyer convictions, but nowhere in Rule 7 is there express language requiring a lawyer to self-report that criminal charges have been filed or that the lawyer has actually been convicted.

However, there is existing authority to suggest that a lawyer has an implicit duty to self-report a criminal conviction, at least to the extent the conviction has been previously determined to demonstrate an unfitness to practice law. This implicit duty comes from at least three facets:

- 1) this Court controls and regulates the practice of law in Oklahoma and if we, as a licensing authority are not advised of criminal actions by the persons we regulate, we cannot fulfil our duties;
- 2) before admittance to the Oklahoma Bar, criminal histories are reviewed, which indicates the relevance of criminal conduct to the license to practice law; and
- 3) Attorneys admitted to practice law are officers of the court and judicial system.

The court continued, “To discover which types of convictions have been previously determined to demonstrate an unfitness to practice law, a lawyer need only look at our prior disciplinary cases for examples.”

The dissent, which would have disbarred the respondent, gave hope for greater clarity by saying, “The majority explained there was no express duty to self-report this conviction to the OBA, but this case provides the opportunity to support such a duty.”

This case expresses a new view of the duty to self-report. For the sake of clarity, I hope we may see

this information in the form of a rule soon. In the meantime, any lawyer advising lawyers about discipline should be aware of the importance of this case.

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

ENDNOTES

1. 2023 OK 99.
2. *Supra*.

Meeting Summary

The Oklahoma Bar Association Board of Governors met Dec. 8, 2023.

REPORT OF THE PRESIDENT

President Hermanson reported he attended the Annual Meeting, including the Welcome Reception, Lawyers Helping Lawyers Assistance Program Committee meeting, Annual Luncheon, Board of Editors meeting, Law Day Committee meeting, Oklahoma Bar Foundation Reception, Diversity Awards Dinner, Ice Cream Social, Delegates Breakfast, General Assembly and House of Delegates. He wrote the December president's article for the *Oklahoma Bar Journal*, worked on the final appointments and attended the District Attorneys Council meeting and the Board of Governors holiday party. Additionally, he worked on miscellaneous tasks to finish up the year, attended the Executive Committee meeting and worked on arrangements to attend the National Conference of Bar Presidents and the Southern Conference of Bar Presidents at the ABA Midyear Meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Pringle reported he attended the Annual Meeting and House of Delegates. He met with LegisOK for a discussion of its monitoring systems and a demonstration with Executive Director Johnson. He worked on and made appointments, as well as prepared for the ABA Midyear Meeting and

registrations. He worked on logistics for the swearing-in ceremony, attended the Oklahoma County Bar Association's holiday party and discussed the budget hearing process and information with Executive Director Johnson.

REPORT OF THE VICE PRESIDENT

Vice President Williams reported he attended the Annual Meeting, including events such as the Diversity Awards Dinner and House of Delegates. He virtually attended the December meeting of the Legislative Monitoring Committee and chaired the November meeting of the Professionalism Committee. He coordinated Professionalism Committee CLE presentations for the Washington County Bar Association and Garvin County Bar Association and presented at the 5th Annual Champions for Children Conference of the Oklahoma Guardian Ad Litem Institute. Additionally, he worked on appointments to replace expiring terms in the Strategic Planning Committee and attended the Board of Governors holiday party. He also prepared for the ABA Midyear Meeting and registration.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended many aspects of the Annual Meeting and met with LegisOK for a discussion of its monitoring systems and a

demonstration with President-Elect Pringle. She met with a roofing company for follow-up discussions on roofing and other security-based updates, met with the TU College of Law on membership engagement and worked on registration for the National Conference of Bar Presidents Midyear Meeting. She prepared the OBA budget application, filed it with the Oklahoma Supreme Court, attended the hearing and filed a rule change application for the Licensed Legal Internship Program. Additionally, she attended the Diversity Committee CLE on voting rights, the Board of Governors holiday party and the Lawyers Helping Lawyers Assistance Program Committee meeting.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Hicks reported he attended the Annual Meeting, including the Diversity Awards Dinner. He also attended the Board of Governors holiday party and the Legislative Monitoring Committee meeting.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended two Lawyers Helping Lawyers Assistance Program Committee meetings, the Diversity Awards Dinner and the Diversity Committee's CLE program on voting rights. She attended the Legislative Monitoring Committee meeting and the Board of Governors holiday

party. **Governor Barbush** reported he attended the Annual Meeting, including the Diversity Awards Dinner. He also attended the Board of Governors holiday party and the Lawyers Helping Lawyers Assistance Program Committee meeting. **Governor Bracken** reported he attended the Annual Meeting, the Oklahoma County Bar Association board meeting, the Oklahoma County Bar Association Christmas party and trivia night and the Board of Governors holiday party. **Governor Conner** reported he attended the Garfield County Bar Association Christmas party and meeting and the Awards Committee meeting. **Governor Dow** reported she attended the Cleveland County Bar Association meeting and the Board of Governors holiday party. **Governor Knott** reported she attended the Canadian County Bar Association holiday party. **Governor Rogers** reported he attended the Annual Meeting, including the Diversity Awards Dinner. He also attended the Board of Governors holiday party. **Governor Smith** reported she attended the Diversity Awards Dinner during the Annual Meeting and thanked fellow board members for attending. She also attended the Board of Governors holiday party. **Governor Thurman** reported he attended events during the Annual Meeting, including the Diversity Awards Dinner, Delegates Breakfast and General Assembly. He attended the Oklahoma Bureau of Narcotics

annual banquet, where he was recognized with the 2023 Director's Award for Law Enforcement. He attended the Pontotoc County Multidisciplinary Team meeting to discuss district cases involving abused children and the Board of Governors holiday party. **Governor Vanderburg** reported he recorded his portion of the district court judge training program and attended the Oklahoma Association of Municipal Attorneys board meeting in Stroud.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Shaffer Siex reported she attended the Annual Meeting, including events such as the Diversity Awards Dinner, Delegates Breakfast and General Assembly. She reviewed the October YLD budget and projected end-of-year budget outcomes, met with YLD Chair-Elect Talbert to discuss upcoming tasks to be completed in the new year and authored an article for the *Oklahoma Bar Journal*.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

Governor Knott said the **Law Schools Committee** annual report is being finalized and is expected to be delivered to the Board of Governors soon. Governor Ailles Bahm reported the **Bench and Bar Committee** is continuing to move forward and is meeting and holding networking meetings in the evenings. She also said the **Lawyers Helping Lawyers Assistance Program Committee** is involved in the critical task of developing a working partnership with the LHL Foundation and is also focused on developing future leaders. Governor Barbush said the **Cannabis Law Committee** has announced its new leadership and is working on a planned joint CLE with the Family Law Section. Governor Rogers said the **Professionalism Committee** recently met. Governor Smith said the **Diversity Committee** has met and recently held a CLE on voting rights. Past President Hicks said the **Strategic Planning Committee** met during the Annual Meeting. Governor Hilfiger said the **Law Day Committee** is meeting soon and gearing up for its 2024 activities. Vice President Williams said the **Legislative Monitoring Committee** recently met and is preparing for the Legislative Kickoff event on Feb. 2. He also said the **Membership Engagement Committee** met during the Annual Meeting and is gaining traction in meeting with law school representatives.

PROFESSIONALISM MOMENT

President Hermanson reviewed and discussed his focus on civility in the courtroom, which he emphasized throughout his year-long term as president.

OBA GROUP INSURANCE COMMITTEE RECOMMENDATION

The board passed a motion to approve the recommendation of the OBA Insurance Committee to change some of the insurers and update current insurance offerings as an added value to members.

REVIEW AND APPROVAL OF AWARDS COMMITTEE RECOMMENDATIONS

The board passed a motion to approve the recommendation of the Awards Committee that no changes be made to the committee's customary practices or to the awards to be presented during the Annual Meeting in 2024.

CLIENTS' SECURITY FUND REPORT

The board passed a motion to approve the recommendation of the Clients' Security Fund Committee to distribute funds to approved 2023 claimants as equitably as possible over the multiple years of claims against one deceased attorney – to be accomplished by prorating payouts this year and carrying over some funds to next year with the intent of a similar 88% proration. The motion included the issuance of a corresponding press release to be approved by Chairperson Salem and General Counsel Hendryx.

HEROES PROGRAM PRESENTATION

The board passed a motion to approve raising the program's current annual maximum income requirement from \$47,000 to \$60,000

The board passed a motion to approve the recommendation of the executive director to begin using LegisOK as the OBA's service provider for legislative monitoring and bill tracking.

to keep pace with cost-of-living increases since the program's inception. President Hermanson also asked the Military Assistance Committee to come forward with recommendations for structural changes to the program to ensure there is adequate assistance available to meet the demand for services.

DISCUSS "LEGISOK" – LEGISLATIVE INFORMATION SERVICES OF OKLAHOMA LLC

The board passed a motion to approve the recommendation of the executive director to begin using LegisOK as the OBA's service provider for legislative monitoring and bill tracking.

PRESIDENT-ELECT'S APPOINTMENTS (BOARD VOTE REQUIRED)

Clients' Security Fund – The board passed a motion to approve the reappointment of Micheal Salem of Norman to a one-year term as chairperson that expires Dec. 31, 2024; the reappointment of Peggy Stockwell of Norman to a one-year term as vice chairperson that expires Dec. 31, 2024; the reappointments of Jennifer K. Christian, Oklahoma City; John Kinslow, Lawton; and Derek K. Burch, Oklahoma City; to three-year terms that expire Dec. 31, 2026; and the appointment of

Keith Oehlert, Oklahoma City, to a three-year term as layperson that expires Dec. 31, 2026.

OBA Professional Responsibility Commission – The board passed a motion to approve the reappointment of Matthew Beese of Muskogee to a three-year term that expires Dec. 31, 2026; and the appointment of Robin Rochelle of Lawton to a three-year term that expires Dec. 31, 2026, replacing Heather Burrage of Durant.

Oklahoma Indian Legal Services (OILS) – The board passed a motion to approve the appointment of Julie Rorie, Oklahoma City; Eric Davis, Oklahoma City; and Hershel Gorham, El Reno; to three-year terms that expire Dec. 31, 2026.

OBA MCLE Commission – The board passed a motion to approve the reappointment of Kim Hays of Tulsa to a one-year term as chairperson that expires Dec. 31, 2024; the reappointment of Matthew Beese, Muskogee; and the appointment of John R. Andrew, Ponca City; to three-year terms that expire Dec. 31, 2026.

Board of Editors – The board passed a motion to approve the appointment of Magdalena A. Way, El Reno, District 9, to complete an unexpired term that expires Dec. 31, 2024; and the appointment of Norma G. Cossio, Enid, District 4,

to complete an unexpired term that expires Dec. 31, 2024.

Council on Judicial Complaints (COJC) – The board passed a motion to approve the appointment of Angela Ailles Bahm, Oklahoma City, to a term that begins July 1, 2024, and expires June 30, 2029, replacing Cathy Christensen of Oklahoma City.

District Attorneys Council (DA's Council) – The board passed a motion to approve the appointment of Brian Hermanson, Ponca City, to a term that begins July 1, 2024, and expires June 30, 2027, replacing Greg Mashburn of Norman.

PRESIDENT-ELECT'S APPOINTMENTS (BOARD VOTE NOT REQUIRED)

Audit Committee – President-Elect Pringle appointed Governor Angela Ailles Bahm of Oklahoma City to a one-year term as chairperson that expires Dec. 31, 2024. He also appointed Vice President-Elect Amber Peckio, Tulsa – term begins Jan. 1, 2024, and expires Dec. 31, 2024; Governor John E. Barbush, Durant – term begins Jan. 1, 2024, and expires Dec. 31, 2025; Governor Philip D. Hixon, Tulsa – term begins Jan. 1, 2024, and expires Dec. 31, 2026; Governor William Ladd Oldfield, Ponca City – term begins Jan. 1, 2024, and expires Dec. 31, 2026.

Investment Committee – President-Elect Pringle reappointed M. Joe Crosthwait Jr. of Midwest City to a one-year term as chairperson that expires Dec. 31, 2024. He also reappointed Kendra M. Robben of Oklahoma City to a one-year term as vice chairperson that expires Dec. 31, 2024. He also reappointed Audrey C. Talley, Oklahoma City, and Charles W. Chesnut, Miami, to terms that begin Jan. 1, 2024, and expire Dec. 31, 2026. He appointed Claire C. Bailey of Norman

to a term that begins Jan. 1, 2024, and expires Dec. 31, 2026.

Legal Ethics Advisory Panel (LEAP) – President-Elect Pringle reappointed Steven K. Balman, Tulsa, to a one-year term as chairperson/panel coordinator that expires Dec. 31, 2024. He also reappointed Michael Salem, Norman, and Lynnwood Moore, Tulsa, to terms that begin Jan. 1, 2024, and expire Dec. 31, 2026.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hermanson reviewed upcoming bar-related events. 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 state Capitol Courtroom, second floor, Oklahoma City. Other upcoming events include the Oklahoma County Bar Association Law Day Luncheon, April 30, Oklahoma City Convention Center; Law Day/Ask A Lawyer, May 1, Oklahoma Bar Center and statewide; and the 2024 OBA Annual Meeting, July 9-12, Embassy Suites, Norman.

NEXT BOARD MEETING

The Board of Governors met in January, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held Friday, Feb. 23, in Oklahoma City.

OBF Announces 2024 Housing Protection and Community Redevelopment Grantees

THE OKLAHOMA BAR FOUNDATION is excited to announce that \$331,800 in grants will fund six nonprofits providing legal representation to low-income Oklahomans in the areas of foreclosure, eviction, domestic violence, civil legal aid and commutation.



2024 HOUSING PROTECTION & COMMUNITY REDEVELOPMENT GRANTEEES

Grantee	Area of Service	Funding Amount
Community Action Agency (LASO)*	Canadian and Oklahoma counties	\$47,500
Legal Aid Services of Oklahoma – Mortgage Foreclosure Defense	LeFlore, Pittsburg and other counties	\$50,000
OCU School of Law – Pro Bono Housing Foreclosure and Eviction Assistance Program	Oklahoma County	\$90,300
Safe Center (LASO)*	Stephens and Jefferson counties	\$48,000
Tulsa County Bar Association	Tulsa County	\$6,000
Tulsa County Public Defender – Project Commutation	Tulsa County	\$90,000
<i>*Indicates embedded attorney from Legal Aid Services of Oklahoma (LASO)</i>	Total	\$331,800

GRANTEE HIGHLIGHT

The Mortgage Foreclosure Defense program at Legal Aid Services of Oklahoma positively impacts about 75 families per year that are on the verge of losing their homes. The program provides access to a reliable attorney and other effective resources to educate homeowners and communicate with lenders to resolve issues so that families can stay in their homes. This program focuses on Oklahoma counties experiencing a high number of home foreclosures, like Pittsburg and LeFlore counties.

COURT GRANT APPLICATION OPEN NOW

How can the OBF help improve the administration of justice in your courtroom? Courts can apply now through March 4 for an OBF Court Grant for technological equipment like interactive display boards and audio/video systems. Find the online application at www.okbarfoundation.org/grants/grant-applications.

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Cy Pres

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Memorials & Tributes

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



Unclaimed Trust Funds

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



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Nurturing Harmony: The Crucial Balance Between Legal Pursuits and Personal Well-Being

By *Laura R. Talbert*

IN THE WORLD OF LAW, where deadlines loom like shadows and courtroom battles unfold like epic dramas, achieving a work-life balance can feel like a herculean task. Lawyers, known for their tenacity and dedication, often find themselves entangled in a web of ceaseless demands. Yet, in the heart of this legal labyrinth lies a profound truth – the importance of carving out time for oneself.

The legal profession, with its intricate cases and high stakes, can easily consume one's entire life. Late nights at the office, weekends blurred with legal research and a constant buzz of emails contribute to a relentless work cycle. However, as the legal landscape evolves, so does the understanding of the critical need for work-life balance.

To appreciate the significance of this balance, one must first acknowledge the toll the legal profession can take on mental and physical well-being. The pressures of representing clients, preparing for cases and navigating complex legal intricacies can lead to stress and burnout. These factors underscore the necessity of carving out time for personal pursuits, an essential component of maintaining a lawyer's overall health.

Carving out time for oneself is not a luxury; it is a fundamental requirement for sustained

professional success. Studies consistently show that a well-rested and mentally healthy lawyer is more likely to exhibit enhanced cognitive abilities, sharper analytical skills and increased productivity. A lawyer who embraces a balanced life is better equipped to handle the rigors of the legal profession, bringing not only legal expertise but also emotional resilience to the table. In other words, you're a better advocate for your clients when you can balance your work life and your home life.

Beyond the professional realm, personal well-being contributes to a lawyer's ability to form meaningful connections and maintain a sense of fulfillment. Relationships outside the courtroom become anchors, providing solace and support during challenging times. Carving out time for family, friends and personal passions becomes a source of rejuvenation, fostering a lawyer's emotional strength and overall satisfaction with life.

In the pursuit of this balance, setting clear boundaries is paramount. It involves establishing designated work hours, resisting the temptation to bring work home excessively and protecting personal time as if it were a prized possession. It is an intentional act of reclaiming control over one's life and asserting the importance of personal well-being.

Taking regular breaks, whether short respites during the workday or more extended vacations, is a crucial component of this balance. Stepping away from the legal battlefield allows lawyers to recharge, gain perspective and return to their casework with renewed vigor. Vacations, in particular, offer an opportunity to detach from the demands of legal practice and reconnect with the passions and interests that define a lawyer beyond their professional role.

Achieving work-life balance as a lawyer is not only advisable but imperative. Carving out time for oneself is not a selfish act; rather, it is an investment in both personal well-being and professional effectiveness. As the legal landscape continues to evolve, embracing a balanced approach to life will not only enhance the quality of a lawyer's work but also contribute to a fulfilling and sustainable career in the legal profession. Whether you're a young lawyer or one more seasoned, make 2024 the year you take care of both your clients and yourself.

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

JULY 9-12, 2024

— SAVE THE DATE — OBA ANNUAL MEETING

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FOR YOUR INFORMATION

OBA DAY AT THE CAPITOL

On Tuesday, March 26, join us for this year's OBA Day at the Capitol. The morning will kick off with speakers covering bills of interest, how to talk to legislators, legislative updates and more. Attendees will then have the opportunity to visit with legislators. Be sure to save the date and keep your eye out for more information on how to register!



LHL DISCUSSION GROUP HOSTS MARCH MEETINGS IN OKC AND TULSA

The Lawyers Helping Lawyers monthly discussion group will meet March 7 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet March 14 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet March 28 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.



SARA E. HILL CONFIRMED AS A U.S. DISTRICT JUDGE

Sara E. Hill has been confirmed as U.S. district judge for the Northern District of Oklahoma. She is the first Native American woman to serve as a federal judge for Oklahoma and is the eighth Native American judge in United States history to receive a lifetime appointment. Judge Hill previously served as the Cherokee Nation's attorney general from 2019 to 2023. She received her J.D. from the TU College of Law in 2003.

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

The Oklahoma Bar Center will be closed Monday, Feb. 19, in observance of Presidents Day. Also, be sure to docket the 2024 OBA Annual Meeting at the Embassy Suites in Norman July 9-12.

OBA DUES ARE DUE

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

THE BACK PAGE: SHOW YOUR CREATIVE SIDE

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 at lorir@okbar.org.

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

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



OKLAHOMA BAR ASSOCIATION



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DID YOU KNOW?

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

CHECK IT OUT

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

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

ON THE MOVE

Ryan Leonard, Heidi Long, Kane Cassil, Elaine DeGiusti, Jim Dobbs, Travis W. Brown, Olivia Glazner Cassil and Jamie Shouse have formed a new partnership, Leonard, Long & Cassil PLLC. The boutique litigation firm in Oklahoma City handles complex commercial disputes.

Kirsten L. Palfreyman has been named partner at the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds. Ms. Palfreyman graduated from the TU College of Law in 2011. During law school, she completed internships with Judge Linda Morrissey of the Tulsa County District Court and Judge Deborah Barnes of the Court of Civil Appeals. She practices in the area of civil litigation with an emphasis on research.

Bill Molinsky has been selected as a director of the Oklahoma City law firm of Lytle Soulé & Felty PC. **Lauren Harris** has joined the firm as an associate attorney. Mr. Molinsky joined the firm as a preferred shareholder in 2023 and practices in the areas of civil defense litigation and appellate law. He received his J.D. from the OU College of Law. Ms. Harris is a 2023 graduate of the OU College of Law, where she was a member of the Dean's Leadership Fellows and director of the Daugherty Intraschool Moot Court Competition. She also served as a mentor for new and international students. Ms. Harris' areas of practice include general civil law, business law and administrative/municipal law.

Carrie L. Burnsed has joined the law firm of Halloran Sage in the Hartford, Connecticut, office. She practices in the areas of health-care regulatory and transaction matters and is a member of the Health Care Practice Group, bringing 20 years of extensive healthcare experience in the field. Ms. Burnsed received her J.D. from the OCU School of Law in 2002 and is an active member of the Health Care Compliance Association, amongst other organizations. She was recently selected to serve on the judging panel for the American Health Law Association's inaugural Inclusion, Diversity, Equity and Accessibility Champion Award.

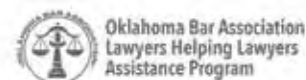
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- Travis Pickens, Oklahoma City Private Practitioner

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KUDOS

Logan James, Carson Glass Lamle, Lauren Marciano and Collin Walke have been elected shareholders of the law firm of Hall Estill. Mr. James focuses his practice on trusts and estate litigation and complex commercial litigation. He has extensive experience in all phases of litigation, including trial work. Ms. Lamle rejoined Hall Estill in January 2022. She initially started her legal career with the firm in 2016 before serving as a law clerk for Judge John F. Heil III. She practices in the areas of complex commercial litigation and energy and natural resources law. Ms. Marciano joined the firm in 2021. She practices in the areas of complex commercial, construction, employment, and trusts and estate litigation. Mr. Walke is the leader of Hall Estill's Cybersecurity & Data Privacy practice and is certified in information privacy and artificial intelligence systems auditing. He brings extensive experience from his tenure in the Oklahoma House of Representatives.

Jim Buxton was elected president of the Oklahoma Association for Justice. The organization, previously known as the Oklahoma Trial Lawyers Association, is the oldest trial lawyers association in the country. Its goal is preserving the rights of Oklahomans and their access to courts and trial by jury.

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 April issue must be received by March 1.

IN MEMORIAM

Barry Weldon Benefield of Oklahoma City died Dec. 1. He was born Dec. 28, 1942. Mr. Benefield received his J.D. from the OU College of Law and became a member of the ABA in 1967. After law school, he worked on a project in New Jersey, fighting against discrimination. He also worked for Oklahoma Indian Legal Services, and his heart was with the Native American Center, helping Native Americans all over the world with their legal matters.

Jordan Barrett Ellis of Oklahoma City died Dec. 10. He was born Aug. 3, 1980, in Tulsa. He was a National Merit Scholar at OU, where he dual majored in letters and Spanish. Mr. Ellis was a member of Phi Beta Kappa, student congress chairman, a Cortez A.M. Ewing Public Service fellow and a J.R. Morris Campus Life Award honoree. He graduated from OU *summa cum laude* in 2003 and received his J.D. from Harvard Law School in 2006, where he served as managing editor of the *Harvard Negotiation Law Review*. Mr. Ellis began his career as an associate attorney at the Chicago office of Jones Day, practicing in the area of mergers and acquisitions. He also worked at McAfee & Taft for 10 years before returning to his alma mater. Mr. Ellis served as of counsel for the OU Foundation. He enjoyed outdoor activities, such as backpacking and mountain biking, and was a layperson and teacher at Connect United Methodist Church. Mr. Ellis served on the Board of Directors of Skyline Urban Ministry and the Redbud Classic. Memorial contributions may be made to OU's Barrett and Megan Ellis Study Abroad Scholarship.

James H. Essman of Midland, Texas, died Aug. 5, 2023. He was born Feb. 23, 1933, in Tulsa. He graduated from TU with a degree in business administration and received his LL.B. from the TU College of Law in 1958. He was a member of Sigma Chi and Delta Theta Phi and worked full time throughout law school. Mr. Essman began his legal career with Shell Oil Co. as a lease and title analyst before eventually working as a landman. After 10 years, he became an independent petroleum landman and primarily worked on drilling deals, purchasing oil and gas leases, as well as investing in minerals and royalties until shortly before his death. Mr. Essman was a long-time member of the Midland YMCA and a past member of St. Nicholas Episcopal Church. Memorial contributions may be made to the University of Texas MD Anderson Cancer Center or a charity of your choice.

Don W. Fugate of Inola died July 4, 2023. He was born March 4, 1935, in the township of Strike Axe. He was a member of the Osage Nation and grew up in Tulsa and Collinsville. Mr. Fugate worked in information management systems as a scientific and software programmer for more than 30 years. He retired from American Airlines and began practicing law. He received his J.D. from the TU College of Law in 1975. He was elected as an Osage Nation district judge for four years and worked as a Tulsa County assistant public defender for six and a half years, representing deprived children. Memorial contributions may be made to the First Baptist Church Inola preschool ministry.

John George Ghostbear of Tulsa died Dec. 28. He was born Feb. 16, 1943, in Tahlequah. Mr. Ghostbear graduated from TU with a bachelor's degree in history and political science and received his J.D. from the TU College of Law in 1969. He practiced in the area of federal Indian law. Memorial contributions may be made to St. Luke's Episcopal Church.

Carlton Robert Jones of Tulsa died April 18, 2023. He was born June 10, 1936, in Enid. He graduated from OSU and the OU College of Law. During his time at OSU, he was the treasurer of Sigma Nu and president of Beta Alpha Psi, the accounting honorary society. At the OU College of Law, Mr. Jones was an editor of the *Oklahoma Law Review*, a member of the Order of the Coif and president of Phi Alpha Phi. He became a partner of the law firm of GableGotwals and was a founding partner of Johnson & Jones PC in 1994. He also co-authored a book on estate planning in Oklahoma with W. Thomas Coffman.

Charles Scott Letcher of Kirkwood, Missouri, died July 20, 2023. He was born Sept. 1, 1934, in Wilkes-Barre, Pennsylvania. He graduated from TU in 1955 with a degree in chemical engineering and began his career at General Mills. Mr. Letcher graduated from the TU College of Law in 1979. He began practicing in the areas of labor negotiations, federal registration and patent submissions for Petrolite and also had a private law practice. Memorial contributions may be made to the Ladue Chapel Presbyterian Church or the Knight Alzheimer Disease Research Center's Memory & Aging Project.

Kenneth L. Meyer Jr. of Muskogee died Dec. 18. He was born Feb. 22, 1926, in Woodward. **He served in the U.S. Army and Navy during World War II and was recalled by the Navy to serve during the Korean War.** Mr. Meyer was initiated into Phi Delta Phi and graduated from the OU College of Law in 1950. He practiced law in Checotah and served as an assistant county attorney of McIntosh County before associating with the First National Bank and Trust Co. of Muskogee, where he was an officer and director for nearly 30 years. He was also elected president of the Trust Division of the Oklahoma Bankers Association. After retiring from banking, he joined the Phoenix Federal Savings and Loan Association to establish trust services for customers. After the company's closure, he practiced law with Mike Norman until Judge Norman was elevated to the bench. Mr. Meyer served as past president of the Muskogee County Bar Association and as treasurer of the association for 43 years. He held leadership positions in and was a member of various organizations, including the Muskogee Rotary Club, First United Methodist Church, Veterans of Foreign Wars and more.

George William Newton of Tulsa died Jan. 2. He was born Jan. 24, 1937, in Perry. He graduated from OU, where he was a walk-on member of the football team and an active member of Sigma Alpha Epsilon. He received his bachelor's degree in 1959 and his J.D. from the OU College of Law in 1962. Mr. Newton was a solo practitioner for 12 years before forming a legal practice

with John O'Connor, which evolved into Newton, O'Connor, Turner & Ketchum in Tulsa. In 2013, he received the Tulsa County Bar Association's Golden Rule Award, recognizing him for making outstanding contributions to the legal profession, having the highest of ideals and being willing to mentor those with less experience. Mr. Newton also served his community through numerous charitable activities. He was a member of the Sunrise South Rotary Club of Tulsa and the Rotary Club of Southeast Tulsa, serving on many committees. He was a longtime member of the First United Methodist Church, where he regularly served as a Sunday school teacher.

Leola C. Schumacher of Muskogee died May 31, 2023. She was born Nov. 14, 1932, in Oklahoma City. Ms. Schumacher graduated from OSU with a bachelor's degree in sociology and from OU with a master's degree in library science. She received her J.D. with honors from the OU College of Law in 1984 and dedicated her career to helping low-income Oklahomans with legal needs. When she retired, she was the managing attorney for a multi-county region in eastern Oklahoma for Legal Aid Services of Oklahoma.

Lana Jeanne Tyree of Oklahoma City died Dec. 23. She was born Jan. 29, 1945, in Oklahoma City. Ms. Tyree graduated from OCU in 1968 with a bachelor's degree in psychology and received her J.D. from the OU College of Law in 1971. She practiced law for 50 years in the area of civil law. Memorial contributions may be made to

St. Jude Children's Research Hospital, Shriners Hospitals for Children, the American Society for the Prevention of Cruelty to Animals or the Humane Society of the United States.

Larry Gene Vickers Jr. of Vian died Dec. 4. He was born Nov. 9, 1972, in Fort Smith, Arkansas. He graduated from Northeastern State University in 1996 and received his J.D. from the TU College of Law in 2000. He worked in private practice for more than 20 years and served as the Vian city attorney for 18 years. Mr. Vickers was the attorney for Webber Falls and surrounding communities as well. He became a judge in Fort Gibson, where he served for four years. Most recently, Mr. Vickers served as an assistant district attorney for Muskogee County. Additionally, he served as the vice president of the Muskogee County Bar Association and was a longtime member of the Landmark Missionary Baptist Church. Memorial contributions may be made to the American Diabetes Association.

Joseph A. Walkowski Jr. of Salt Lake City died June 13, 2023. He was born Sept. 30, 1949, in Heidelberg, Germany. He received his bachelor's degree in mechanical engineering from the University of Delaware in 1971 and his J.D. from the Georgetown Law School in 1975. He also earned his master's degree in business administration with highest honors from OCU. Mr. Walkowski began working as a patent examiner at the U.S. Patent and Trademark Office before going into private practice as a civil litigation attorney. He then became a patent attorney for Halliburton Energy Services and served as

chief patent counsel for Eastman Christensen Co. Eventually, Mr. Walkowski returned to private practice with the patent law firm of Trask Britt in Salt Lake City, where he served as general counsel from 1990 until his death.

Charles Vernon Williams Jr. of Oklahoma City died Nov. 25. He was born Dec. 29, 1930, in Tulsa. He enlisted in the U.S. Air Force in 1950 and was discharged in August 1953. Mr. Williams served as a flight chief, putting basic trainees through boot camp. He ended up working on B-25s at the Vance Air Force Base in Enid. He graduated from TU with his bachelor's degree and received his J.D. from the TU College of Law in 1961. Mr. Williams served as an assistant district attorney in Beckham and Blaine counties and was appointed district judge for the Osage Nation Tribal Court in 1993.



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POSITIONS AVAILABLE

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

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RICHARDSON RICHARDSON BOUDREAUX SEEKS AN ASSOCIATE ATTORNEY with 1 to 7 years of experience to add to our team. Since 1984, our firm has been helping Oklahomans with a wide variety of civil claims. Come join an established, successful and growing firm. We have an open door policy for mentoring and a great team of people. Licensure in Oklahoma and a motivation to help people are necessary. Qualified applicants may submit their resume via email to jcm@rrbok.com. Benefits include bonuses, incentives, health, dental and retirement account with matching. No phone calls please.

MULTI-STATE LAW FIRM SEEKING OIL AND GAS ATTORNEY LICENSED IN TEXAS: Ball Morse Lowe, a respected metro-area law firm with a multi-basin practice, is seeking to expand its dynamic Oil, Gas + Energy team in Oklahoma City, OK; Denver, CO; and will also consider remote working options for the right candidate. Offering a competitive salary commensurate with experience, bonus opportunities, full health benefits, 401(k) match, and comprehensive support for client management and practice growth. Texas license and 3-5 years of direct oil and gas experience required. To apply, send cover letter, resume, and references to office@ballmorselowe.com and be prepared to provide a writing sample upon request.

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

POSITIONS AVAILABLE

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

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

MCDANIEL ACORD, PLLC IS RECRUITING A LITIGATION ASSOCIATE ATTORNEY for the firm's Edmond office to assist our clients in civil litigation within a strong team setting that focuses on client service and maximizing outcomes. Our practice includes challenging procedural and technical issues, and the successful candidate will possess strong analytical and advocacy skills. Our Firm provides excellent benefits and rewards performance. We are looking for the right attorney to join our team who will take pride in the service we deliver and fit within our family-oriented, friendly, and low-key firm environment. Candidates should have 2 to 5 years litigation experience that reflects skill in legal research, drafting memoranda, briefs and discovery, taking depositions, managing document production, and oral argument. Candidates should submit a recent writing sample and CV to smcdaniel@ok-counsel.com.

POSITIONS AVAILABLE

HB LAW PARTNERS, PLLC, a Norman civil litigation firm, is seeking highly motivated attorneys with 2-5 years experience in civil litigation. Strong research, writing, and communication skills are required. Trial, arbitration, deposition, and hearing experience preferred but not required. Position includes competitive salary and benefits commensurate with experience, with excellent bonus opportunity. Please send a cover letter, resume, references, and writing sample to info@hblawpartners.com.

OKLAHOMA CITY-BASED, MULTI-JURISDICTIONAL LAW FIRM actively seeking motivated and detail-oriented attorneys experienced in Estate Planning and Probate to join our fast-paced and growing practice group. Our team provides clients the respect, time and attention needed to develop cohesive and thoughtful legal solutions. As a firm, we are intentional in maintaining a positive and motivating work culture. Benefits include a competitive fee structure, full health benefits, 401K, full back-end client support and the opportunity for practice growth. Qualified candidates should have at least 2+ years of experience in both Estate Planning and Probate. Please send resume and references to office@ballmorselowe.com. If you are up to the challenge, please submit your resume for consideration.

MCDANIEL ACORD, PLLC IS RECRUITING A LITIGATION ASSOCIATE ATTORNEY for the firm's Tulsa office to assist our clients in civil litigation and family law within a strong team setting that focuses on client service and maximizing outcomes. Our practice includes challenging procedural and technical issues, and the successful candidate will possess strong analytical and advocacy skills. Our Firm provides excellent benefits and rewards performance. We are looking for the right attorney to join our team who will take pride in the service we deliver and fit within our family-oriented, friendly, and low-key firm environment. Candidates should have 2 to 5 years litigation experience that reflects skill in legal research, drafting memoranda, briefs and discovery, taking depositions, managing document production, and oral argument. Candidates should submit a recent writing sample and CV to smcdaniel@ok-counsel.com.

POSITIONS AVAILABLE

OKLAHOMA INDIGENT DEFENSE SEEKING ATTORNEYS

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

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

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

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

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

Applications must be submitted online. Visit <https://oklahoma.gov/oids/employment.html> to view job announcements and apply online. This is an open, continuous announcement; application reviews will be conducted periodically until all positions are filled.

POSITIONS AVAILABLE

General Counsel

Oklahoma Public Employees Retirement System

The Oklahoma Public Employees Retirement System (OPERS) is seeking applications for the position of General Counsel. The individual in this position is the primary legal counsel to the agency and the Board of Trustees. OPERS is a state agency that administers four retirement plans for approximately 80,000 state and local government employees, elected officials, and state justices and judges.

The General Counsel is responsible for representing the agency in all civil litigation including administrative hearings and appeals unless outside counsel is employed. The General Counsel provides legal advice, develops administrative rules, and drafts legal opinions and contracts. The General Counsel is responsible for advising the Executive Director and the Board of Trustees on all legal issues. The General Counsel is responsible for the management and supervision of the Assistant General Counsel and any other legal support staff.

To be considered, an individual must have a Juris Doctorate degree, be a member in good standing with the Oklahoma Bar Association, have at least seven years of experience as a practicing attorney, and communicate effectively both verbally and in writing. Excellent legal research and writing skills are required. Knowledge of legal principles and their application to public retirement entities and state agencies is preferred.

Salary will be commensurate with relevant experience, not to exceed \$165,000 per year. Benefits include a paid benefit allowance to help cover the cost of health, dental, and life insurance, optional flexible spending accounts for health care and/or dependent care, 11 paid holidays per year, paid time off for vacation and sick days, a retirement savings plan, and annual longevity bonuses after two years of service.

To apply, email a current resume and cover letter demonstrating how your specific experience aligns with the essential job functions, the necessary knowledge, skills, and abilities, and the education and experience requirements of the position to dbyrd@opers.ok.gov.

Application deadline: February 22, 2024, at 11:59 p.m.

Equal Opportunity Employer.

POSITIONS AVAILABLE

THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA IN MUSKOGEE, OK, is seeking applicants for multiple Assistant U.S. Attorney positions for our Criminal Division. AUSAs in the Criminal Division have the unique opportunity to represent the United States of America by directing the investigation and prosecution of federal offenses occurring within the Eastern District, including Indian Country. Salary is based on the number of years of professional attorney experience. Applicants must possess a J.D. degree, be an active member of the bar in good standing (any U.S. jurisdiction) and have at least one (1) year post-J.D. legal or other relevant experience. Prior violent crime prosecution and jury trial experience is preferred. AUSAs may live within 25 miles of the district which includes much of the Tulsa metropolitan area. See vacancy announcement 23-12029252-AUSA at www.usajobs.gov (Exec Office for US Attorneys). Applications must be submitted online. See How to Apply section of announcement for specific information. Questions may be directed to Jessica Alexander, Human Resources Specialist, via email at Jessica.Alexander@usdoj.gov. This is an open, continuous announcement that has been extended to June 28, 2024. Additional reviews of applications will be conducted periodically, until all positions are filled.

CIVIL DIVISION ASSISTANT DISTRICT ATTORNEY, Oklahoma County District Attorney's Office. Qualifications: 10 years of federal court litigation experience in civil matters, and government defense or insurance defense experience, and first chair civil jury trial experience. Compensation and benefits commensurate with experience for this career position. State benefits. Resume Contact: Aaron Etherington at aaron.etherington@oklahomacounty.org.

Learning a New Language

By Lisbeth L. McCarty



CONTINUING LEGAL EDUCATION is a requirement for Oklahoma attorneys, which makes sense because there are always new laws, new terms and new concepts to learn. I also enjoy continuing my education in other areas, which is what prompted me to take steps to learn how to speak Spanish. These efforts resulted in my creation of the following poem:

CLASE DE ESPAÑOL

My teacher speaks so rapidly
as I sit there so vapidly
Learning Spanish is truly rough
Those gender verbs do make it tough
And what about the strangest plight
where double-negatives are right?
There's two words to say "to be"
All these choices are haunting me!
But somehow, I am still compelled
to learn, albeit overwhelmed
Although I sit here at a loss,
I refuse to say, "No más."

Ms. McCarty is a Norman-based attorney and author.



OBA CLE
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2023 BANKING AND COMMERCIAL LAW UPDATE

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

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

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

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

MORE EFFECTIVE WRITING MAKES MORE EFFECTIVE LAWYERS

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

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

THE BAD LAWYERS OF HOLLYWOOD: AN ETHICS PROGRAM

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

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

2023 OBA ANNUAL MEETING

Original Program Dates: Nov. 1/2, 2023

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

2023 YEAR END REVIEW

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

ARTIFICIAL INTELLIGENCE IN A LAW PRACTICE

In this session we will discuss and demonstrate some AI built into tools that you may already have, plus some that can be useful right away. MCLE 1/0

2023 GALPS CLE CONFERENCE

Original Program Date: Dec. 8, 2023 - MCLE 5/1

VOTING RIGHTS IN OKLAHOMA: THE LEGACY OF GUINN V. U.S.

Original Program Date: Dec. 8, 2023 - MCLE 1 Hr of Ethics

HONORING SOVEREIGNTY: AN INDIAN LAW UPDATE

Original Program Date: Dec. 21, 2023 - MCLE 5/2

THE DIRTY DOZEN: 12 MOST COMMON GRAMMAR & WRITING ERRORS

MCLE 1/0

THE SNEAKY DOZEN: 12 SUBTLE GRAMMAR & WRITING ERRORS

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CYBER AGE ETHICS FOR TRANSACTIONAL LAWYERS

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